

STATE OF NEW YORK  
SUPREME COURT  
COUNTY OF ONONDAGA

---

In the matter of:

JOHN DOE,

Petitioner,

vs.

NEW YORK STATE COMMISSION  
ON JUDICIAL CONDUCT

Respondent,

---

**VERIFIED PETITION  
and  
AFFIDAVIT IN SUPPORT  
OF SHOW CAUSE ORDER  
and a  
TEMPORARY  
RESTRAINING ORDER**

**Index No.**

**RJI No.**

Andrew N. Piraino, being duly sworn deposes and says as and for his Verified Petition as follows:

INTRODUCTION

1. This is a Verified Petition and is being brought as a Special Proceeding pursuant to CPLR Article 78 against the New York State Commission on Judicial Conduct (hereafter Commission or respondent).

2. Petitioner seeks a writ of prohibition pursuant to Article 78, including §7803(2), upon the basis that the Commission is proceeding without, and in excess of, their statutory jurisdiction.

3. Petitioner is a duly elected town judge within the State of New York. The Commission has filed a Formal Complaint pursuant to Judiciary Law §44(4) alleging petitioner has engaged in acts of unethical judicial misconduct. Petitioner demurs and does not dispute

these factual allegations. The acts complained of are mere administrative failures and do not under any circumstances rise to the level of unethical judicial misconduct.

The Formal Complaint does not allege petitioner engaged in any acts of venality or judicial intemperance. Rather the gravamen of the complaint is petitioner: a] on multiple occasions mistakenly imposed fines in excess of Vehicle and Traffic Law [hereafter VTL] statutes; and b] on multiple occasions mistakenly failed to impose minimum fines or surcharges required by the VTL; and c] failed to supervise the Court's clerks, because on multiple occasions the Court's clerks made administrative errors; and d] failed to supervise the Court's clerks because on multiple occasions the Court's clerks did commit acts of official impropriety.

4. Pursuant to Judiciary Law §44, subject matter jurisdiction of the Commission is strictly limited to prosecuting acts of unethical judicial misconduct. Therefore, the Commission's prosecution of petitioner for administrative failures is both without jurisdiction, and in excess of its jurisdiction.

5. Petitioner is entitled to an order, judgment and decree vacating the Commission's Formal Complaint.

#### PARTIES

6. Petitioner, Honorable Andrew N. Piraino, is a duly elected Justice of the Town Court of Salina, Onondaga County. He maintains his judicial chambers at 201 School Road, Liverpool, New York 13088. Telephone 315.457.4251.

7. Respondent, New York State Commission on Judicial Conduct, was statutorily

created pursuant to Judiciary Law §41. The Commission's Clerk is Hon. Jean M. Savanyu. The Commission maintains an office at 400 Andrews Street, Suite 700, Rochester, New York 14604. Telephone 585.232.5756.

8. The New York State Attorney General is the Constitutional attorney for the Commission. The New York State Attorney General maintains an office at 615 Erie Blvd. West, Syracuse, New York 13204. Telephone 315.448.4800.

#### CONFIDENTIALLY OF ALL PROCEEDINGS

9. Pursuant to Judiciary Law §45, this Special Proceeding and all matters related to it are statutorily required to be "confidential and shall not be made available to any person." As such, Petitioner seeks an immediate order: sealing the records maintained by the Clerk of this court; directing the caption of the case to be styled as "John Doe v New York State Commission on Judicial Conduct;" and pursuant to Judiciary Law §4 directing all proceedings are to be held in a court room closed to the public.

#### JURISDICTION

10. Pursuant to Judiciary Law §140-b the Supreme Court has jurisdiction to consider this Special Proceeding and to grant the relief Petitioner seeks.

11. Upon information and belief, in the Matter of Nicholson v State Commission on Judicial Conduct, 50 NY2d 597 [1980], the Court of Appeals specifically held that a writ of prohibition under Article 78 is the proper procedural device to be used when challenging the Commission's jurisdiction.

12. Petitioner highlights that this application for relief does not seek to limit or prevent the Commission from performing its investigative function. In fact, the Commission has already fully investigated Petitioner's judicial activities. Petitioner has given the Commission extensive sworn deposition testimony. Moreover, Petitioner voluntarily produced a full and complete copy of all court records which involve the matters of interest to the Commission.

13. There are no questions of fact, nor factual disputes. Petitioner does not disagree with the factual statements contained in the Commission's Formal Complaint. The only issue left to resolve involves a matter of law. That is, since petitioner's actions are mere administrative failures -- as a matter of law -- the Commission does not have subject matter jurisdiction to prosecute petitioner.

#### WHAT IS UNETHICAL JUDICIAL MISCONDUCT

14. Upon information and belief, Judiciary Law § 44(1) allows the Commission to *investigate* "conduct, qualifications, fitness to perform, or performance of official duties of any judge." However, the Commission's authorizing legislation only allows it to *prosecute* judicial activities involving "misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, prejudicial to the administration of justice." The statute does not define "misconduct," "persistent failure to perform his duties," or "habitual intemperance and conduct."

15. The Commission's Administrator has called itself the "judicial ethics officer." Petitioner does not challenge this summary analysis of the Commission's role. Thus, unless Petitioner has in some fashion acted unethically, the Commission's prosecution is without

jurisdictional authority.

[Statement of Robert H. Tembeckjian, Administrator and Counsel, Commission on Judicial Conduct to the New York State Senate Standing Committee of the Judiciary, January 29, 2007, at page 10].

16. The Commission, in its various public pronouncements does provide detail as to what actions constitute unethical judicial misconduct. The Commission has publically stated it will only investigate complaints involving:

- improper demeanor
  - conflicts of interest
  - intoxication
  - bias
  - prejudice
  - favoritism
  - corruption
  - prohibited business or political activity
  - serious financial and records mismanagement
  - assertion of the influence of judicial office for the private benefit of a Judge or others, and
  - other misconduct on or off the bench
- [\[http://www.scjc.state.ny.us/Publications/brochure.htm\]](http://www.scjc.state.ny.us/Publications/brochure.htm)

17. The Commission acknowledges its job is not to correct errors of law. The Commission itself has stated:

The Commission does not act as an appellate court and does not review the merits of a judge's ruling or alleged errors of law. The Commission does not have the authority, for example, . . . to change the sentence imposed upon a defendant.

<http://www.scjc.state.ny.us/Publications/brochure.htm>

18. The Commission does not exist to oversee the training of judges, or the manner in which the courts are administered. These functions are the responsibility of the Office of Court

Administration [hereafter OCA]. The OCA is the administrative arm of the court system under the control of the Chief Administrative Judge of the New York State Unified Court System. The Chief Judge of the Court of Appeals also holds the position of Chief Administrative Judge .  
<http://www.courts.state.ny.us/admin/oca.shtml>]

Petitioner's court is overseen administratively by OCA. Being in Onondaga County, the Town of Salina is located within the Fifth Judicial District. Supreme Court Justice Hon James C. Tormey is the Administrative Judge for the Fifth Judicial District [<http://www.nycourts.gov/courts/5jd/onondaga/index.shtml>].

Upon information and belief, Justice Tormey has named Supreme Court Justice James P. Murphy to oversee the operations and administration of the town and village courts in the Fifth Judicial District; and has named Hon. David S. Gideon as OCA liaison to the town and village courts [Judge Gideon is on the OCA staff, and contemporaneously holds the elected position as a Town of Dewitt Justice].

19. As a matter of law, unless the Commission alleges one or more of the erroneous sentences imposed by petitioner was due to impure motives, or due to some other unethical judicial misconduct [See Judiciary Law §44], the Commission is statutorily without subject matter jurisdiction. Put simply, a judge's good faith, but mistaken action, due to misinterpreting or misapplying the law can never support a prosecution of unethical judicial misconduct. Similarly, mistaken and/or improper actions undertaken by the Court's clerks, without petitioner's knowledge-- as a matter of law-- is not chargeable to him if petitioner has used due diligence in overseeing and supervising his clerks.

MATTER OF GREENFIELD 76 NY2d 293 [1990]

20. Upon information and belief, the Court of Appeals in Matter of Greenfield 76 NY2d 293 [1990] confirmed even “serious administrative failings” without “persistent or deliberative neglect” does not constitute judicial misconduct. [at page 294] The Court of Appeals added that until a judge’s actions show he has “defied administrative directives or has attempted to subvert the system by, for instance, falsifying, [or] concealing” unethical judicial misconduct has simply not occurred.

21. Upon information and belief, Matter of Greenfield confirms the Commission does not have subject matter jurisdiction unless it affirmatively alleges the judge has acted in a) bad faith, or b) has demonstrated an unwillingness to handle his judicial duties. Even when the evidence shows a judge has committed *numerous* administrative errors -- without aggravating circumstances – the Commission does not have statutory jurisdiction to prosecute.

MATTER OF GILPATRIC 13 NY3d 586 [2009]

22. Upon information and belief, in the recent case of Matter of Gilpatric 13 NY3d 586 [2009] the Commission essentially sought a *per se* rule that an extensive delay in issuing decisions on disputed cases constitutes unethical judicial misconduct. The court rejected the Commission’s argument for a *per se* rule. The court clarified Matter of Greenfield 76 NY2d 293 [1990], and stated that an administrative failure *may* rise to the level of misconduct depending on the context of the administrative failures. In making its rulings the court ratified, reaffirmed and reiterated the Matter of Greenfield jurisdictional limitations:

**it is important to draw a line between the role of the Commission and court administrators in order to avoid**

**confusion and provide adequate notice to members of the judiciary as to when and under what circumstances . . . a purely administrative concern . . . becomes a matter warranting punitive sanctions.**

23. In the Gilpatric case the Commission itself, in its's Memorandum in Support of Motion for Summary Determination, dated October 6, 2008, admitted that "**Greenfield requires delay plus aggravating circumstances.**" The Commission argued the aggravating factors were: a) Judge Gilpatric's **prior** Letter of Dismissal and Caution; and b) the **repeated inquiries** from his administrative judge. [See Gilpatric, Record on Appeal, at page 91].

24. Upon information and belief, the Gilpatric decision did not change the basic premise of Greenfield that before a judge's administrative failures may constitute judicial misconduct -- there must be aggravating factors. The Complaint brought against petitioner is completely devoid of any factual allegations of administrative failure **plus aggravating circumstances.** [As described in Gilpatric, a persistent lack of action in response to administrative recommendations and warnings may constitute an aggravating circumstance.]

25. No matter how the Commission's Formal Complaint is parsed, there is not one fact which could in any manner be characterized as an "aggravating circumstance." To the contrary, petitioner has shown a willingness and ability to handle his judicial duties. Moreover, petitioner -- even to this date -- has never been contacted by OCA regarding the quantity or quality of his judicial work product.

26. Petitioner has always acted in "good faith;" a fact which the Commission does not



challenge. The record before this court shows the Commission has failed to show, or even allege, petitioner is guilty of administrative failures **plus** “aggravating circumstances.”

27. Beyond the statutory limitations imposed by the Judiciary Law -- as a matter of justice, fairness and equity -- this court should never allow the Commission to prosecute a judge for mere administrative failures taken in good faith.

#### THE COMMISSION IS NOT AN APPELLATE COURT

28. The Legislature never granted the Commission jurisdictional authority to act as a super appellate court. If the Commission is allowed to prosecute petitioner it will be given a free hand to prosecute any judge who is foolish enough to make a decision that is not favored by the Commission.

#### THE COMMISSION IS NOT THE ADMINISTRATOR OF THE COURT SYSTEM

29. The Legislature never granted the Commission the jurisdictional authority to prosecute judges for administrative failures. Oversight of the courts rests with the Chief Judge of the Court of Appeals and the OCA. If the Commission is allowed to prosecute petitioner it will be given a free hand to prosecute any judge who does not “toe the line” of the Commission’s bureaucratic demands.

#### PETITIONER’S LACK OF PRIOR KNOWLEDGE

30. Petitioner has been a justice of the Salina Town Court since January 1, 1993; a period of some 18 years.

31. During petitioner's judicial tenure, from January 1, 1993, until he received a letter from the Commission on June 14, 2009, petitioner had never been contacted by the Commission, the OCA, or any governmental entity concerning the quantity or quality of his judicial work product. Petitioner verily believed his judicial performance was not only acceptable, but exemplary.

#### PLEADINGS AND RELATED DOCUMENTS

32. On or about April 18, 2008, the Commission received a complaint from 2 defendants who were ticketed for not wearing their seatbelts. One defendant was the driver, the other defendant was the front seat passenger. Defendants each plead guilty, by mail. After accepting the guilty pleas, petitioner imposed a fine of \$60 and a surcharge of \$55 on each defendant. Defendants paid the fine. No appeal was filed. Once the fine was paid neither defendant ever made further contact with petitioner or the court's staff.

Instead of contacting the court about its error or filing an appeal, defendants submitted a complaint to the Commission. Defendant's letter identified they were charged a \$60 fine, but that the maximum fine was \$50.

33. Upon information and belief, the Commission did not counsel or advise defendants to retain an attorney to represent their interest, advise them to contact petitioner's court; nor, did the Commission contact petitioner or his court staff to correct the obvious error. Instead, the Commission opened a secret and surreptitious investigation.

34. Upon information and belief, the Commission contacted the NY State Comptroller

and requested a listing of all fine and surcharge monies which had been submitted by petitioner for the period of January 1, 2006 to May 30, 2008. In due course, petitioner's court submits all fine and surcharge monies to the Comptroller. As part of the submission, petitioner's court provides the name of each defendant, the amount of the fine and surcharge paid, the date of payment, and the charges to which the defendant was found guilty.

The NY State Comptroller has always accepted all fine and surcharge monies transmitted by petitioner without complaint or question. The Commission has not alleged petitioner has ever mishandled any fine or surcharge money; or that the court's records do not accurately show the activities taken by petitioner and the court's staff.

35. Instead of making sure that justice was performed and the legal error corrected, the Commission secretly and surreptitiously investigated petitioner for more than 11 months.

36. **Exhibit A.** The Commission contacted petitioner by letter dated May 14, 2009. The Commission did not seek an explanation from petitioner. Rather, in a heavy-handed manner, the Commission directed petitioner to appear at the Commission's offices in Rochester on June 14, 2009 to give sworn deposition testimony. The letter of May 14, 2009 is attached.

37. In response to the Commission's letter, and prior to his testimony, petitioner and the court's staff immediately pulled from the clerk's archives copies of every record related to the matters of interest to the Commission. This was a Herculean task, as the Commission had inquired about 1,524 closed cases. The documents generally consisted of the charging instrument [i.e. traffic ticket], the court's internal records, including any communication from the People/defendant, and the disposition records. These records were physically delivered to the

Commission on June 11, 2009.

38. **Exhibit B.** On May 29, 2009, petitioner's counsel deposed petitioner's former Chief Clerk. Petitioner's chief clerk previously worked for Judge Burnham for several years. The testimony showed the process and procedures used by petitioner -- had been adopted essentially verbatim from those used by his predecessor, Judge Helen Burnham. Thus, the judicial processes and procedures employed by petitioner had been in use, literally for many decades, without incident or concern from either the Commission or OCA. [It is noted that Judge Burnham was a respected jurist and had served as president of the NY State's Magistrates' Association. Certainly, petitioner was not only justified, but wise, to adopt the proven judicial processes and procedures used by his predecessor.] The transcript of May 29, 2009 is attached.

Upon information and belief, Petitioner's use of the procedures and practices in use by his predecessor; and which judicial practices and procedures are in general use by town and village courts throughout Onondaga County constitutes "due diligence" in executing his judicial responsibilities and in overseeing the court's staff.

39. **Exhibit C.** On June 11, 2009, petitioner gave sworn testimony for several hours. The transcript of June 11, 2009 is attached.

40. **Exhibit D.** On July 30, 2009, petitioner submitted a formal request to the Commission requesting the Investigation be closed, with a finding of no cause for action. The request of July 30, 2009 is attached.

41. **Exhibit E.** On September 1, 2009, petitioner submitted a supplement to his request that the matter be closed, with a finding of no cause for action. In a reported appellate division case, a judge's statutorily erroneous criminal sentence was affirmed by the appellate court. Certainly, if imposition of a clearly illegal sentence was affirmed, the imposition of the sentence by the trial court could not be deemed unethical judicial misconduct. The supplemental letter request of September 1, 2009 is attached.

42. **Exhibit F.** Having not heard from the Commission for several months, on February 23, 2010, a further letter was submitted by petitioner urging the Investigation be closed, with a finding of no cause for action. The letter of February 23, 2010 is attached.

43. **Exhibit G.** The NY Bar Association Journal published an article authored by retired Court of Appeals Judge Joseph W. Bellacosa [May, 2010]. Judge Bellacosa attacked the current judicial disciplinary process and the Commission's improper attempt to encroach on the principle of judicial independence [at page 46]. Petitioner again wrote to the Commission requesting the investigation be closed. The letter of May 20, 2010 is attached.

44. **Exhibit H.** Without explanation or comment, on May 20, 2010, the Commission issued a Formal Complaint against petitioner. The Formal Complaint dated May 20, 2010 is attached.

45. **Exhibit I.** On June 24, 2010, petitioner served his Verified Answer. The answer contained several affirmative defenses; including:

- a] the complaint fails to state a cause of action,
- b] the Commission lacks subject matter jurisdiction as administrative failings are the sole responsibility of the OCA,
- c] the Commission lacks subject matter jurisdiction as correction of an illegal sentence is the sole responsibility of the appellate courts,
- d] the complaint fails to allege any facts which violate Judiciary Law §44, since petitioner has not committed misconduct nor has he shown habitual intemperance and conduct, and
  
- e] that based on the principle of *Stare Decisis*, and the decisions in Matter of Gilpatric 12 NY3d 586 [2009], Matter of Bauer 3 NY3d 158 [2004] (Judge Read's Dissent, at page 173 " . . . the Commission's charges [based on excessive fines] relating to matters other than right to counsel and bail [are] of relatively little moment.") and Matter of Greenfield 76 NY2d 293 [1990] the alleged conduct of Petitioner is not actionable by the Commission.

The Answer and affirmative defenses specifically identified the complaint's failure:

- f] to allege petitioner had prior knowledge or awareness that he or the Court's clerks had committed or been responsible for any administrative or other deficiency.
- g] to allege petitioner took actions in bad faith or by deliberate neglect,
- h] to allege petitioner has defied administrative directives,
- i] to allege petitioner has attempted to subvert the system,
- j] to allege petitioner failed to perform his judicial duties despite repeated administrative efforts to assist the judge, or
- k] to allege petitioner's continuing conduct demonstrates an unwillingness or inability to discharge his judicial duties. The Verified Answer dated June 24, 2010 is attached.

To date the Commission has not served or attempted to issue a supplemental or amended Formal Complaint.

46. **Exhibit J.** Since the Formal Complaint was completely lacking in substance, on June 24, 2010, petitioner made a motion to dismiss the Formal Complaint. The Notice of Motion, the affidavit of petitioner dated June 24, 2010, and the affidavit of Attorney Zimmerman dated June 24, 2010 are attached.

47. **Exhibit K.** The Commission on August 19, 2010 submitted opposition to the motion to dismiss. The affirmation of Attorney Dugay dated August 19, 2010 is attached.

48. **Exhibit L.** Petitioner's attorney on August 26, 2010 submitted a reply. Attorney Zimmerman's affirmation dated August 26, 2010 is attached.

49. **Exhibit M.** Without explanation or decision on October 4, 2010 the Commission denied petitioner's motion to dismiss. The determination is attached.

50. Upon information and belief, once the Commission's order denying the motion to dismiss was received, petitioner's attorney performed significant research to understand the process for appealing the Commission's erroneous decision. After reading a large volume of cases employing the CPLR Article 78 procedure, no reported cases could be found describing how an erroneous decision of the Commission could be appealed to the Court of Appeals. Petitioner's attorney directly telephoned the Civil Clerk of the Court of Appeals. During this conference, the clerk advised the Court of Appeals does not recognize any procedure to appeal from the Commission's denial of a motion to dismiss.

Further research confirmed that in Matter of Nicholson v State Commission on Judicial

Conduct, 50 NY2d 597 [1980], the Court of Appeals held that a writ of prohibition under Article 78 is the proper procedural device to be used when challenging the Commission's jurisdiction.

51. Upon information and belief, by statutory design, and unique within all of known principles of American jurisprudence, the Commission is allowed to initiate a complaint, investigate its own complaint, prosecute its own complaint, to make its own factual findings that a judge has committed unethical acts of judicial misconduct -- and then to impose sanctions against the judge--up to and including removal from office. Only after the Commission has imposed a penalty does the statute scheme allow for direct appeal to the Court of Appeals.

As Judge Bellacosa so eloquently stated "*Quis custodiet ipso custodes?*" Which is translated as: "Who will watch the watchdogs?" [See generally: Judiciary Law §40 et. seq. and edition of the Point of view: Time to Reform Judicial Reform, NY Bar Association Journal, May, 2010]

## CONCLUSION

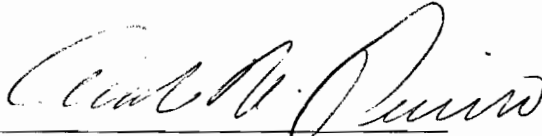
52. Unless the Commission is able to show petitioner is guilty of administrative failures **plus aggravating circumstances** there is no subject matter jurisdiction to proceed. Without subject matter jurisdiction, the Commission's Formal Complaint against petitioner must be vacated.

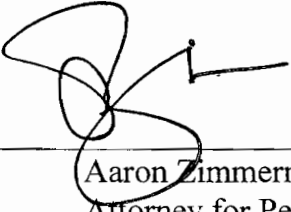


VERIFICATION

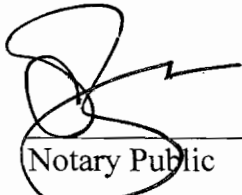
53. Petitioner being duly sworn deposes and says, all factual allegations contained in this affidavit are true and accurate except those made upon information and belief and as to those he verily believes them to be true.

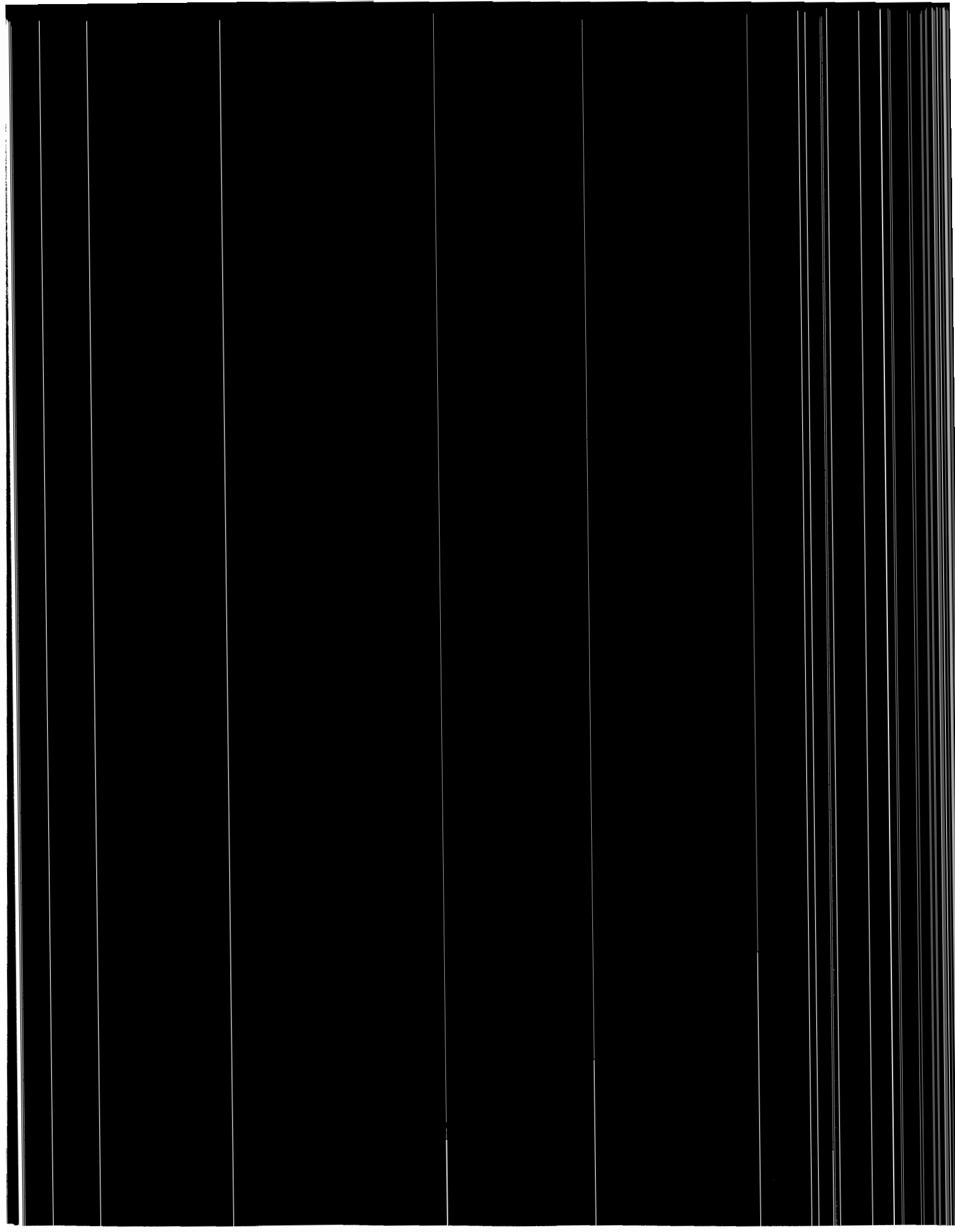
Dated: January 20, 2011

  
\_\_\_\_\_  
Andrew N. Piraino

  
\_\_\_\_\_  
Aaron Zimmerman, Esq  
Attorney for Petitioner  
117 South State Street  
Syracuse, New York 13202  
315.475.7777  
Fax 315.475.4225  
[az@ZiPiLaw.com](mailto:az@ZiPiLaw.com)  
[Fax & email not for service]

On the 20<sup>th</sup> day of January, 2011, personally appeared Andrew N. Piraino, who is known to me or who produced proof of his identity. He did swear to tell the truth, and he swore all of the factual statements made in the Verified Petition are true and accurate, except those made upon information and belief, and as to those statements he verily believes them to be true.; and he did then affix his signature hereto.

  
\_\_\_\_\_  
Notary Public  
Aaron M. Zimmerman  
N.Y. Notary Public  
Onondaga Co. - 4697848  
Expires March 30/15





NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT  
400 ANDREWS STREET, SUITE 700  
ROCHESTER, NEW YORK 14604

HON. THOMAS A. KLONICK, CHAIR  
STEPHEN R. COFFEY, VICE CHAIR  
JOSEPH W. BELLUCK  
RICHARD D. EMERY  
PAUL B. HARDING  
ELIZABETH B. HUBBARD  
MARVIN E. JACOB  
HON. JILL KONVISER  
NINA M. MOORE  
HON. KAREN K. PETERS  
HON. TERRY JANE RUDERMAN  
MEMBERS  
JEAN M. SAVANYU  
CLERK

585-232-5756 585-232-7834  
TELEPHONE FACSIMILE

www.scjc.state.ny.us

ROBERT H. TEMBECKJIAN  
ADMINISTRATOR & COUNSEL

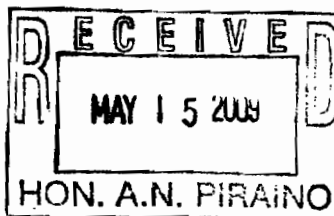
JOHN J. POSTEL  
DEPUTY ADMINISTRATOR

M. KATHLEEN MARTIN  
DAVID M. DUGUAY  
SENIOR ATTORNEYS

STEPHANIE A. FIX  
STAFF ATTORNEY

**CONFIDENTIAL**

May 14, 2009



Honorable Andrew N. Piraino  
Salina Town Justice  
Salina Town Court  
201 School Road  
Liverpool, New York 13088-6232

Re: File No. 2008/R-139

Dear Judge Piraino:

In accordance with Article 2-A of the Judiciary Law, the State Commission on Judicial Conduct is investigating allegations that you have imposed excessive fines in Vehicle and Traffic Law cases, including *People v. Ronald Boise* and *People v. Regina Scott* in which each defendant was fined \$60 following their conviction of No Seatbelt, notwithstanding that the maximum statutory fine was \$50.

In addition, it is alleged that you imposed fines and surcharges outside of the statutory amounts in 1,374 cases as set forth in the attached Schedule A. Specifically, it is alleged that:

- You imposed a total of \$12,712 in excessive fines in 770 cases as follows:
  - \$0 in 0 Penal Law cases
  - \$1 in 1 Transportation Law cases
  - \$12, 711 in 769 Vehicle and Traffic Law cases
- You imposed fines which totaled \$12,069.70 below the statutorily-required minimum amount in 182 cases as follows:
  - \$0 in 0 Penal Law cases

- \$500 in 5 Transportation Law cases
- \$11,569.70 in 177 Vehicle and Traffic Law cases
- You imposed a total of \$2,480 in excessive surcharges in 73 cases as follows:
  - \$75 in 2 Penal Law cases
  - \$0 in 0 Transportation Law cases
  - \$2,405 in 71 Vehicle and Traffic Law cases
- You imposed surcharges which totaled \$17,730 below the statutorily-required minimum amount in 349 cases as follows :
  - \$5,895 in 50 Penal Law cases
  - \$1,520 in 11 Transportation Law cases
  - \$10,315 in 288 Vehicle and Traffic Law cases
- You imposed \$450 in fines and \$550 in surcharges in 10 cases for Vehicle and Traffic Law 319-3 charges notwithstanding that Vehicle and Traffic Law 319-3 does not reference a chargeable offense

It is further alleged, as set forth in Schedule B, that you:

- Disposed of 774 cases by accepting pleas to Vehicle and Traffic Law 1101 notwithstanding that Vehicle and Traffic Law 1101 does not reference a chargeable offense. Specifically, it is alleged that you allowed Vehicle and Traffic Law 1101 pleas to:
  - 5 Salina Town Ordinance cases in which \$360 in fines were imposed,
  - 2 Taxation Law cases in which \$300 in fines were imposed
  - 10 Transportation Law cases in which \$790 in fines were imposed, and
  - 757 Vehicle and Traffic Law cases in which \$58,285 in fines were imposed

In connection with this investigation, the Commission requests that you appear to give testimony on June 11, 2009, at 1:00 P.M., at the Commission's office, 400 Andrews Street, Suite 700, Rochester, New York 14604 (map enclosed).

At your appearance, you will be questioned about your policies, practices and procedures concerning charge reductions, and fine and surcharge determinations. Specifically, you will be questioned about your imposition of fines, fees and surcharges in various cases listed on the enclosed Schedule A, and about your disposition of Vehicle

*Honorable Andrew N. Piraino*  
*May 14, 2009*  
*Page Three*

and Traffic Law charges, Taxation Law charges, Transportation Law charges and Salina Town Ordinance charges by pleas to VTL 1101 in various cases listed on the enclosed Schedule B.

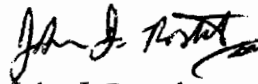
Your appearance is requested in accordance with Section 44, subdivision 3, of the Judiciary Law. This is not a hearing as provided by Section 44, subdivision 4, of the Judiciary Law. Your testimony will be sworn and transcribed and a copy provided to you at no cost. You have the right to be represented by counsel and to make a statement and present relevant material. Your attorney will have the opportunity to ask you questions, subject to further questioning by Commission staff.

**Please provide written confirmation of your scheduled appearance no later than June 1, 2009.**

Please feel free to have your attorney call me if I can answer any questions about procedures.

I am enclosing copies of the complaints, dated April 18, 2009, and the Commission's Operating Procedures and Rules.

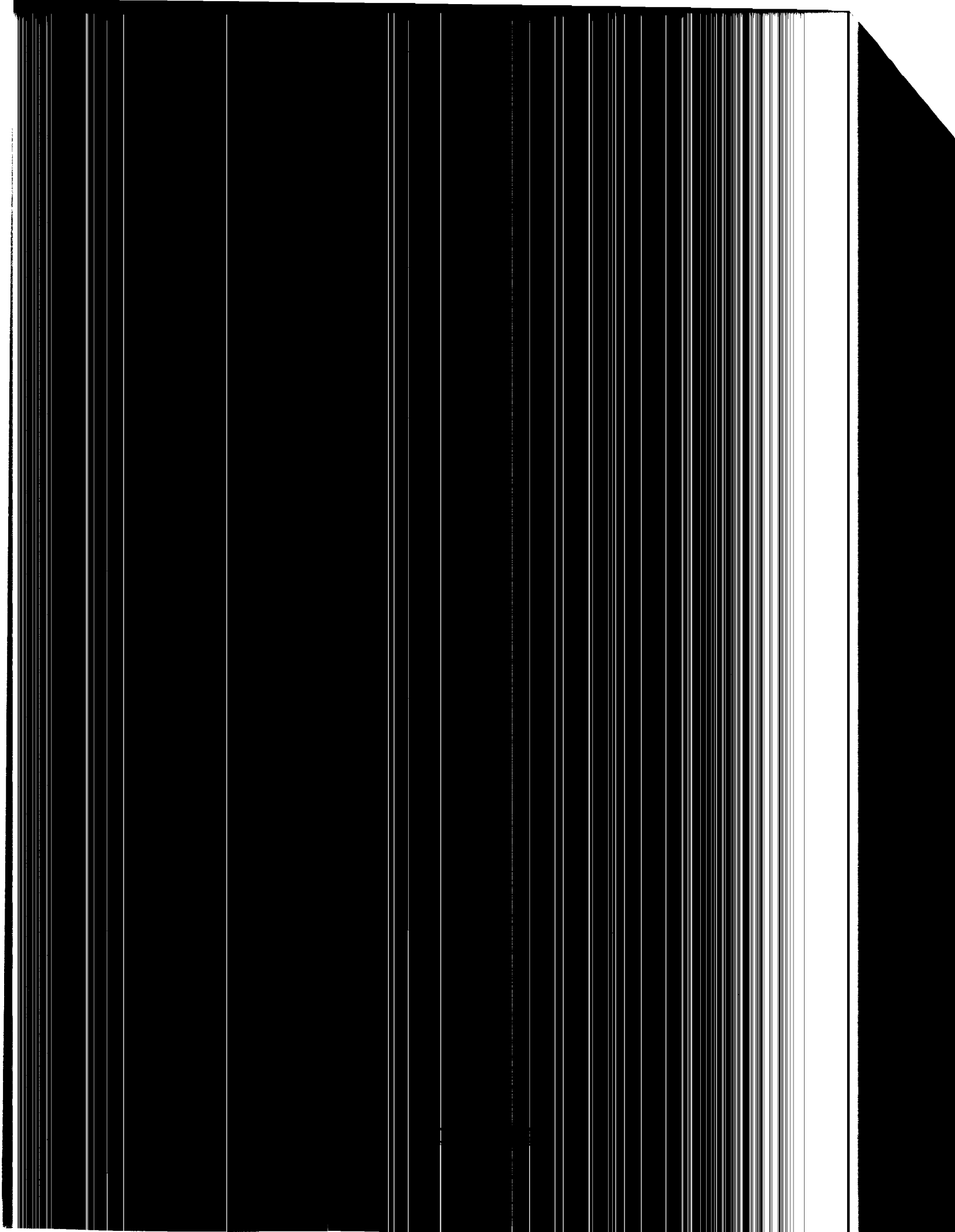
Very truly yours,



John J. Postel  
Deputy Administrator

JJP:lp  
Enclosures

CERTIFIED MAIL #55596284  
RETURN RECEIPT REQUESTED



**VERIFICATION OF WITNESS**

I, ELEANOR LEE MAZZYE, hereby certify that I have read the transcript of my testimony taken under oath on May 20, 2009; that the transcript is a true, complete, and correct record of what was asked, answered, and said on the record as given by me are true and correct.

  
ELEANOR LEE MAZZYE

SUBSCRIBED AND SWORN to before me, the undersigned authority, on this 27<sup>th</sup> day of April, 2010.

  
NOTARY PUBLIC

WENDY L. CONTOS  
Notary Public, State of New York  
Qual. in Onondaga Co, No. 01CO6197098  
Commission Expires 11-24-2012

1 STATE OF NEW YORK  
2 COMMISSION ON JUDICIAL CONDUCT COUNTY OF ONONDAGA

3 -----x

4  
5 In Re: HONORABLE ANDREW N. PIRAINO  
6 Salina Town Justice



7  
8 -----x

9  
10  
11 Witness statement of ELEANOR LEE MAZZYE,  
12 held on May 20, 2009, at 2:00 p.m., at  
13 Zimmerman Law Firm, 117 South State Street,  
14 Syracuse, New York, before Diana Yauchler,  
15 Court Reporter and Notary Public in and for the  
16 State of New York.

17  
18  
19  
20  
21  
22  
23  
24  
25

 ORIGINAL



A P P E A R A N C E S

1

2

ZIMMERMAN LAW FIRM  
117 South State Street  
Syracuse, New York 13202  
BY: AARON M. ZIMMERMAN, Esq.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## INDEX OF EXHIBITS

1

2

3

<u>No.</u>	<u>DESCRIPTION</u>	<u>Page Marked</u>	<u>Page Identified</u>
4	1	4	17
5	2		
6	Vehicle & Traffic Sample Information Sheet	4	23
7	3A		
8	Vehicle & Traffic Docket (DWI)	4	23
9	3B		
10	Record of Court Action (DWI)	4	23
11	3C		
12	Folder	4	23
13	4A		
14	Criminal Docket	4	27
15	4B		
16	Record of Court Action	4	27
17	4C		
18	Folder	4	27

14

15

16

17

18

19

20

21

22

23

24

25

1                   ELEANOR L. MAZZYE,

2                   called as a witness, being duly sworn,

3                   testifies as follows:

4                   \* \* \* \* \*

5                   (Exhibits 1 through 4C marked for  
6                   identification.)

7                   \* \* \* \* \*

8                   EXAMINATION BY MR. ZIMMERMAN

9                   BY MR. ZIMMERMAN:

10                  Q.     What is your full name, ma'am?

11                  A.     Eleanor Lee Mazzye.

12                  Q.     And where do you live?

13                  A.     I live at 106 Sunflower Drive.

14                  Q.     Age and date of birth?

15                  A.     1/19/43 and I am 66.

16                  Q.     Are you employed at the present time?

17                  A.     Only part time.

18                  Q.     Can you tell me what your education consists  
19                  of?

20                  A.     Basically, just high school. I went to  
21                  business school right out of high school, key plus  
22                  calculator, keypunch machine. Other than that, no  
23                  further training.

24                  Q.     Can you tell me, how long have you worked as a  
25                  clerk of a town or village justice court?

1 A. Twenty-plus years.

2 Q. And who did you begin working for?

3 A. Judge Helen Burnham.

4 Q. And what town was that in?

5 A. In the Town of Salina.

6 Q. And how many years did you work for Judge  
7 Burnham?

8 A. From '87 until '93.

9 Q. Okay. And what was your job title?

10 A. Assistant court clerk.

11 Q. What were your job duties on a day-to-day  
12 basis?

13 A. Basically, answering the phone, doing the mail,  
14 sorting the mail for the judge, whether they be fines or  
15 criminal letters. Once the judge had put fines on  
16 things, I sent out notices to the people of what their  
17 fine would be; taking care of people that came in the  
18 office asking questions about anything pertaining to  
19 traffic tickets, criminal charges, evictions, small  
20 claims.

21 Q. Would you assist a judge during court  
22 proceedings?

23 A. Occasionally. That was during that time,  
24 occasionally.

25 Q. Yes; okay. Did you attend any classes or

1 seminars to learn how to perform your duties as an  
2 assistant clerk for Judge Burnham?

3 A. Yes.

4 Q. Where did you receive that training?

5 A. One in New York City for the Association of  
6 Towns, but I don't recall which year it was. It was  
7 probably '89, I'm going to say, but I could be wrong on  
8 those dates. Then, we periodically had court clerk  
9 meetings and we would all have someone there who would be  
10 teaching us maybe if there had been a change in something  
11 that the State of New York wanted us to change, and I  
12 would attend those classes to keep us up-to-date with  
13 what the state wanted us to do.

14 Q. All right. Now, ma'am, did there come a time  
15 where Justice Burnham retired?

16 A. Yes.

17 Q. Do you remember when that was approximately?

18 A. I believe that was in '92.

19 Q. And, at some point, did -- withdrawn.

20 (There was an off the record discussion.)

21 Q. At some point, was there an election in the  
22 Town of Salina for a new judge?

23 A. Yes.

24 Q. And did Judge Andrew Piraino become elected?

25 A. Yes, he did.

1 Q. And did he start his term approximately January  
2 1st of 1994?

3 A. Yes.

4 Q. Did you become employed by Judge Piraino?

5 A. I did. I became his head clerk when he won the  
6 election.

7 Q. Okay. And do you remember when you began  
8 working with Judge Piraino?

9 A. As soon as he was sworn in, January of '94.

10 Q. Okay. And when Judge Piraino was sworn in, did  
11 you transport the policies and practices and procedures  
12 you had learned as an assistant clerk with Judge Barnham  
13 to the workings of Judge Piraino's court room?

14 A. Basically, yes. Sometimes Judge Piraino would  
15 request different kinds of forms he wanted us to use, and  
16 we would create things like that, but, in general, the  
17 procedure was the same.

18 Q. Okay. And when did you work with Judge  
19 Piraino, what years?

20 A. From '94 until August of 2008.

21 Q. And during that time frame, did you always hold  
22 the same job?

23 A. I did.

24 Q. And what was the official title of that job?

25 A. Head court clerk.

1 Q. Okay. And can you tell me -- withdrawn.

2 (There was an off the record discussion.)

3 Q. Was that a full-time or part-time job?

4 A. A full-time position.

5 Q. And by full time, how many hours a week would  
6 you work and how many days of the week?

7 A. You work Monday through Friday, and on  
8 Wednesday evening was court. So the work week was like  
9 35 hours and something, but there was always a few more  
10 hours on my time card because of court.

11 Q. Okay.

12 A. So it varied anywhere from 35 to 40 for a round  
13 figure.

14 Q. Is it fair to say you would handle both  
15 processing of procedures and paperwork in the office and  
16 also attend the court proceedings?

17 A. Yes.

18 Q. On a day-to-day basis, can you tell me what you  
19 would do as chief clerk?

20 A. Basically, as I became the head clerk, I took  
21 over more of the responsibility of criminal cases and DWI  
22 cases, and more dealings with the district attorney's  
23 office, with probation, the county jail, things like that  
24 that I took over. I still did traffic, as I did as an  
25 assistant clerk, but not as much. I took over the more

1 complex things.

2 Q. Did you oversee other employees?

3 A. I did.

4 Q. And how many assistant clerks reported to you?

5 A. Well, during those 20 years, it was -- I had  
6 one full-time person in the beginning and one part-time  
7 person.

8 Q. This would be beginning about 1994?

9 A. That's correct, yes.

10 Q. And how long did that situation exist?

11 A. I'm going to say approximately four to five  
12 years.

13 Q. And after that time frame, how did it change?

14 A. Well, we had to get more help. We were  
15 extremely busy and it seemed like our workload just got  
16 enormous, and I was granted another part-time person. So  
17 I had two part time -- well, the one that was full time  
18 had to go part time, and they let me have another  
19 part-time person. So, in reality, I didn't accomplish  
20 much, but because of the town and situations, we had to  
21 switch our employees around like that. So, for many  
22 years, I was working with two part-time employees, then  
23 maybe about seven years ago, I was able to get a  
24 full-time clerk and still have my part-time clerks.

25 Q. So, approximately 2001 until the time you



1 retired in 2008, you were there, plus a full-time  
2 assistant and two part-time assistants?

3 A. That's correct.

4 Q. Can you tell me, when you say a full-time  
5 assistant, was that person working approximately 40 hours  
6 per week?

7 A. Absolutely.

8 Q. And how many hours a week were each part-time  
9 assistant working?

10 A. I believe it was 20 hours a week, but it could  
11 have been 17. The Town of Salina went union and some of  
12 the changes -- I believe it started out maybe 17 hours,  
13 and when the union came in, they could work 20 hours a  
14 week.

15 Q. Are you aware of the steps that had to be taken  
16 before an increase in staff could be obtained?

17 A. Oh, yes.

18 Q. Can you explain to me what was going on?

19 A. We had to put a request in stating why we were  
20 asking for another employee and if the board would  
21 approve it.

22 Q. This would be the Salina Town Board?

23 A. Yes.

24 Q. And do you know the reasons identified for the  
25 town board?



1           A.     I'm sure the letters that I remember Judge  
2 Piraino and I doing had to do with the amount of work  
3 that had increased. Different things had come down from  
4 Albany, and we had to change the way we were doing a lot  
5 of things. The way Albany wanted it done, specifically  
6 on traffic matters, basically things like that.

7           Q.     Okay. So are you telling me there was more  
8 administrative activity performed for each traffic  
9 ticket?

10          A.     Absolutely.

11          Q.     Can you explain to me how these changes would  
12 show up and what would have to be done?

13          A.     Well, the officers occasionally would have  
14 things that they would call a seatbelt drive. I'm sure  
15 you have heard it advertised, the buckle-up seatbelts or  
16 buckle-up campaign they were doing. So things like that  
17 always generated lots of more tickets.

18          Q.     This is the quote, "Click it or Ticket," end  
19 quote.

20          A.     Yes, that type of thing.

21          Q.     Okay.

22          A.     I couldn't remember that, but that is correct,  
23 that is what it was called, and that would always produce  
24 more tickets. Anytime they had roadblocks and they were  
25 checking for most everything, it could be inspection, it

1 could be DWI, it could be a number of things, that would  
2 prompt more tickets in our court. As you know, we are  
3 the crossroads; we have 81, we have the thruway, plus  
4 Salina is a very big town. Things were coming down from  
5 Albany that we would have to change, perhaps the  
6 surcharge went up in price. So we had to redo our  
7 letters so that this would accommodate the correct price,  
8 and it seemed like many times before we could get  
9 everything working smooth, they would up it again.

10 Q. They meaning who?

11 A. Albany -- or the Department of Motor Vehicles,  
12 I guess, is the exact people that came along and did it.  
13 This would all mean more work for us, because we have to  
14 go back now and start changing things again because of  
15 the increase. At the same time, the fines start going  
16 up. So it was a lot of things like that that made us go  
17 to the board and say we need some more help.

18 Q. Okay. Did the board approve the request for  
19 additional help?

20 A. I believe we were always granted -- a couple of  
21 times we had a particular funds working with DWI tickets  
22 that the judges were awarded \$10.00 everytime they did an  
23 arraignment on a DWI case.

24 MR. ZIMMERMAN: Off.

25 (There was an off the record discussion.)

1 BY MR. ZIMMERMAN:

2 Q. Did the board approve your request for  
3 additional help?

4 A. When we requested additional help, it often  
5 took anywhere from two weeks to four weeks, sometimes six  
6 weeks to get approval from the board, because perhaps all  
7 of the board members weren't there, whatever the reasons  
8 were, and we didn't get it immediately. We didn't get it  
9 immediately -- well, sometimes we did, but a lot of times  
10 we didn't because we were fighting with the budget deal  
11 and there wasn't enough money to hire, so we had to wait.

12 Q. Can you tell me, ma'am, how much the volume of  
13 paperwork increased, from your perspective as chief  
14 clerk, from 2001 until the time you retired in 2008?

15 A. Oh, it was between a double and triple, easily.

16 Q. Even though the amount of people did not  
17 increase, the amount of workload did?

18 A. Absolutely.

19 Q. Doubled or tripled?

20 A. Absolutely.

21 Q. Okay. Now, let me turn, if I might, to a  
22 slightly different matter, that is, physically how the  
23 office would operate. In the office, you had vehicle and  
24 traffic law simplified information that you would handle?

25 A. That's correct.

1 Q. You would also have misdemeanor simplified  
2 information?

3 A. Yes. They were the long form, as we referred  
4 to them.

5 Q. Would you also have to deal with felony  
6 complaints?

7 A. Yes.

8 Q. What about the civil docket?

9 A. Yes, we had civil things to handle, too. We  
10 had small claims and we had evictions.

11 Q. Okay.

12 A. And in the last few years -- the evictions and  
13 small claims in the last few years become numerous more  
14 than we were accustomed.

15 Q. Did that begin as early as January of 2006, the  
16 increase of civil matters?

17 A. Oh, yes, I would say so.

18 Q. Okay.

19 A. It kind of started when the economy started  
20 being a problem. You could see different people that  
21 would come in with small claims and complaints and things  
22 like that.

23 Q. Let me walk you through, if I might, the way in  
24 which matters would actually be handled.

25 A. Okay.

1 Q. Can you tell me how traffic tickets would be  
2 received by your office?

3 A. Okay. When you were given a ticket, you also  
4 got a copy of it, and you would come into our office or  
5 mail it in. Those were your two options.

6 MR. ZIMMERMAN: Off.

7 (There was an off the record discussion.)

8 A. Okay. Officers would drop these off on what  
9 they call a relay. The sheriffs would deliver a handful  
10 of tickets with all different court dates on them, as  
11 would the state police, and we had to put them in date  
12 order and get them ready for whatever date was on their  
13 ticket to either appear or handle by mail, which we  
14 didn't know at that point, but we needed to get the  
15 ticket in the computer, filed and ready.

16 Q. Okay. Now, you would receive tickets from  
17 which police agencies?

18 A. Onondaga County Sheriff's, New York State  
19 Police, occasionally we would get them from environmental  
20 conservation for boating, which was also the Onondaga  
21 County Sheriff but a different division, boating summons  
22 had been issued on the lake.

23 Q. Okay. Now, when a ticket would come in, you  
24 first said you sorted them, and you said they were sorted  
25 by date. What was the important date, was it the return

1 date of the ticket?

2 A. Correct. The date they had to answer their  
3 ticket by, which was not the date they were ticketed, but  
4 the date they had to answer that ticket by. That is how  
5 we filed them.

6 Q. Okay. And you would physically file the  
7 tickets in addition to entering the data into a computer  
8 system?

9 A. That's correct.

10 Q. All right. Let me ask you, people would  
11 occasionally send in the ticket with a guilty plea  
12 written on the back or signed on the back?

13 A. Well, their option was to come into the court  
14 that the ticket told them to or to mail it in, and it had  
15 to be signed either guilty or not guilty.

16 Q. Okay. So you had your court procedure set up  
17 so that the person who had been charged with the vehicle  
18 and traffic law or similar infraction could mail in a  
19 response or show up in court on the return date?

20 A. This was on the vehicle and traffic, yes,  
21 that's true.

22 Q. Okay. Now, let me walk through a vehicle and  
23 traffic law. When the person signed the back pleading  
24 guilty, what would happen with the ticket physically?

25 A. We date stamp when we got it, go and pull the

1 original ticket that the officer had given us, and we put  
2 it on the judge's desk. The judge sets all fines.

3 Q. And would you attach the physical ticket to a  
4 form that you had created?

5 A. Not necessarily. We took the folders and we  
6 made them into a jacket, and everything went inside the  
7 jacket.

8 MR. ZIMMERMAN: Off.

9 (There was an off the record discussion.)

10 A. Yes. When we received the ticket, it went into  
11 the pink folder that we had made, and everything was put  
12 in there, clipped together at the top and put on the  
13 judge's desk.

14 Q. Okay. Now, I would like to hand you what has  
15 been marked for purposes of this witness deposition as  
16 Deposition Exhibit No. 1. Is that the form document that  
17 you have referenced?

18 A. Yes.

19 Q. Now, I have had dummy information put up on the  
20 top. Is that the type of thing that would be done for  
21 each and every ticket?

22 A. Every ticket.

23 Q. So what would happen if an individual, for  
24 example, were stopped and issued three tickets at one  
25 time, speeding, broken taillight and oversized tires?



1           A.     That is all going to be listed on this cover  
2 sheet.

3           Q.     Three tickets would be listed on Exhibit 1?

4           A.     Yes.

5           Q.     Okay.  And if the person had pled guilty, what  
6 would you physically do with the ticket and Exhibit 1?

7           A.     We would take this out of the file, his pink  
8 copy that had been folded and made like a cover, put his  
9 guilty plea inside on the top, put it together with a  
10 paperclip and it goes in to the judge.

11          Q.     And what does the judge do with that Exhibit 1  
12 and the actual tickets?

13          A.     The judge will take the set apart and make sure  
14 that it was signed guilty, which is what we are saying  
15 when we put it in a particular spot on his desk, then he  
16 places the fines on them.

17          Q.     How does he identify for your clerk's office  
18 the fines that had been imposed?

19          A.     Generally, he would write them on the top half  
20 of it.

21          Q.     Of Exhibit 1?

22          A.     That's correct.  He would write it up there.  
23 Generally, how it would be is a number, for example, a  
24 \$50.00, then a slash, then the second set of numbers  
25 would be a surcharge.

1 Q. And that was the standard that you and the  
2 judge would use?

3 A. Yes.

4 Q. That was your shorthand?

5 A. Yes.

6 Q. And would -- withdrawn.

7 MR. ZIMMERMAN: Off.

8 (There was an off the record discussion.)

9 BY MR. ZIMMERMAN:

10 Q. After the judge had performed his function, he  
11 would then return the original document for further  
12 processing?

13 A. He would put them in another spot on the desk  
14 and we would take them. They would all have the amount  
15 of the fines on them, and then we would send out invoice  
16 notices to these people telling them of the fine and when  
17 it had to be paid.

18 Q. Now, you have worked with Judge Piraino for  
19 many years. Have you physically observed him perform  
20 this function of evaluating Exhibit 1, the document,  
21 along with the actual traffic tickets, considering what  
22 was in that information and then impose a fine and  
23 surcharge?

24 A. Yes, that was the procedure.

25 Q. You have seen him physically do it?

1           A.     Yes, I have.  He takes it apart and looks at  
2 it, sees if there are any notes.  Sometimes on a ticket,  
3 maybe a defendant would write something, that is why  
4 everything had to go to him.

5           Q.     And he would -- based on your personal  
6 observations, he would carefully review Exhibit 1 and  
7 review the traffic ticket, both sides of all of the  
8 pieces of paper looking for information, and then after  
9 due time issue a fine and surcharge if one were  
10 necessary?

11          A.     That's correct.  Then it would come back to us,  
12 yes.  To the best of my knowledge, that is how it was  
13 done, and I saw him do it just as you say.

14          Q.     Do you have a judgement, for example, during  
15 2006 and 2007 and 2008, how many traffic tickets handled  
16 through the use of a V&T docket, as shown on Exhibit 1,  
17 there would be -- or how about a number of tickets per  
18 week that would be handled?

19          A.     We could go through 200 sometimes.

20          Q.     On the average?

21          A.     I would say maybe 175 would be a better  
22 average.

23          Q.     Okay.  During the time that you were there, how  
24 often would Judge Piraino appear at town hall to perform  
25 business of the town court?

1 A. I would say on an average of every other day.

2 Q. And how long would he be there, approximately?

3 A. Well, that is hard to say. It would depend on  
4 how much work we were able to put in there.

5 Q. That's fine. Does Judge Piraino hold court,  
6 generally, once a week?

7 A. Yes.

8 Q. What day of the week does he generally hold it?

9 A. Wednesday.

10 Q. What time does court generally start and end?

11 A. It generally starts at 5:00 and, on an average,  
12 I would say we were through by 8:00.

13 Q. Okay. Do you know how many matters would be  
14 considered by the judge during any time court was in  
15 session?

16 A. So each Wednesday evening, how many matters  
17 will the judge have to consider and rule on? That is  
18 very difficult to say, too.

19 Q. Between traffic tickets, criminal matters,  
20 civil matters, evictions, everything else he might be  
21 required to rule upon?

22 A. I would say, on an average, anywhere from 100  
23 to 150.

24 Q. Okay.

25 A. Sometimes more or sometimes less. A lot of

1 people on the calendar didn't show. I'm trying to recall  
2 what the calendar numbers were, and I would say that is  
3 an average.

4 Q. Okay. Let me turn to driving while intoxicated  
5 charges. Were they handled differently than other  
6 vehicle and traffic law matters?

7 A. Yes.

8 Q. Can you tell me in what fashion they were  
9 handled differently?

10 A. First, a DWI did not have the option to mail or  
11 come in, they had to appear in court on the date that  
12 their ticket so told them to be there. So that was the  
13 process for DWI, they did not have a choice, they had to  
14 appear.

15 Q. All right. And, physically, would you create a  
16 file differently than you would, for example, for Exhibit  
17 1?

18 A. Basically, it was the same. We did attach a  
19 second sheet to them, which we call the Record of the  
20 Court. That would be for the judge's notes and things we  
21 had to let the judge know about before this person came  
22 in for whatever reason, and then we made a folder up, a  
23 legal size folder, and all of the paperwork went in  
24 there, and also attached with it was a copy of the whole  
25 DWI case that an attorney would be allowed to have in

1 case they came in to be arraigned and the attorney  
2 requested it; it was our job to present it to them.

3 Q. Is it a fair statement to say you had a file  
4 folder and other documents because there was  
5 significantly more paperwork generated with a DWI charge?

6 A. Yes, absolutely.

7 Q. I would like to hand you what has been marked  
8 as Exhibits 3A, 3B and 3C. Can you identify what those  
9 are for us?

10 A. 3A would be the Vehicle and Traffic docket, and  
11 the only thing different was that they were DWIs as  
12 opposed to simplified traffic tickets; 3B would be the  
13 Record of Court Action that I mentioned, and the judge  
14 would date it and answer the questions on it, when it was  
15 adjourned to, and that is kind of the column we worked  
16 with when we went back in to the computer to do the work  
17 on it; 3C would be the folder we used to put everything  
18 in the file, then it was filed back in the filing  
19 cabinet.

20 Q. Okay. Now, I overlooked that I also created a  
21 Deposition Exhibit No. 2. If you look up at the top, I  
22 had created a dummy information for V&T Section 1180(d)  
23 for Exhibit 2. Can you tell me what Exhibit 2 is?

24 A. The difference between both of these -- well,  
25 Exhibit 2, for us in the office, we would immediately

1 know that this person must make a personal appearance  
2 because there is a 511, aggravated unlicensed operator.  
3 He must make a personal appearance as a DWI, but it's not  
4 clarified as such, but not one handled by mail.

5 Q. So the same form as Exhibit 1, but there are  
6 certain pieces of information that are significant to you  
7 as a clerk in the manner in which the file would be  
8 handled?

9 A. Like on 511, you would get other paperwork,  
10 have to request a copy of their abstract driving record  
11 so it's in the file for the judge when that person is  
12 arraigned. So another item we had to do is take the time  
13 to pull out of our computer his driving rap sheet.

14 Q. Okay. Now, finally, in addition to vehicle and  
15 traffic law charges, transportation law violations, did  
16 the court also handle criminal matters?

17 A. Yes, we did.

18 Q. Okay. And can you tell me, how were criminal  
19 matters physically handled? You described how tickets  
20 were dropped off. How would the paperwork come in on  
21 criminal law matters?

22 A. Well, on criminal law, you either got the  
23 paperwork delivered by the officer, the arresting agency,  
24 whether the sheriff's or troopers, or you would get them  
25 if there had to be -- if it was an offense and immediate

1 arraignment, then they would be mailed to us from another  
2 court, whoever happened to do the arraignment. If Judge  
3 Piraino didn't do it, another court did it for him  
4 because he wasn't available at the time, then those would  
5 get mailed to us. We would get a phone call that a  
6 different judge had arraigned this person, but it was  
7 going to be our case.

8 Q. At some point, you received paperwork on a  
9 particular criminal charge?

10 A. Absolutely.

11 Q. And what would you do when you physically  
12 received the paperwork in the clerk's office?

13 A. We would have to enter it into the computer,  
14 all of the information, the name, address, the personal  
15 information, the date of arrest, the date that they were  
16 picked up on the offense, if it was an immediate  
17 arraignment. If not, it would be another court date when  
18 to appear, and all of that had to be in the system. We  
19 had all of the paperwork from the officer that dropped it  
20 off or mailed it in, then we make duplicate copies for  
21 the file again for all of the paperwork an attorney would  
22 need to have.

23 Q. Did your office create a file for each  
24 individual charge?

25 A. Not each charge, each arrest.



1 Q. So each arrest could entail several different  
2 charges?

3 A. Yes.

4 Q. And would each arrest generate its own file?

5 A. Yes.

6 Q. But there might be several charges in a file?

7 A. If it is on the same day of arrest, it becomes  
8 one file, but if two weeks later he was arrested, we have  
9 to make another file, and now this individual has two  
10 files.

11 Q. Okay. So, is it fair to say that in your court  
12 policy, whenever an individual is stopped for a traffic  
13 matter or arrested, each stop or each arrest is  
14 considered to be one case?

15 A. Absolutely.

16 Q. Okay. And each case may have one or multiple  
17 charges affiliated with it?

18 A. That's correct, as long as it's the same date  
19 of arrest. The date is what determines how many folders  
20 and everything we had to make.

21 Q. There would be one folder per arrest --

22 A. Yes.

23 Q. -- or per stop?

24 A. That's correct.

25 Q. Okay. Let me hand you, if I might, what has

1 been marked as Exhibits 4A, 4B and 4C. Tell me what  
2 those are individually, if you will, please?

3 A. Okay. The 4A would be the Criminal Docket,  
4 which is basically set up just like the Vehicle and  
5 Traffic Docket, and the 4B is the same thing, which is  
6 Record of the Court Action on that criminal case, and 4C  
7 would be the folder that we put it in and file it in our  
8 filing cabinet.

9 Q. Now, over the years you have seen Judge Piraino  
10 assess fines; is that true?

11 A. Yes.

12 Q. Based on your personal observations, can you  
13 tell me the factors that you would see him consider  
14 before setting the fine in dealing with vehicle and  
15 traffic law matters?

16 A. Vehicle and traffic matters would kind of,  
17 basically, be if there was -- well, if it was a guilty  
18 plea with an explanation, I do believe he took those into  
19 account.

20 Q. Because you saw him actually read all of the  
21 pieces of paper?

22 A. Basically, yes.

23 Q. Okay.

24 A. He would read if they sent a letter. A lot of  
25 times he would give us back the letter and write, I

1 suggest these people plead not guilty, that type of  
2 thing.

3 MR. ZIMMERMAN: Off.

4 (There was an off the record discussion.)

5 A. The paperwork would go into the judge with a  
6 guilty plea on it, the judge would review it. At that  
7 point, sometimes there would be a letter attached or  
8 something written on the ticket, and the judge would read  
9 the information and he would send it back to us, and he  
10 would tell us I'm not going to accept this guilty plea due  
11 to the fact this gentleman is requesting something for no  
12 points; he just lost his job, can't afford fines. All of  
13 this is taken into consideration, I suggest that he plead  
14 not guilty and get an attorney or get in touch with the  
15 DA, call our office and we will explain to him how to  
16 handle it from there.

17 Q. Did you have a standard form letter that the  
18 court would send out to individuals when this  
19 circumstance would present itself?

20 A. No, not in those cases, because we technically  
21 saw it and read "guilty," so it went to him. He  
22 proceeded to read it with the attached note, which we did  
23 not take the time to read because we saw "guilty" and it  
24 went to the judge. So then we had to kind of compile a  
25 letter as we did it. It didn't happen frequently, but it

1 did happen.

2 Q. Okay. Once the judge had assessed a fine,  
3 answered a charge, if one was applicable, can you tell me  
4 how your office would go about notifying the defendant?

5 A. We would get the paperwork back from the judge,  
6 the case, the fine would be on it and we had a form  
7 letter that we used through the computer, and we just  
8 insert the totals that he gave us, one for a fine and one  
9 was for civil fee and one was for surcharge, and we just  
10 had to put the numbers he put on this paper in those  
11 correct boxes, so to speak, and then through the computer  
12 it generated the letter, told them how much it was, when  
13 it had to be paid and how to pay it.

14 Q. Okay. When payment was made by the defendant,  
15 how would you go about physically closing out the file?

16 A. We would close it out after they paid it. It  
17 would be written on those documents that we closed.

18 Q. If it were a vehicle and traffic law matter, it  
19 would be Exhibit 1?

20 A. That's correct.

21 Q. Or transportation law matter?

22 A. Exhibit 2.

23 Q. And if it was a DWI, Exhibit 3 would be used?

24 A. Yes.

25 Q. And if it was a criminal matter, Exhibit 4

1 would be used?

2 A. That's correct. A box, a space that would tell  
3 us -- well, we would put it in the proper box, the  
4 amount, the date and the receipt number that we used to  
5 write it.

6 Q. And how would you then go about closing out the  
7 file?

8 A. Then we would go in the computer to close the  
9 file, because we had our money now, the numbers and  
10 everything are there, and we just put in the date that it  
11 was paid, the receipt number, how it was paid and we  
12 close the case down.

13 Q. Okay. When the case had been closed in the  
14 computer system and you had completed your  
15 responsibilities, what would you physically do with those  
16 pieces of paper?

17 A. The file is somewhat cleaned out. The only  
18 thing we throw away is if we had a duplicate letter.

19 MR. ZIMMERMAN: Off.

20 (There was an off the record discussion.)

21 A. At that time -- those pieces of paper are  
22 stapled together now, because whenever we would see a  
23 case stapled, we knew it was final, it was done. It goes  
24 in a banker box by the month alphabetically.

25 Q. The month that the case was paid and closed?

1 A. Right.

2 Q. Not by the date of the charge?

3 A. No, by the date it was paid, or however it was  
4 closed. If it was dismissed, whatever date that was, it  
5 was filed in one box. Everything in that box is the same  
6 month.

7 Q. Date of final action?

8 A. That's correct. Date of disposition is what we  
9 used to use.

10 Q. Okay. And the procedures you have described  
11 for me today are the procedures that were in effect  
12 throughout all of 2006, all of 2007 and until the time  
13 that you retired in 2008?

14 A. To the best of my knowledge.

15 Q. When did you retire in 2008?

16 A. August; August 29th.

17 MR. ZIMMERMAN: Off.

18 (There was an off the record discussion.)

19 BY MR. ZIMMERMAN:

20 Q. Ma'am, there were a couple of additional  
21 questions I wanted to ask you about. From the beginning  
22 of 2006 until the time you retired, it was you being the  
23 chief clerk?

24 A. Yes.

25 Q. And you had how many assistant clerks?

1           A.    I had one full-time clerk and I had two  
2 part-time clerks.

3           Q.    And the assistant clerks were responsible to  
4 you?

5           A.    Yes.

6           Q.    And all of the employees, including yourself,  
7 were responsible to Judge Piraino?

8           A.    Absolutely.

9           Q.    Did Judge Piraino oversee everyone's work  
10 activities on a daily basis?

11          A.    Yes.

12               MR. ZIMMERMAN:  That's all I have.  Thank you.

13

14

15

16

17

18

19

20

21

22

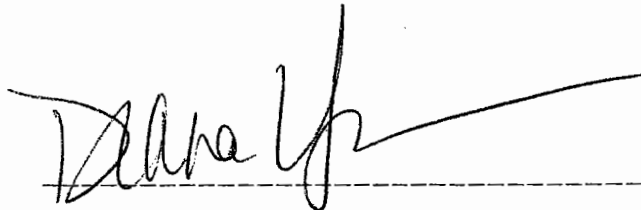
23

24

25

## C E R T I F I C A T I O N

I, DIANA YAUCHLER, Court Reporter and Notary Public in and for the State of New York, state that I attended the foregoing proceedings, took stenographic notes of the same, and state that the foregoing is a true and correct copy of the same, and the whole thereof, to the best of my ability.



DIANA YAUCHLER, Court Reporter

Dated: May 20, 2009.

**ORIGINAL**





Deposition 17:15 17:16 23:21	4:16 7:4	9:11	4:6	20:12 31:14
Described 24:19 31:10	Employee 10:20	Folded 18:8	Identified 3:3 10:24	L
DESCRIPTION 3:3	Employees 9:2 9:21 9:22 32:6	Folder 3:10 3:13 17:11 22:22 22:23 23:4 23:17	Identify 18:17 23:8	Lake 15:22
Desk 17:2 17:13 18:15 19:13	End 11:18 21:10	Folders 26:21 27:7	Immediate 24:25 25:16	Last 14:12 14:13
Determines 26:19	Enormous 9:16	Follows 17:5 26:19	Immediately 13:8 13:9 23:25	Law 1:13 2:2 13:24 16:18 16:23 22:6 24:15
Diana 1:14 33:3 33:18	Enter 25:13	Foregoing 33:5 33:6	Important 15:25	Learn 24:15 24:21 24:22 27:15 29:18 29:21
Difference 23:24	Entering 16:7	Form 3:4 14:3 17:4 17:16 24:5 28:17 29:6	Impose 19:22	Learned 6:1
Different 7:15 11:3 13:22 14:20 15:10 15:21 23:11	Environmental 15:19	Forms 7:15	Imposed 18:18	7:12
25:6 26:1	Esq 2:4	Four 9:11 13:5	Including 32:6	Lee 1:11 4:11
Differently 22:5 22:9 22:16	Evaluating 19:20	Frame 7:21 9:13	Increase 10:16 12:15 13:17 14:16	Legal 22:23
Difficult 21:18	Evening 8:8 21:16	Frequently 28:25	Increased 11:3 13:13	Less 21:25
Discussion 6:20 8:2 12:25 15:7 17:9 19:8 28:4 30:20	Everytime 12:22	Friday 8:7	INDEX 3:1	Letter 27:24 27:25 28:7 28:17 28:25 29:7 29:12
31:18	Evictions 5:19 14:10 14:12 21:20	Full 4:10 8:5 9:17	Individual 17:23 25:24 26:9 26:12	30:18
Dismissed 31:4	Exact 12:12	Full-time 8:3 8:4 9:6 9:24 10:1 10:4 32:1	Individually 27:2	Letters 5:15 11:1 12:7
Disposition 31:8	EXAMINATION 4:8	Function 19:10 19:20	Individuals 28:18	Listed 18:1 18:3
District 8:22	Example 17:24 18:23 20:14 22:16	Funds 12:21	Information 3:6 13:24 14:2 17:19 19:22 20:8 23:22	Live 4:12 4:13
Division 15:21	Exhibit 17:16 18:3 18:6 18:11 18:21 19:20 20:6	General 7:16	24:6 25:14 25:15 28:9	Look 23:21
Docket 3:7 3:11 14:8 20:16 23:10 27:3 27:5	17:16 18:3 18:6 18:11 18:21 19:20 20:6	Generally 18:19 18:23 21:6 21:8 21:10 21:11	Infraction 16:18	Looking 20:8
Document 3:4 17:16 19:11 19:20	20:16 22:16 23:21 23:23 23:25 24:5	Generate 26:4	Insert 29:8	Looks 20:1
Documents 23:4 29:17	5 29:19 29:22 29:23 29:25	Generated 11:17 23:5 29:12	Inside 17:6 18:9	Lost 28:12
Done 11:5 11:12 17:20 20:13 30:23	Exhibits 3:1 4:5 23:8 27:1	Gentleman 28:11	Inspection 11:25	M
Double 13:15	Exist 9:10	Given 15:3 17:1	Intoxicated 22:4	Ma'am 4:10 6:14 13:12 31:20
Doubled 13:19	Explain 10:18 11:11 28:15	Granted 9:16 12:20	Invoice 19:15	Machine 4:22
Down 11:3 12:4 30:12	Explanation 27:18	Guess 12:12	Issue 20:9	Mail 5:13 5:14 13:5 13:13 16:14 16:18 22:10
Drive 4:13 11:14	Extremely 9:15	Guilty 16:11 16:15 16:15 16:24 18:5 18:9 18:14	Issued 15:22 17:24	24:4
Driving 22:4 24:10 24:13	F	27:17 28:1 28:6 28:10 28:14 28:21 28:23	Item 24:12	Mailed 25:1 25:5 25:20
Drop 15:8	Fact 28:11	H	Itself 28:19	Manner 24:7
Dropped 24:20 25:19	Factors 27:13	Half 18:19	J	Marked 3:3 4:5 17:15 23:7 27:1
Due 20:9 28:10	Fair 8:14 23:3 26:11	Hall 20:24	Jacket 17:6 17:7	Matter 13:22 26:13 29:18 29:21 29:25
Duly 4:2	Fashion 22:8	Hand 17:14 23:7 26:25	Jail 8:23	Matters 11:6 14:16 14:24 21:13 21:16 21:19 21:20
Dummy 17:19 23:22	Fee 29:9	Handful 15:9	January 7:1 7:9 14:15	20 22:6 24:16 24:19 24:21 27:15 27:16
Duplicate 25:20 30:18	Felony 14:5	Handle 8:14 13:24 14:9 15:13 24:16 28:16	Job 5:9 5:11 7:22 7:24 8:3 23:2 28:12	Mazzye 1:11 4:1 4:11
During 5:21 5:23 7:21 9:5 20:14 20:23 21:14	Few 8:9 14:12 14:13	Handled 14:24 20:15 20:18 22:5 22:9 24:4 24:8	Judge 5:3 5:6 5:14 5:15 5:21 6:2 6:22 6:24 7:4	Mean 12:13
Duties 5:11 6:1	Fighting 13:10	Hard 24:19	Judgement 17:2 17:13 22:20	Meaning 12:10
DWI 3:7 3:9 8:21 12:1 12:21 12:23 22:10 22:13	Figure 8:13	Head 21:3	Judges 12:22	Meetings 6:9
23:11	File 16:6 18:7 22:16 23:3 23:18 24:7 24:11	Head 7:5 7:25 8:20	JUDICIAL 1:2	Members 13:7
E	15:15 16:5 23:18 31:5	Heard 11:15	Justice 1:6 4:25 6:15	Mentioned 23:13
Early 14:15	Files 26:10	Held 1:12	K	Might 13:21 14:23 21:20 26:6 26:25
Easily 13:15	Filing 23:18 27:8	Heien 5:3	Keep 6:12	Misdemeanor 14:1
Economy 14:19	Final 30:23 31:7	Help 9:14 12:17 12:19 13:3 13:4	Key 4:21	Monday 8:7
Education 4:18	Finally 24:14	High 4:20 4:21	Keypunch 4:22	Money 13:11 30:9
Effect 31:11	Fine 5:17 19:16 19:22 20:9 21:5 27:14 29:2	Hire 13:11	Kind 14:19 23:15 27:16 28:24	Month 30:24 30:25 31:6
Either 15:13 16:15 24:22	Fines 5:14 5:15 12:15 17:2 18:16 18:18 19:15	Hold 7:21 21:5 21:8	Kinds 7:15	Most 11:25
Eleanor 1:11 4:1 4:11	27:10 28:12	HONORABLE 1:5	Knowledge	Motor 12:11
Elected 6:24	Firm 1:13 2:2	Hours 8:5 8:9 8:10 10:5 10:8 10:10 10:12 10:13		Multiple 26:16
Election 6:21 7:6	First 15:24 22:10	I		Must 24:1 24:3
Employed	Five	Identification		N
				Name 4:10 25:14
				Necessarily 17:5

Necessary 20:10 Need 12:17 25:22 Needed 15:14 New 1:14 1:16 2:3 6:5 6:11 6:22 15:18 33:4 Notary 1:15 33:3 Note 28:22 Notes 20:2 22:20 33:6 Notices 5:16 19:16 Notifying 29:4 Number 12:1 18:23 20:17 30:4 30:11 Numbers 18:24 22:2 29:10 30:9 Numerous 14:13	4:17 8:3 9:6 9:16 9:17 9:18 9:19 9:22 9: 24 10:2 10:8 32:2 Part-time 8:3 9:6 9:16 9:19 9:22 9:24 10:2 10:8 32: 2 Particular 12:21 18:15 25:9 Pay 29:13 Payment 29:14 People 5:16 5:17 12:12 13:16 14:20 16:10 19:16 22:1 28:1 Per 10:6 20:17 26:21 26:23 Perform 6:1 19:19 20:24 Performed 11:8 19:10 Perhaps 12:5 13:6 Periodically 6:8 Person 9:6 9:7 9:16 9:19 10:5 16:17 16:23 18:5 22:21 24:1 24:11 25:6 Personal 20:5 24:1 24:3 25:14 27:12 Perspective 13:13 Pertaining 5:18 Phone 5:13 25:5 Physical 17:3 Physically 13:22 16:6 16:24 18:6 19:19 19:25 22:15 24:19 25:11 29:15 30:15 Picked 25:16 Pieces 20:8 24:6 27:21 30:10 30:21 Pink 17:11 18:7 Piraino 1:5 6:24 7:4 7:8 7:10 7:14 7:19 11:2 19: 18 20:24 21:5 25:3 27:9 32:7 32:9 Piraino's 7:13 Places 18:16 Plea 16:11 18:9 27:18 28:6 28:10 Plead 28:1 28:13 Pleading 16:23 Pled 18:5 Plus 4:21 5:1 10:1 12:3 PM 1:12 Point 6:19 6:21 15:14 25:8 28:7 Points 28:12 Police 15:11 15:17 15:19 Policies 7:11 Policy 26:12 Position 8:4 Practices 7:11 Present 4:16 23:2 28:19 Price 12:6 12:7 Probation 8:23 Problem 14:20 Procedure 7:17 16:16 19:24 Procedures 7:11 8:15 31:10 31:11	Proceeded 28:22 Proceedings 5:22 8:16 33:5 Process 22:13 Processing 8:15 19:12 Produce 11:23 Prompt 12:2 Proper 30:3 Public 1:15 33:4 Pull 16:25 24:13 Purposes 17:15 Put 5:15 10:19 15:11 17:1 17:11 17:12 17:19 18:8 18:9 18:15 19:13 21:4 23:17 27:7 29:10 29:10 30:3 30:10	20:6 20:7 28:6 Roadblocks 11:24 Room 7:13 Round 8:12 Rule 21:17 21:21	6:9 Sometimes 7:14 13:5 13:9 20:2 20:19 21:25 21:25 28:7 Somewhat 30:17 Soon 7:9 Sorted 15:24 15:24 Sorting 5:14 South 1:13 2:3 Space 30:2 Specifically 11:5 Speeding 17:25 Spot 18:15 19:13 Staff 10:16 Stamp 16:25 Standard 19:1 28:17 Stapled 30:22 30:23 Start 7:1 12:14 12:15 21:10 Started 10:12 14:19 14:19 Starts 21:11 State 1:13 1:16 2:3 6:11 6:13 15:11 15:18 33:4 33:4 33:6 Statement 1:11 23:3 Stating 10:19 Stenographic 33:5 Steps 10:15 Still 8:24 9:24 Stop 26:13 26:23 Stopped 17:24 26:12 Street 1:13 2:3 Suggest 28:1 28:13 Summons 15:21 Sunflower 4:13 Surcharge 12:6 18:25 19:23 20:9 29:9 Switch 9:21 Sworn 4:2 7:9 7:10 Syracuse 1:14 2:3 System 16:8 25:18 30:14	
O	Observations 20:6 27:12 Observed 19:19 Obtained 10:16 Occasionally 5:23 5:24 11:13 15:19 16:11 Offense 24:25 25:16 Office 5:18 8:15 8:23 13:23 13:23 15:2 15:4 18: 17 23:25 25:12 25:23 28:15 29:4 Officer 17:1 24:23 25:19 Officers 11:13 15:8 Official 1:24 Often 13:4 20:24 Once 5:15 21:6 29:2 One 6:5 9:6 9:6 9:17 17:24 20:9 24:4 26:8 26: 14 26:16 26:21 29:3 29:8 29:8 29:9 31:5 32:1 Onondaga 1:2 15:18 15:20 Operate 13:23 Operator 24:2 Opposed 23:12 Option 16:13 22:10 Options 15:5 Order 15:12 Original 17:1 19:11 Overlooked 23:20 Oversee 9:2 32:9 Oversized 17:25 Own 26:4	Person 9:6 9:7 9:16 9:19 10:5 16:17 16:23 18:5 22:21 24:1 24:11 25:6 Personal 20:5 24:1 24:3 25:14 27:12 Perspective 13:13 Pertaining 5:18 Phone 5:13 25:5 Physical 17:3 Physically 13:22 16:6 16:24 18:6 19:19 19:25 22:15 24:19 25:11 29:15 30:15 Picked 25:16 Pieces 20:8 24:6 27:21 30:10 30:21 Pink 17:11 18:7 Piraino 1:5 6:24 7:4 7:8 7:10 7:14 7:19 11:2 19: 18 20:24 21:5 25:3 27:9 32:7 32:9 Piraino's 7:13 Places 18:16 Plea 16:11 18:9 27:18 28:6 28:10 Plead 28:1 28:13 Pleading 16:23 Pled 18:5 Plus 4:21 5:1 10:1 12:3 PM 1:12 Point 6:19 6:21 15:14 25:8 28:7 Points 28:12 Police 15:11 15:17 15:19 Policies 7:11 Policy 26:12 Position 8:4 Practices 7:11 Present 4:16 23:2 28:19 Price 12:6 12:7 Probation 8:23 Problem 14:20 Procedure 7:17 16:16 19:24 Procedures 7:11 8:15 31:10 31:11	Q Questions 5:18 23:14 31:21 Quote 11:18 11:19	S Galina 1:6 5:5 6:22 10:11 10:22 12:4 Sample 3:6 Saw 20:13 27:20 28:21 28:23 School 4:20 4:21 4:21 Seatbelt 11:14 Seatbelts 11:15 Second 18:24 22:19 Section 23:22 See 14:20 27:13 30:22 Sees 20:2 Seminars 6:1 Send 16:11 19:15 28:9 28:18 Sent 5:16 27:24 Session 21:15 Set 16:16 18:13 18:24 27:4 Sets 17:2 Settling 27:14 Seven 9:23 Several 26:1 26:6 Sheet 3:6 18:2 22:19 24:13 Sheriff 15:21 Sheriff's 15:18 24:24 Sheriffs 15:9 Shorthand 19:4 Show 11:12 16:19 22:1 Shown 20:16 Sides 20:7 Signed 16:12 16:15 16:23 18:14 Significant 24:6 Significantly 23:5 Similar 16:18 Simplified 13:24 14:1 23:12 Situation 9:10 Situations 9:20 Six 13:5 Size 22:23 Slash 18:24 Slightly 13:22 Small 5:19 14:10 14:13 14:21 Smooth 12:9 Someone	T Taillight 17:25 Teaching 6:10 Technically 28:20 Term 7:1 Testifies 4:3 Thereof 33:7 Three 17:24 18:3 Throughout 31:12 Throw 30:18 Thruway
P	Page 3:3 3:3 Paid 19:17 29:13 29:16 30:11 30:11 30:25 31: 3 Paper 20:8 27:21 29:10 30:16 30:21 Paperclip 18:10 Paperwork 8:15 13:13 22:23 23:5 24:9 24:20 24:23 25:8 25:12 25:19 25:21 28:5 29:5 Part	Proceeded 28:22 Proceedings 5:22 8:16 33:5 Process 22:13 Processing 8:15 19:12 Produce 11:23 Prompt 12:2 Proper 30:3 Public 1:15 33:4 Pull 16:25 24:13 Purposes 17:15 Put 5:15 10:19 15:11 17:1 17:11 17:12 17:19 18:8 18:9 18:15 19:13 21:4 23:17 27:7 29:10 29:10 30:3 30:10	20:6 20:7 28:6 Roadblocks 11:24 Room 7:13 Round 8:12 Rule 21:17 21:21	6:9 Sometimes 7:14 13:5 13:9 20:2 20:19 21:25 21:25 28:7 Somewhat 30:17 Soon 7:9 Sorted 15:24 15:24 Sorting 5:14 South 1:13 2:3 Space 30:2 Specifically 11:5 Speeding 17:25 Spot 18:15 19:13 Staff 10:16 Stamp 16:25 Standard 19:1 28:17 Stapled 30:22 30:23 Start 7:1 12:14 12:15 21:10 Started 10:12 14:19 14:19 Starts 21:11 State 1:13 1:16 2:3 6:11 6:13 15:11 15:18 33:4 33:4 33:6 Statement 1:11 23:3 Stating 10:19 Stenographic 33:5 Steps 10:15 Still 8:24 9:24 Stop 26:13 26:23 Stopped 17:24 26:12 Street 1:13 2:3 Suggest 28:1 28:13 Summons 15:21 Sunflower 4:13 Surcharge 12:6 18:25 19:23 20:9 29:9 Switch 9:21 Sworn 4:2 7:9 7:10 Syracuse 1:14 2:3 System 16:8 25:18 30:14	

12:3	13:12
Ticket	W
11:9 11:18 15:3 15:13 15:15 15:23 16:1	Wait
16:3 16:4 16:11 16:14 16:24 17:1 17:3	13:11
17:10 17:21 17:22 18:6 20:2 20:7 22:12	Walk
28:8	14:23 16:22
Ticketed	Wednesday
16:3	8:8 21:9 21:16
Tickets	Week
5:19 11:17 11:24 12:2 12:21 15:1 15:10	8:5 8:6 8:8 10:6 10:8 10:10 10:14 20:18
15:16 16:7 17:24 18:3 18:12 19:21 20:15	21:6 21:8
20:17 21:19 23:12 24:19	Weeks
Tires	13:5 13:5 13:6 26:8
17:25	Whole
Title	22:24 33:7
5:9 7:24	Withdrawn
Today	6:19 8:1 19:6
31:11	Witness
Together	1:11 4:2 17:15
17:12 18:9 30:22	Won
Took	7:5
8:20 8:24 8:25 13:5 17:5 27:18 33:5	Workings
Top	7:13
17:12 17:20 18:9 18:19 23:21	Workload
Totals	9:15 13:17
29:8	Write
Touch	18:19 18:22 20:3 27:25 30:5
28:14	Written
Town	16:12 28:8 29:17
1:6 4:25 5:4 5:5 6:22 9:20 10:11 10:22	Y
10:25 12:4 20:24 20:25	Yauchler
Towns	1:14 33:3 33:18
6:6	Year
Traffic	6:6
3:5 3:7 5:19 8:24 11:6 11:8 13:24 15:1	Years
16:18 16:20 16:23 19:21 20:7 20:15 21:	5:1 5:6 7:19 9:5 9:12 9:22 9:23 14:12 14:
19 22:6 23:10 23:12 24:15 26:12 27:5 27:	13 19:19 27:9
15 27:16 29:18	York
Training	1:14 1:16 2:3 6:5 6:11 15:18 33:4
4:23 6:4	Yourself
Transport	32:6
7:11	Z
Transportation	Zimmerman
24:15 29:21	1:13 2:2 2:4 4:8 4:9 12:24 13:1 15:6 17:8
Triple	19:7 19:9 28:3 30:19 31:17 31:19 32:12
13:15	
Tripled	
13:19	
Troopers	
24:24	
True	
16:21 27:10 33:6	
Trying	
22:1	
Turn	
13:21 22:4	
Twenty	
5:1	
Twenty-plus	
5:1	
Two	
9:17 9:22 10:2 13:5 15:5 26:8 26:9 32:1	
Type	
11:20 17:20 28:1	
U	
Union	
10:11 10:13	
Unlicensed	
24:2	
Up	
6:12 11:12 11:15 11:16 12:6 12:9 12:16	
16:16 16:19 17:19 18:22 22:22 23:21 25:	
16 27:4	
Up-to-date	
6:12	
V	
V&T	
20:16 23:22	
Varied	
8:12	
Vehicle	
3:5 3:7 13:23 16:17 16:20 16:22 22:6 23:	
10 24:14 27:4 27:14 27:16 29:18	
Vehicles	
12:11	
Village	
4:25	
Violations	
24:15	
Volume	

# VEHICLE & TRAFFIC DOCKET



**09050236**

ANP

Doe, John A.  
123 First Street  
Liverpool, NY 13088

**MAIL-IN DATA**

Requested Plea \_\_\_\_\_  
Notice of Fine Sent \_\_\_\_\_  
Support Deposition Requested \_\_\_\_\_  
Driver's Abstract \_\_\_\_\_

Date of Arrest: 04/01/2008

- 01 VTL 1192 03 - DWI-1ST OFFENSE
- 02 VTL 1192 2-A - AGGRAVATED DWI
- 03 VTL 1163 - TURN SIGNAL VIO
- 04 VTL 0375 12A2 - NO SAFETY GLASS

DATE OF BIRTH: 12/12/1954

ATTY:

A or R

ARRAIGNMENT DATE: / /

PHONE:

EMPLOYMENT:

DR#: \_\_\_\_\_

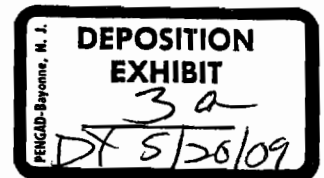
F/NF OP Iss: \_\_\_\_\_ Exp: \_\_\_\_\_ Vac: \_\_\_\_\_

F/NF OP Iss: \_\_\_\_\_ Exp: \_\_\_\_\_ Vac: \_\_\_\_\_

**COURT ADJOURNMENT RECORD**

CODE	DATE TO	REQUESTED BY
001	04/10/2008	ORIGINAL APPEARANCE

BAIL			
	AMOUNT	DATE	RECEIPT NO.
REF'D			
	AMOUNT	DATE	RECEIPT NO.
FINE			
	AMOUNT	DATE	RECEIPT NO.
SCOFF			
	AMOUNT	DATE	RECEIPT NO.



RECORD OF COURT ACTION

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_



# CRIMINAL DOCKET



**09050238** ANP

Doe, Jackie L.  
123 Salina Dr.  
Anywhere, NY 10000

Date of Arrest: 04/01/2008  
01 PL 240.26 - HARASSMENT 2ND  
02 PL 160.15 03 - ROBBERY-1

DATE OF BIRTH: 04/25/1973	ATTY:	A or R
ARRAIGNMENT DATE:    /    /		
PHONE:		
EMPLOYMENT:		

DR# 00000000

F/NF OP Iss: \_\_\_\_\_ Exp: \_\_\_\_\_ Vac: \_\_\_\_\_  
F/NF OP Iss: \_\_\_\_\_ Exp: \_\_\_\_\_ Vac: \_\_\_\_\_

COURT ADJOURNMENT RECORD		
CODE	DATE TO	REQUESTED BY
001	04/10/2008	ORIGINAL APPEARANCE

BAIL			
	AMOUNT	DATE	RECEIPT NO.
REF'D			
	AMOUNT	DATE	RECEIPT NO.
FINE			
	AMOUNT	DATE	RECEIPT NO.

PENGLAP-Byonnie, N. J.

DEPOSITION EXHIBIT

4a

5/5/09

RECORD OF COURT ACTION

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_

DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_

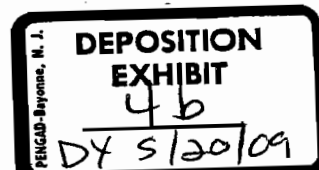
DATE \_\_\_\_\_  
DEFENDANT PRESENT: YES NO  
DEFENSE COUNSEL: YES NO

ADJOURNED TO: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
REASON FOR ADJOURNMENT:

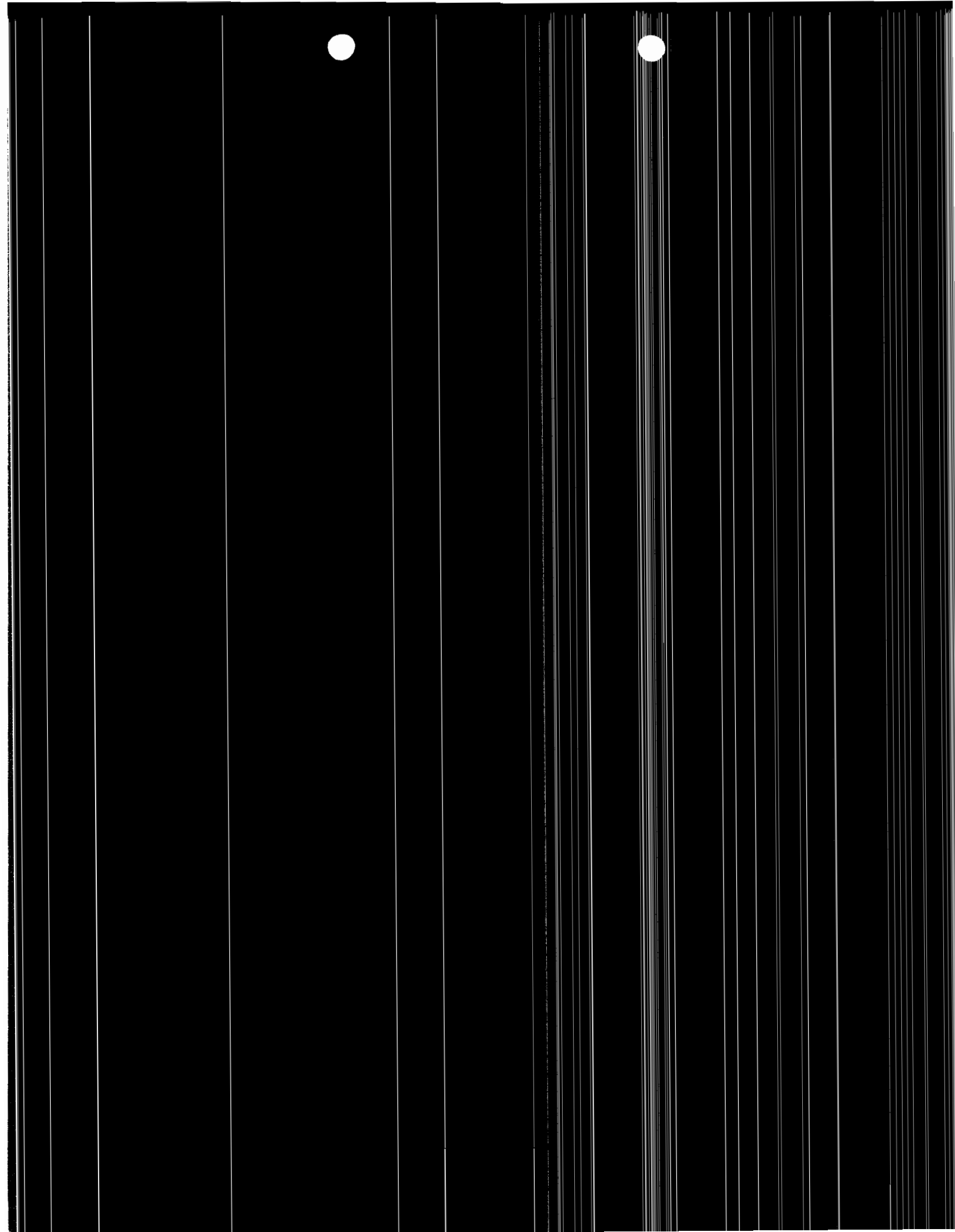
NAME \_\_\_\_\_  
DISTRICT ATTORNEY YES NO

NOTES:

NAME \_\_\_\_\_







STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

----- X  
In the Matter of an Investigation :  
Pursuant to Section 44, subdivision 3, :  
of the Judiciary Law in Relation to :  
  
ANDREW N. PIRAINO, :  
  
a Justice of the Salina Town Court, :  
Onondaga County. :



400 Andrews Street  
Rochester, New York 14604

June 11, 2009  
1:00 P.M.

Before:

GARY MULDOON, ESQ.,  
Referee

Present:

DAVID DUGUAY, ESQ.,  
Senior Attorney

HON. ANDREW N. PIRAINO,  
Witness

Also Present:

AARON MARK ZIMMERMAN, ESQ.,  
Attorney for Witness  
117 S. State Street  
Syracuse, New York 13202

BETSY SAMPSON,  
Investigator and FTR Operator

VANESSA MANGAN,  
Investigator

COMMISSION EXHIBITS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

	<u>Description</u>	<u>Ident.</u>
1	Three Page letter dated May 14, 2009, from John J. Postel to Honorable Andrew Piraino.	3
2	Eight Page document of complaints and Vehicle & Traffic Law notice from Salina Town Court.	4
3	Eighty-four Page document, Mis-Sentencing Cases, <u>Schedule A.</u>	5
4	Forty-four Page document, VTL 1101 cases, <u>Schedule B.</u>	5
5	Order appointing Gary Muldoon as Referee for case dated May 15, 2009.	25
6	Letter Dated June 2, 2009, along with copies of a letter to Judge Tormey, and a letter to Onondaga District Attorney's Office.	75

JUDGE'S EXHIBITS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

	<u>Description</u>	<u>Ident.</u>
A	Two Page document of Vehicle & Traffic docket for Regina Scott #08030043 & Uniform Traffic Ticket.	26
B	Three Page document #08030069 docket, Uniform Traffic Ticket for Ronald L. Boise.	30
C	Copy of Schedule A (Commission's <u>Exhibit 3</u> ) total of 84 pages.	34
D	Two Boxes of Court Records from Salina Town Court, that correspond with (Commission <u>Exhibit 3</u> ), Schedule A.	88
E	Four Pages, Salina Town Court computer generated summary of case activity	98
F	177 Pages of Pending cases Report for Salina Town Court, with attached post-it note.	

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MULDOON: Good afternoon, and welcome all, my name is Gary Muldoon, and I am the referee in this matter. There is a preliminary statement that I'm going to read, we'll do at this time. During the course of this proceeding, the judge may consult with his attorney. I will entertain requests for private consultation. Counsel may make objections to questions posed to the judge. However, in making objections, counsel should take into account that this is an investigation, not a trial, and that the rules of evidence do not apply. Counsel will have the opportunity to question the judge at the conclusion of questioning by the Commission's attorney. This is subject to further questioning by the attorney for the Commission. The judge and the judge's attorney may make initial and closing oral statements, and within seven days of receipt of the transcript may submit a statement in writing. Any other written materials may also be submitted at this appearance or within seven days of receipt of the transcript. Now, judge, at this point I will be swearing you in.

(Hon. Andrew N. Piraino)

1 Do you solemnly swear, to tell the truth, the  
2 whole truth and nothing but the truth, so help  
3 you God?

4 THE WITNESS: I do.

5 MR. MULDOON: Very good, Mr. Duguay?

6 HON. ANDREW N. PIRAINO.

7 having been duly sworn, was examined and testified as follows:

8  
9 EXAMINATION BY

10 DAVID DUGUAY:

11 Q. Thank you Mr. Muldoon, good afternoon Judge Piraino.

12 A. Good afternoon.

13 Q. Judge Piraino, you're appearing here today with counsel, correct?

14 A. That's correct.

15 Q. And I believe we have a written appearance but, Mr. Zimmerman if  
16 you could put your appearance on the record, please?

17 MR. ZIMMERMAN: Yes, I previously  
18 submitted correspondence confirming that I'm  
19 representing Judge Piraino. You've kindly  
20 provided me with a notice of appearance form,  
21 which I've now completed, executed and had  
22 Judge Piraino execute this day as well. I ask that  
23 be made part of the record, and I'd like to hand it  
24 up to the referee.

25 MR. MULDOON: Thank you, very good.

(Hon. Andrew N. Piraino)

MR. DUGUAY: Thank you--

MR. MULDOON: --Mr. Duguay.

1 Q. Judge Piraino, you're appearing here today pursuant to a letter from  
2 the New York State Commission on Judicial Conduct, correct?

3 A. That's correct, sir.

4 Q. I've marked as Commission Exhibit number 1, a three page document,  
5 again dated May 14<sup>th</sup>. It was sent by John J. Postel, Deputy  
6 Administrator from the Rochester office. We hand Commission  
7 Exhibit number 1 to you, ask if that is the letter that you received on or  
8 about May 14, 2009.

9 (Commission Exhibit 1 was marked for identification)

10 A: Yes, it is.

11 Q. Okay, now, judge, in that letter we set forth a number of issues that we  
12 would be questioning you about, correct?

13 A. Correct.

14 Q. That we gave you notice that we would be asking certain types of  
15 questions--

16 A. --correct--

17 Q. --regarding certain matters, correct?

18 A. Yes, sir.

19 Q. Okay and we did provide you with information that you could obtain  
20 counsel, which you did--

21 A. --yes, sir--

22 Q. --hiring Mr. Zimmerman, correct?

23 A. Yes.  
24  
25

3.

(Hon. Andrew N. Piraino)

1 Q. Okay--

2 MR. ZIMMERMAN: --Mr. Duguay,  
3 before we go further--

4 MR. MULDOON: --yes--

5 MR. ZIMMERMAN: --Mr. Muldoon, if  
6 we could confirm on the record that this is merely  
7 an investigation as authorized by Judiciary Law  
8 44, Sub Section 3, and is not a formal complaint.  
9 I think that's significant and needs to be stated  
10 for the record so that we can approach this in a  
11 particular fashion.

12 MR. DUGUAY: That's correct and I  
13 believe it is referenced for Mr. Muldoon's  
14 purposes. I believe the letter does reference that it  
15 is such a hearing, it's not a formal hearing at this  
16 point. There had been no charges filed as of now.

17 MR. ZIMMERMAN: Thank you.

18 MR. MULDOON: Yes, this is pursuant to  
19 Judiciary Law, Section 44 Subdivision 3, I  
20 believe it is. Thank you--

21 Q. --okay, judge I marked as Commission Exhibit number 2, an eight  
22 page document. In the letter that you're holding, Commission Exhibit  
23 number 1, it references a complaint. What I've marked today as  
24 Commission Exhibit number 2, are eight pages of complaints. It  
25 contains two complaints, as well as some law that was provided as

4.



(Hon. Andrew N. Piraino)

1 part of the complaint that was sent to our office. Also there is a notice  
2 from the Salina Town Court, with regard to a fine notice, is it--

3 (Commission Exhibit 2 was marked for identification)

4 A. --correct--

5 Q. --accurate description of Commission Exhibit number 2--

6 A. --yes.

7 Q. Okay and that was provided previously with the letter Commission  
8 Exhibit number 1, correct--

9 A. --correct.

10 Q. Judge, I'm marking now as Commission Exhibit number 3, an 84 page  
11 document. It's entitled Schedule A on the front, top, middle section. It,  
12 again, that, if you can just briefly review it, I'm marking that as a  
13 reference of an attachment that we sent along with the letter of May  
14 14, which is now marked as Commission number 1, is that correct?

15 (Commission Exhibit 3 was marked for identification)

16 A. That's correct, sir.

17 Q. Okay and you did receive a copy of that Schedule along with the  
18 mailed letter of May 14<sup>th</sup>, correct--

19 A. --yes, I did.

20 Q. Finally judge, I'm gonna hand you Commission Exhibit number 4, and  
21 I'm doing this for convenience purposes so we don't have one big  
22 stack of papers. It's a 44 page document, Commission Exhibit number  
23 4, is entitled Schedule B, and again, I'm gonna hand it to you, ask you  
24 to review that and confirm that it's the, a copy of the same schedule  
25 that was sent to you on or about May 14<sup>th</sup>, with the letter now marked

5.

(Hon. Andrew N. Piraino)

1 as Commission Exhibit number 1?

2 (Commission Exhibit number 4 was marked for identification)

3 A. Yes, it is.

4 Q. Okay, what I'm gonna do at this point, I'm gonna put the exhibits next  
5 to Referee Muldoon and then we'll periodically be referring to them  
6 throughout the hearing, okay judge, counsel as well. If you ever need  
7 it or wish to take a look, either ask me or Mr. Muldoon and one of us  
8 will get it over to you.

9 MR. ZIMMERMAN: Thank you.

10 Q. Okay, judge, if you can briefly indicate the place and year that you  
11 received your Juris Doctor?

12 A. Albany Law School, 1981.

13 Q. Thanks, and the department that you admitted to New York State and  
14 the year, if you can remember?

15 A. I admitted in '83, Fourth Department.

16 Q. Okay, and prior to taking the bench judge, what legal employment  
17 were you engaged in?

18 A. I've been a self employed workers compensation attorney for the last  
19 twenty five years.

20 Q. Okay, in addition to workers comp, any other areas of laws that you  
21 practice prior to taking the bench?

22 A. Personal injuries, Social Security Disability off the workers  
23 compensation cases. When I first became an attorney, I was on the  
24 local assigned counsel list for the justice courts actually, for about a  
25 year and a half.

6.

(Hon. Andrew N. Piraino)

1 Q. Okay, so, in that employment would you have taken on any criminal  
2 cases?

3 A. Yes, misdemeanors, I was not on the felony list, misdemeanors, traffic  
4 infractions, misdemeanor DWI's--

5 Q. --okay--

6 A. --it was only for a year and a half.

7 Q. Okay, so some vehicle and traffic cases as well is what you indicated,  
8 correct--

9 A. --sure.

10 Q. Okay, and you're also currently employed, being a part time judge, you  
11 also work in private employment, is that correct--

12 A. --yes, I'm a worker's compensation attorney.

13 Q. Okay, can you state your place of employment?

14 A. Andrew Piraino, 117 South State Street, Syracuse, New York, 13202.

15 Q. Okay, and at this time are you just doing workers comp or are you  
16 doing other areas of law as well--

17 A. --personal injuries, social security disability off of the workers comp,  
18 most of the practice is workers compensation--

19 Q. --okay--

20 A. --we're over there every day.

21 Q. Okay, thank you judge. And judge, now directing your attention to  
22 your judicial history, how, when were you first elect or appointed to  
23 your position--

24 A. --I was elected in, this is my sixteenth year, 1993, January 1<sup>st</sup> '94, I  
25 took office. I'm in my fourth term.

7.

(Hon. Andrew N. Piraino)

1 Q. Okay, and your official title judge?

2 A. Salina Town Judge.

3 Q. Okay, and you have a co-judge as well, correct?

4 A. Yes, I do.

5 Q. And your current co-judge, if you can.

6 A. My current co-judge is Paul Carey.

7 MR. MULDOON: How do you spell  
8 Carey?

9 THE WITNESS: C-A-R-E-Y.

10 Q. Okay, now judge, prior to taking the bench, did you go through  
11 training through the Office of Court Administration?

12 A. Yes.

13 Q. And that was completed before you took the bench on January 1,  
14 1994--

15 A. --No, I take, take that back. I did not go to training until after I took the  
16 bench, it was like three months after.

17 Q. Okay, if you take the initial course from, from OCA.

18 A. Right.

19 Q. After you took the bench.

20 A. Right.

21 Q. Okay, as part of your training you're required to take an examination  
22 and pass an examination, correct?

23 A. I don't recall taking an examination, I may have, but I just, a long time  
24 ago.

25 Q. Okay--

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. --I don't know if they did back in '94.

Q. Okay, and since 1994, you go for training by Office of Court Administration, correct--

A. --yes, I do, twice a year--

Q. --twice--

A. --as a matter of fact the training is in the Town of Salina because we're centrally located.

Q. It's helpful this year--

A. --so I bring the coffee and donuts.

Q. You've been doing that twice a year pretty much since 1994, correct--

A. --twice a year all, every year for twice a year, and a mandatory jail visit once a year.

Q. Okay, and as part of the training, you do take exams following each training, correct?

A. The attorneys do not have to take the exams.

Q. Okay--

A. --only the non-attorney judges.

Q. Okay, not the initial, but even as far as updates?

A. No--

Q. --okay--

A. --we don't take the exams.

Q. Okay, judge, through your experience on the bench and your training, you're familiar with the Justice Court Fund, correct?

A. Yes.

Q. Okay, and you're familiar with the Justice Court Fund handbook?

(Hon. Andrew N. Piraino)

1 A. Yes.

2 Q. Okay, do you have a copy of that handbook?

3 A. Not with me, but I believe I have one in the office.

4 Q. Okay, but you do have one available to access, correct--

5 A. --yeah, yes--

6 Q. --and do you use it as necessary to access information to, for questions  
7 that may arise--

8 A. --yes, yes.

9 Q. Okay and with regard to any other question, are you familiar with other  
10 sources of information that you can confer--

11 A. --yes, we have the resource center which is very helpful. The,  
12 obviously the handout that we receive at the justice training is very  
13 helpful, and the lectures. As far as my own resources, we have  
14 Gould's, Salina Town Code book, because they have town ordinances  
15 for traffic, which are equivalent to the v&t ordinances. McGill's Penal  
16 Law and transportation and v&t and the New York State Assembly  
17 online, which refers you to the different laws.

18 Q. And for the sources that you just referenced, do you have hard copies  
19 outside of when you said that it's online, the Assembly--

20 A. --yeah--

21 Q. --do you have hard copies in your courtroom?

22 A. Yes.

23 Q. Okay, would they be within reach while you're in court?

24 A. Yes.

25 Q. Okay, so you have the ability to utilize it when necessary, correct?

(Hon. Andrew N. Piraino)

1 A. Yes.

2 Q. And just very quickly, with regard to filing monthly reports with the  
3 State Comptroller's Office--

4 A. --correct--

5 Q. --you're currently filing electronically, is--

6 A. --that's correct.

7 Q. IBP program, correct?

8 A. I believe so, yes, the newest one.

9 Q. That would be the invoice billing procedure--

10 A. --correct--

11 Q. --I think is it, correct? Okay and how long have you been doing that, if  
12 you know?

13 A. I think we started, three years maybe.

14 Q. Okay, you're familiar with how that works essentially?

15 A. Yes, my clerk handles that, and I look it over and it gets shipped in.

16 Q. Okay, are you aware, well, let's talk, previous to the IBP program,  
17 what, generally were done with the court funds as far as you, in other  
18 words the fine and such that were taken in every month?

19 A. Well they were, they were turned into the State Comptroller's Office,  
20 and they'd be processed and whatever part would come back to the  
21 town would come back from the State Comptroller's Office.

22 Q. Okay, are you familiar with the IBP program that now the money's  
23 going to CFO of the town instead of the state directly--

24 A. --correct--

25 MR. ZIMMERMAN: I'm sorry, I

(Hon. Andrew N. Piraino)

1 did not hear that, could you say that  
2 question again?

3 Q. Sure, if I can remember it exactly, Mr. Zimmerman, but currently with  
4 the new electronic program, the IBP program, okay, you are now  
5 aware that the monies don't go directly to the state, they go to the  
6 town first, correct?

7 A. Correct.

8 Q. And then the town is billed by the state, correct--

9 A. --that's, that's correct.

10 Q. And that's your understanding?

11 A. Yes.

12 Q. And that's been your understanding the last couple of years, is that  
13 accurate?

14 A. I believe so.

15 Q. Okay, judge, with regard to the Salina, correct--

16 A. --Salina, yes--

17 Q. --Town Court, how often does that court meet?

18 A. I'm sorry.

19 Q. How often does that court meet, schedule--

20 A. --my, my court schedule, as far as regular court time, is every  
21 Wednesday. We do the evictions from 3:30 to 4:30, then I take the  
22 regular bench at 5:00 and if there's any prisoners, we do the prisoners  
23 first. And then from 5:00 until, whenever, 6:30, 6:00, any of the  
24 attorneys that are there, we do the attorneys first because most of them  
25 are assigned counsel and they're charging their time. And then so

12.



(Hon. Andrew N. Piraino)

1 called pedestrians without counsel are told to appear at 6:00, and then  
2 we go right to the end of the calendar, and at the end of the calendar,  
3 if there are any small claims, I'll handle them at the end of the  
4 calendar.

5 Q. Okay and if you'd estimate the approximate volume, as far as number  
6 of cases that you would handle on any given disposition night?

7 A. It varies from anywhere from 75 to 150, maybe more, maybe less. As  
8 far as an average time, probably looking at 8:00, 8:30, depending on  
9 the evictions. Just to give you an example, I had an attorney show up  
10 on a small claims and they were--

11 Q. --took a little while to do judge--

12 A. --that lasted more than the court calendar, but it varies.

13 Q. Okay, what types of cases typically would you be handling on your  
14 disposition nights?

15 A. As far as v&t cases, DWI arraignments, suspension on arraignments,  
16 Pringles hearings, any felony arraignment, any misdemeanor  
17 arraignment, town dog ordinances, running loose, loose running dogs,  
18 barking dogs, dangerous dog hearings we do at a different time.

19 Q. Okay and with regard to the distribution of cases, is it fair to say, that  
20 given your location, that your calendars very heavy with vehicle and  
21 traffic cases?

22 A. Yes, it is. The Town of Salina, Interstate 81 runs through it north and  
23 south, and the New York State Thruway runs through the town east  
24 and west, so beside the troopers, we have the sheriffs also.

25 Q. Okay, and there's no local police, is that correct--

(Hon. Andrew N. Piraino)

1 A. --no, the only local police is the Village of Liverpool, but they have  
2 their own judge.

3 Q. Okay--

4 A. --but I have been called to do arraignments when that judge is  
5 unavailable.

6 Q. Okay, thank you judge. Okay, with regard to clerks in the court, you  
7 have a clerk that's especially assigned to your court?

8 A. Yes, I do, I have a senior clerk.

9 Q. What would her name be, judge?

10 A. Jacqueline, she's Jacqueline Cronk, C-R-O-N-K.

11 Q. Okay and you said she's new, so how long has she been with you  
12 judge?

13 A. My other senior clerk retired in October, or I'm sorry, August, so Ms.  
14 Cronk has been with me since September 1<sup>st</sup>.

15 Q. 2008, correct?

16 A. Correct.

17 Q. Okay--

18 A. --and she is, comes from the Watertown, Town of Watertown Town  
19 Court and she has ten years experience as a head clerk, and has been a  
20 clerk for at least fifteen years.

21 Q. Okay, and, I'm sorry judge, I can't read my handwriting, your prior  
22 clerk's name again, I'm sorry--

23 A. --you didn't ask me that, it was, my prior head clerk was Lee Mazzye,  
24 M-A-Z-Z-Y-E, and she had been with me for the whole fifteen and a  
25 half years, senior clerk.

(Hon. Andrew N. Piraino)

1 Q. Okay, and what type of training do clerks require to have in your  
2 court?

3 A. They, they have their own training through their clerk's association. I  
4 believe they go twice a year also.

5 Q. Okay and that would be a county clerk association, correct--

6 A. --yes, correct--

7 Q. --any training through OCA for your clerk?

8 A. Not that I'm aware of.

9 Q. And that'd apply to both clerks, both Ms. Mazzey as well as Ms.  
10 Cronk--

11 A. --correct, I have other clerks also but they're subordinate to them.

12 Q. Okay, would the, Ms. Mazzey and, we'll talk about Ms. Mazzey, the  
13 schedule's was in question went from January 2006 to June--

14 A. --that would be under her, that would be under her tenure as head  
15 clerk.

16 Q. Okay, would Ms. Mazzey have been in court with you?

17 A. She would sit up at the bench with me, yes.

18 Q. Okay, so on your court appearances, would she sit close to you--

19 A. --to the right--

20 Q. --assisting with files, and such, correct--

21 A. --correct.

22 Q. Now, what were her duties and responsibilities?

23 A. Her duties were to give me the files, if I would fine anybody, would  
24 take their money and give them the receipts.

25 MR. ZIMMERMAN: You're limiting the

(Hon. Andrew N. Piraino)

1 question only to what happens in court--

2 MR. MULDOON: --on the bench--

3 MR. DUGUAY:--at, at this moment,

4 correct--

5 MR. MULDOON: --on the bench, yes.

6 Q. Okay, after those long Wednesday evenings, Thursday morning, is that  
7 when most of the court dockets and any court case work is done with  
8 regard to filings, notations? Well, why don't you explain to me, I'm  
9 asking a bad question. What traditionally would happen after  
10 Wednesday night court with regard to finalizing cases?

11 A. After Wednesday night court, my clerk, my clerk would go back to the  
12 office, all the cases would be, all the, well we take them down, all of  
13 them, in the drawers they'd be refilled, and Thursday morning she  
14 would go over the court docket to check everything.

15 Q. Okay, well with in--

16 A. --and if she had any questions she would call me like, she couldn't  
17 read my writing--

18 Q. Okay.

19 A. That's basically the big question.

20 Q. Okay, so now, so while you're in court.

21 A. Right.

22 Q. And Ms. Mazzey would be sitting next to you?

23 A. Yes.

24 Q. Okay, when you imposed a sentence, okay, you'd actually be doing the  
25 writing on your own files, correct?

(Hon. Andrew N. Piraino)

1 A. Correct.

2 Q. Okay, and then you would take the files with your handwriting, give  
3 them to Ms. Mazzey, correct?

4 A. Correct, and if there's was a fine to be paid she'd take the money, or  
5 the check or the, now we have credit card machines, which takes a  
6 little longer, but then she would give them the receipt.

7 Q. Okay, just to be very, very clear, so any of the sentencing, any of the  
8 conditions would be something that you would impose, that you  
9 would've been the one that gave that instruction and do all the writing  
10 on that, on the file, correct--

11 A. --correct, correct.

12 Q. Okay, and then Ms. Mazzey would review that and basically complete  
13 the forms that would go to the state based upon your handwritten  
14 notes, correct?

15 A. Correct, not that night--

16 Q. --the next day, or thereafter--

17 A. --the next day, or thereafter, yes.

18 Q. Okay, judge, you had indicated before that you relied on Gould's,  
19 McGill's, also you has access to the statues as well for--

20 A. --right--

21 Q. --purposes of the courtroom, correct?

22 A. Yes.

23 Q. Okay, and once there was a conviction, okay, how would you make a  
24 determination of fine amounts on cases, just as a general question, a  
25 general policy? What factors would you consider?

17.

(Hon. Andrew N. Piraino)

1 A. It, well I'd go by the fine ranges cause they're set, by memory, or if it's  
2 an unusual case, I would look in the book. Unusual being like a public  
3 health law, growing cannabis, we don't get a lot of that, we get more  
4 of it but not a lot. But as far, I look at the year to make sure we're  
5 dealing with the right year for surcharges, because the surcharges are  
6 assessed as the date of the offense, not the date of the plea or the  
7 conviction.

8 MR. ZIMMERMAN: Did you also, Mr.  
9 Duguay, do you want him to tell you about the  
10 aggravating and mitigating factors that he  
11 considers, because your question was, is vague--

12 MR. DUGUAY: --yeah it's, right now it's  
13 a vague, a wide open question and we may hone  
14 into details later. But anything that, again initially  
15 when you consider, when you sit down, what  
16 would be the type of things that would be most  
17 typically look at, that would be an easy way to  
18 start this--

19 MR. ZIMMERMAN: Well I understand  
20 that, but the dilemma I have in my objection, Mr.  
21 Referee, is that we have a number of different  
22 matters that are being handled in town court.  
23 Some are misdemeanors, some are traffic  
24 infractions, some are felonies and so when he  
25 says in general, what do you look at, I find that

(Hon. Andrew N. Piraino)

1 question to be objectionable, unless we were  
2 indentifying a particular class of matters.

3 MR. MULDOON: I don't overrule the  
4 objection, that judge can clarify that question,  
5 and you will also have the opportunity to question  
6 the judge afterwards as well as to submit  
7 information afterwards.

8 MR. ZIMMERMAN: Thank you.

9 Q. Okay, prior to your, the information, the answer you'd given  
10 previously, is there anything else at this moment that you wish to  
11 indicate, things that you'd consider as far as factors in sentencing,  
12 setting sentence ranges?

13 A. Economic situations, if the person is incarcerated already, if they're  
14 working, if they're disabled, ability to pay the fine, restitution, if  
15 restitution has been made, I would normally waive the fine under  
16 section 60.35 if the Penal Law if restitution has been made, I'm  
17 allowed to waive the surcharge also.

18 Q. Okay, judge, you had indicated that you were aware that in instances  
19 there would be minimum and maximum fine ranges, correct?

20 A. Correct, on the v&t, yes.

21 Q. And if I heard you correctly before, you would either go based upon  
22 experience and memory.

23 A. Right.

24 Q. Or in cases where you aren't clear, you consult the resources at--

25 A. --yes--

(Hon. Andrew N. Piraino)

1 Q. --your disposal, correct?

2 A. Correct.

3 Q. Okay, with regard to surcharges, okay, you said primarily you would  
4 handle mostly, well, a large caseload of vehicle and traffic cases,  
5 correct?

6 A. Correct.

7 Q. Okay, and again through experience and such, you would also set  
8 surcharges accordingly?

9 A. Correct, but the surcharges are a little different, the fine, because I've  
10 got cases that come in front of me from now all the way back to the  
11 80's because their licenses were suspended, now they're looking to get  
12 their licenses back, so the surcharges are different. They changed  
13 drastically over the years, so I always look for that.

14 Q. Okay, you said you handle penal law cases as well, criminal cases,  
15 correct?

16 A. Correct.

17 Q. And you rely on the penal law statute as well for setting surcharges,  
18 correct?

19 A. Correct, violations, misdemeanors, obviously I don't sentence felonies,  
20 so I don't get involved in that.

21 Q. Okay, okay and you handle juvenile offender cases as well, correct?

22 A. Over 16--

23 Q. --YO, okay, I'm sorry--

24 A. --YO, case, yes.

25 Q. Okay, and you're familiar with sentencing issue with regard to YO



(Hon. Andrew N. Piraino)

1 cases as well--

2 A. --sealing the YO cases.

3 Q. Okay, I asked you previously about the distribution of monies, I  
4 believe you indicated to, that you're aware now that the funds would  
5 go directly to the town--

6 A. --correct--

7 Q. --correct?

8 A. Yes.

9 Q. Okay and you recognize at some point then you would be, the town  
10 would be billed?

11 A. Yes.

12 Q. Based upon the money that was provided from the court, correct?  
13 Okay, did you have an understanding of how the state would bill? In  
14 other words let's talk first of all about fines, which fines the state  
15 would receive, or which fines would go to locality?

16 A. I really don't pay attention to that, I just fine based on what's in front  
17 of me.

18 Q. Okay, are you aware of any cases specifically that would be, that  
19 would be kept within the town versus meant to go to the state--

20 A. --the town ordinances obviously.

21 Q. Okay.

22 A. The sheriffs unfortunately write a lot, they don't like to get involved in  
23 writing town ordinance tickets, so we don't get a lot of them.

24 Q. Okay.

25 A. And when, and when the clerks put them in the computer, they

(Hon. Andrew N. Piraino)

1 translate back to the v&t offense anyways.

2 Q. Okay, so this would appear in many of your dockets and would  
3 actually reference the, even if it's a town ordinance, it might  
4 reference--

5 A. --the v&t--

6 Q. --the v&t?

7 A. Yes.

8 Q. Okay, judge, at this time I'm gonna hand you--

9 A. I have a copy.

10 MR. ZIMMERMAN: Let me know the  
11 exhibits--

12 Q. --alright, I'm gonna hand you two things actually. Commission Exhibit  
13 number 2, I'm gonna hand you first, and that would be an eight-page  
14 document, was attached--

15 A. --yes--

16 Q. --to the letter I believe, those would've been complaints referenced in  
17 a letter of May 14, which is Commission Exhibit number 1.

18 A. Correct.

19 Q. You've had a chance to review the complaints, correct?

20 A. Yes, I have.

21 Q. I'm referring more specifically to the complaints of Ronald Boise, and  
22 Regina Scott.

23 A. I have.

24 MR. ZIMMERMAN: That's Exhibit 2?

25 Q. That's Exhibit 2, would be the actual complaint and paperwork, and I

22.

(Hon. Andrew N. Piraino)

1 believe it appears on Schedule A, which is Commission Exhibit  
2 number 3, on page 80, if you need to reference that at all. Okay,  
3 you've been able to locate that, correct judge? Now, you're on, right  
4 now you're looking at Schedule A, on page 80--

5 A. --wrong page, I'm sorry. Yes, Mr. Boise and the other lady's name--

6 Q. --Regina Scott, and you're approximately half way down the page--

7 A. --Ms. Scott, yes, I've taken the liberty of numbering these on my copy  
8 because there's so many.

9 Q. Okay, judge, after receiving our letter and the attached information,  
10 you have a chance to review both cases and we'll speak first of the  
11 case of Ronald Boise, correct?

12 A. Correct.

13 Q. Okay, when, and do our records appear to be accurate and that it was a  
14 1229 C 3 Seatbelt case?

15 A. Yeah, when I received the complaint, obviously I have no independent  
16 recollection of that case, so what I had my clerks do is go down and  
17 pull each and every one of the files on Schedule A, so I could review,  
18 review and see where the issues were, if there were any issues, but  
19 yes, we did pull Mr. Boise's file.

20 Q. Okay, and did the information reflect that on our Schedule A appear  
21 accurate based upon your review of the file from Mr. Boise?

22 A. Yes, it did, I assessed him a \$60.00 fine.

23 Q. Okay, and would that same information hold true for the case of  
24 Regina Scott, which is further down the page, again--

25 A. --yes--

23.

(Hon. Andrew N. Piraino)

1 Q. --same date, same charge?

2 A. Yes, it would.

3 Q. Okay, so it would be accurate that the court, you particularly, the judge  
4 in the court on or about April 1<sup>st</sup>, actually fined \$60.00 for a seatbelt  
5 offense by Mr. Boise--

6 A. --whether, I believe it was not fined in the court, it was fined in my  
7 daily duties of coming in to, to handle the fines. I don't, I can't recall  
8 if these people were in court or not.

9 MR. ZIMMERMAN: Do you have the  
10 paperwork, your Honor--

11 THE WITNESS: --yes, yes I do  
12 somewhere--

13 MR. ZIMMERMAN: --why don't we pull  
14 that out so we have, we have the original  
15 paperwork, if you don't mind Mr. Duguay?

16 MR. DUGUAY: That would be terrific  
17 actually--

18 MR. ZIMMERMAN: --it might be easier  
19 for you--

20 MR. DUGUAY: --and if you want we can  
21 mark it as an exhibit? Do you have a second  
22 copy, would you like us to make a copy of that  
23 before marking as an exhibit--

24 THE WITNESS: --we have copies, give  
25 me the pink.

24.

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. ZIMMERMAN: The pink ones?

Maybe I left it outside--

THE WITNESS: --oh no, that's--

MR. ZIMMERMAN: --thats my dummy  
copies--

MR. MULDOON: --this is off the record.

(OFF THE RECORD)

Q. If I could first enter as Commission Exhibit number 5, an Order  
pursuant to your request Mr. Zimmerman, Exhibit number 5 is a one  
page document, it is the Order appointing Gary Muldoon as referee to  
hear testimony in connection with this case--

(Commission Exhibit 5 was marked for identification)

MR. ZIMMERMAN: --thank you very  
much--

MR. DUGUAY: --I'll show you a copy  
just so you can see it and the judge as well and  
we'll--

MR. ZIMMERMAN: It has a date of May  
15<sup>th</sup>, '09, thank you very much.

MR. DUGUAY: Thank you. Give that to  
Mr. Muldoon, Mr. Zimmerman you were going to  
check, I believe, before we went off the record,  
you commented you might have additional  
records that would be helpful to us?

MR. ZIMMERMAN: Yes, we do Mr.

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Duguay. We have the actual records from the two individuals that you mentioned who had received seatbelt charges, Regina Scott, and Ronald Boise, if we can have those marked to assist you. The first one I see you're gonna--

MR. DUGUAY: --well I do have an exhibit sticker I'd like to make these--

MR. ZIMMERMAN: --please.

MR. DUGUAY: Is this an extra copy--

THE WITNESS: --that's an extra copy--

MR. DUGUAY: -- do you want us to make--

THE WITNESS: --no, that's an extra copy.

MR. ZIMMERMAN: We're gonna leave all this with you, we've got copies back at the court. The originals are left there to the extent necessary. The judge had copies for himself.

Q. Great, I just marked them as Judge's exhibit A, it's a two page document, it's entitled Vehicle and Traffic docket on the top of the first page. It references the case of Regina Scott, the number is 08030043. The second page of this document actually is a copy of the Uniform Traffic Ticket. Okay, I'm gonna hand back, across the table to the judge at this time.

(Judge's A was marked for identification)

(Hon. Andrew N. Piraino)

1 A. Yes.

2 Q. Okay, judge, you had indicated that after receiving our schedule and  
3 letter, you went, had your clerks retrieve the actual file for the cases  
4 we just discussed--

5 A. --correct--

6 Q. --correct? And you're holding in front of you, that would be some of  
7 the information contained within, or documents contained within the  
8 file--

9 A. --copy of, yes--

10 Q. --okay, of Ronald Boise, correct?

11 A. Correct, oh, this is Ms. Scott's--

12 Q. --Ms. Scott, I'm sorry--

13 A. --do you want to start with Mr. Boise?

14 Q. No, I'm going backwards, that's perfectly fine. Okay, what did you  
15 discover in your research, judge?

16 A. I discovered that my handwriting on 3/5/08, I assessed a fine of \$60.00  
17 and a surcharge of \$55.00 under Section 1229 C3D--

18 MR. MULDOON: --and this is for which  
19 motorist?

20 THE WITNESS: Ms, Ms. Scott.

21 MR. MULDOON: Thank you.

22 Q. Ms. Scott.

23 A. And this appears, was not done in open court. This was done during a  
24 various time when I would go into the office, I go in probably once a  
25 day to handle any fines where people have mailed in a plea of guilty.

27.

(Hon. Andrew N. Piraino)

1 Q. Okay, and again, referenced on the second page on Judge's exhibit A,  
2 would've been a copy of the ticket that was mailed in, correct?

3 A. Uniform Traffic Ticket, correct.

4 Q. Okay and--

5 A. --it was received March 5<sup>th</sup> and I must have been in the office that day  
6 cause I assessed the fine on March 5<sup>th</sup>.

7 Q. And again, it was a guilty plea by mail, correct?

8 A. That's correct.

9 Q. Okay, now in your research at that time in, that would've been in  
10 March 2008, correct?

11 A. Correct.

12 Q. Do you have occasion to go back, review the statutes that were  
13 applicable at the time?

14 A. I have no recollection on this file. On a daily basis I do 50 to 60 files,  
15 so I don't recall if I looked at the statute for this particular file.

16 Q. Okay, let me clarify, since you received the information from the  
17 Commission and you went back to check--

18 A. --yes--

19 Q. --had a chance to double check whether on the statute in place at the  
20 time had a fine range that was compatible with what you fined Ms.  
21 Boise?

22 A. Yes, I did check and the fine range maximum of \$50.00, so this is a  
23 court error.

24 MR. MULDOON: If I might ask a  
25 question. You said on a daily basis you would

28.

STATE COMMISSION ON JUDICIAL CONDUCT

400 Andrews Street  
Rochester, New York 14604



(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

look at 50 to 60 files?

THE WITNESS: Depending on the volume of the mail that comes in.

MR. MULDOON: Okay.

THE WITNESS: For fining purposes.

MR. MULDOON: Okay, you meet every Wednesday?

THE WITNESS: That's correct, my court date.

MR. MULDOON: Okay, is Wednesday both arraignments as well as dispositions?

THE WITNESS: Yes.

MR. MULDOON: And when you're saying 50 to 60 a day, is that 50 to 60 Monday, Tuesday, Wednesday, Thursday, Friday, or is it--

THE WITNESS: --per day, it's per day.

MR. MULDOON: Okay, okay--

THE WITNESS: --we have a lot of volume. They do what they call saturations, the State Police do saturations where they just go out there with seven or eight cars, they'll come in with 200 or 300 tickets at a time.

MR. DUGUAY: Ouch.

THE WITNESS: Now we got the click it or ticket program going on so, we're busy.

(Hon. Andrew N. Piraino)

1 Q. And judge, with regard to the second case referenced in Commission  
2 Exhibit number 2, the case of Ronald Boise--

3 A. --yes, sir--

4 Q. --you also pulled those documents as well, correct?

5 A. Yes.

6 Q. So you have the copy in front of you, if we can mark that as Judge's  
7 exhibit 2, I'll do that at this time.

8 MS. SAMPSON: B

9 A. B

10 Q. B, I'm sorry, thank you Ms. Sampson. I'm handing you back Judge's  
11 exhibit number B, and again a three page document, the front page  
12 references a case of Ronald Boise, B-O-I-S-E, 08030069. Second  
13 page again appears to be the front of the ticket and the third page then  
14 will be the back with the plea of guilty entered on or about March 5,  
15 2008. I'm gonna hand this to you at this time.

16 (Judge's B was marked for identification)

17 A. Yes, sir, that's correct.

18 Q. I'm gonna ask you to, same facts actually apply as you just testified to  
19 with regard to Ms. Boise, mainly that you went back, you got the file  
20 from the clerk's, correct?

21 A. Well, actually there are different facts with this case. As you can see  
22 it's a different face sheet from the one my court uses. This was done  
23 when I was sitting in Judge Carey's court, and if you'd like me to  
24 explain it--

25 MR. ZIMMERMAN: --are you talking

30.

(Hon. Andrew N. Piraino)

1 about Mr. Boise, Exhibit B?

2 THE WITNESS: --Mr. Boise, Exhibit B.

3 Q. Okay, and Judge Carey, your co-judge, if you could explain that, that  
4 would be great--

5 A. --yes, I certainly will. Judge Harding, my prior co-judge, retired after  
6 32 years. Judge Carey was elected in November of 2007. That election  
7 was challenged by his opponent Mr. Allesio and the case litigated all  
8 the way up to the Court of Appeals, so the other seat was vacant from  
9 January '08 to April of '08, and because of the machinations of  
10 getting somebody else to come, I volunteered to sit in both courts.  
11 And I had to open up a separate account for that court. The reason  
12 being, I couldn't put it through my account in my own court because  
13 of the confusion it would create and I couldn't put it in Judge Carey's  
14 name because he hadn't been sworn in and Judge Harding had retired,  
15 so he couldn't extend his term. So for those first four months of 2008,  
16 I was handling court twice a week and doubling, double the duties. So  
17 this was done, this fine was assessed on a different date than Ms.  
18 Scott's. It was assessed on March 18<sup>th</sup>, probably that's when I went  
19 over them. I would go into, judge, that, that office, logistically we  
20 have two separate offices, they're separated by a wall. The courts do  
21 not have a one space for both judges, so we have our own files, each  
22 court has their own files. So this was done when I was sitting in Judge  
23 Carey's, well in the vacant court, I should say.

24 MR. MULDOON: Does Judge Carey  
25 have, normally meet on a different day of the

(Hon. Andrew N. Piraino)

1 week or different time of day?

2 THE WITNESS: Yes, he does. He meets  
3 on Thursday nights at 5:00. I meet on  
4 Wednesday nights.

5 MR. MULDOON: On both of those nights  
6 the District Attorney is present?

7 THE WITNESS: No, we do not have the  
8 pleasure of having a District Attorney present in  
9 court because of the volume of what happens if a  
10 person wants to contact the District Attorney on a  
11 Speeding ticket, they'll plead not guilty and we'll  
12 give them a letter of instructions on how to do  
13 that. If a person unrepresented wants to talk to  
14 the District Attorney about their criminal case,  
15 they must sign a waiver of counsel before the  
16 District Attorney will obviously talk to them on a  
17 criminal matter.

18 MR. ZIMMERMAN: Mr. Referee, the  
19 only thing I might add is that during the time  
20 frame referenced by Exhibit A, and Exhibit B,  
21 Judge Piraino was the only judge in, sitting in the  
22 Town of Salina.

23 MR. MULDOON: Yes, yes, yes, thank  
24 you, continue.

25 Q. Judge, in reviewing your work, and your handwritten notes--

(Hon. Andrew N. Piraino)

1 A. --yes, sir--

2 Q. --are records accurate in Schedule A, that also fined--

3 A. --\$60.00--

4 Q. --right, Mr. Boise \$60.00?

5 A. Correct.

6 Q. And also at the time the statutory maximum would've been \$50.00,  
7 correct?

8 A. Upon review, that's correct.

9 Q. Okay.

10 MR. MULDOON: Statutory maximum  
11 would've been \$50.00 or \$55.00?

12 MR. DUGUAY: \$50.00.

13 MR. MULDOON: Thank you.

14 Q. Okay, judge, after reviewing those two cases, did you have occasion to  
15 review other, sit down cases, and in this particular case a 1229C3, No  
16 Seatbelt cases? Did you then review Schedule A, with regard to  
17 Seatbelt cases?

18 A. I reviewed the whole schedule. So I went from, I numbered the, just  
19 for the record, on my copy I numbered a number one, which is the first  
20 case, Ms. Rushlow, all the way to number 1336, Mr. Reed. We were  
21 unable to locate about fifteen or twenty files out of the 1300. But  
22 those were still filed, or numbered, and if I couldn't find the file, I  
23 would note on here "court unable to locate file", because of the time  
24 frame it's probably misfiled, we just didn't have time to go digging  
25 through all the boxes.

33.

(Hon. Andrew N. Piraino)

1 Q. Okay, judge, do you have a second copy of your marked Schedule A?

2 A. Yes, I do.

3 Q. Okay, and would you mind, could we mark that as Judge's exhibit C?

4 A. Yes.

5 Q. And we can use for reference purposes.

6 A. And this is done in my writing so, Mr. Zimmerman says he can't read  
7 it, but I can read it.

8 Q. Okay, so again, just for the record, I just marked as Judge's exhibit  
9 number C, a document which appears to be a copy of the Commission  
10 Schedule A.

11 A. Correct.

12 Q. And again, it has a total of 84 pages on the schedule and Judge's  
13 exhibit C begins with the case of Robin Rushlow as you indicated and  
14 your written number one next to that case.

15 A. Yes, sir.

16 Q. And as you also just said, case 1336, and your handwriting on page 84  
17 next Michael A. Reed, which is the last case on the schedule, correct?

18 (Judge's C was marked for identification)

19 A. Correct.

20 Q. Okay, judge, I had asked you before about the No Seatbelt cases. You  
21 indicated you went through the whole schedule?

22 A. Yes, sir.

23 Q. Did you have the ability to break down and check on the seatbelt cases  
24 individually, or not?

25 A. I, I notated where the, where I made errors, yes, or where my clerks

34.

(Hon. Andrew N. Piraino)

1        may have made errors, or where the Commission's information was  
2        inadequate to determine whether I made an error or not.

3        Q. Okay, okay, and in reviewing Commission's Schedule A, okay, you  
4        reviewed that first of all with regard to the amount of the fines,  
5        correct?

6        A. Correct.

7        Q. Okay and you saw that our Exhibit, I believe it's Exhibit 3, Mr.  
8        Muldoon, you have a copy of it there. Okay, so in reviewing  
9        Commission's Exhibit number 3, which is Schedule A, okay, you  
10       reviewed it first you said for the fine amounts that were in excess of  
11       the statutory amounts, correct?

12       A. Well I went through each one.

13       Q. Okay, and you did that with regard to the fines that might have been  
14       deficient or below the statutorily required--

15       A. --below or above, yes.

16       Q. Okay and you did the same with the surcharges, correct, that you  
17       imposed?

18       A. Correct.

19       Q. You checked against the statutes and the time of the statutes, correct--

20       A. --correct.

21       Q. Okay and Judge's exhibit C then would reflect your finding, correct?

22       A. Correct.

23       Q. Okay, so in your review, did you note that, that there were more than  
24       half a dozen cases where you imposed improper, excessive fines, is  
25       that an accurate statement?

(Hon. Andrew N. Piraino)

1 A. It's a possibility, either I did, or my clerk did. Obviously I'm  
2 responsible for my clerks and any mistakes that they made, but, yes,  
3 the answer's yes.

4 Q. Okay, with regard to the fines that were below the statutory required  
5 number. In your review, would you agree, or disagree that there were  
6 more than twenty cases, twenty types of cases, charges I should say?

7 A. I really can disagree or agree with that without going through each one  
8 individually. Do you have any specific one you want to ask me about,  
9 I'd be happy to answer that.

10 Q. Okay, with regard to surcharges, did you make any other--

11 A. --I made notations where your information was incorrect and the  
12 surcharge I assessed was correct. I would cross out, put a line through  
13 where I felt my surcharge was correct, and your information was  
14 based on the Comptroller's Report which only would give, only gave  
15 the information of the date the surcharge was assessed, not the date of  
16 the offense.

17 Q. Okay--

18 A. --so there are several of those where the surcharges were actually  
19 correct, and I can't give you a number.

20 Q. Okay, would you agree or disagree that errors were made with regard  
21 to excessive fines being imposed, with regard to Schedule A--

22 A. --correct, correct. And I noted that, wherever I made an error, I noted  
23 that it is court error, or wherever my clerk made an error, I noted it as  
24 clerk error, but there, again, I'm responsible, obviously for my clerks.

25 Q. For the cases that you reviewed, and you discovered that errors were



(Hon. Andrew N. Piraino)

1 made in imposing an excessive fine--

2 A. --yes--

3 Q. --can you explain the reasons that excessive fines were imposed?

4 A. I cannot, a mental lapse on my part, misinterpretation of the law, might  
5 have been going through too many cases, I don't have an explanation  
6 other than I made a mistake. Because I have, I really have no  
7 independent recollection of why I fined what I did, other than what I  
8 just explained to you. I can give you conjecture, but I just don't have  
9 any--

10 Q. --okay, I'm not asking, I'm not asking for any, okay and going, going  
11 through and checking on our schedule, checking with your documents,  
12 did you keep track of any specific number of cases that you believe  
13 that you imposed an excessive fine?

14 A. No, I didn't, I didn't go back and try to divide it. If you're asking if I  
15 went through all, if I made a chart and went through each one I did not  
16 do that.

17 Q. And judge, again, I'm just referencing Commission Exhibit number 1,  
18 we had sent you a letter dated May 14, 2009.

19 A. Yes.

20 Q. Okay, we referenced some numbers, and again from your testimony,  
21 clearly you're feeling that the numbers aren't completely accurate, is  
22 that correct--

23 A. --that's correct.

24 Q. Okay--

25 A. --I can explain why I feel that, if you'd like.

(Hon. Andrew N. Piraino)

1 Q. Yeah, we're gonna, absolutely, again, it's very important to us. In the  
2 letter we said approximately 770 cases where excessive fines were  
3 imposed. Would that number be close to the number you determined  
4 where, where excessive fines were imposed in cases?

5 MR. ZIMMERMAN: Objection, calls for  
6 conjecture.

7 MR. MULDOON: I'm gonna overrule it,  
8 again, on your questioning if you wish to engage  
9 in any questioning, you may do so.

10 A. There, again, I can't, I can't really, I, I, did not do an individual chart  
11 of how many were correct, or incorrect so without going through and  
12 counting everyone, I can't tell you.

13 Q. Okay, judge, you received Schedule A, there's 84 pages, correct?

14 A. That's correct.

15 Q. Okay, would it be fair to say that you were somewhat distressed at the  
16 size of that schedule when you received it--

17 A. --I was very, I was very distressed. But there again it's based on the  
18 volume I went through and checked the volume for the time period  
19 that you've investigated, January 6<sup>th</sup> to May of 2008, like I've already  
20 testified, I sat in Judge Carey's court for four months of that. And  
21 back in 2006, I was in Judge Harding's court for two months while he  
22 had that double hip replacement. But during that period of time my  
23 records show that opened, that approximately 13,000 cases were  
24 opened. Which is new filings, I want to speak out, I got the figures,  
25 and closed during that period 12 or 13,000 cases. Fines in excess of,

(Hon. Andrew N. Piraino)

1 close to \$800,000 were assessed, surcharges close to that number were  
2 assessed. But I've got those actual figures for you that I'll, so, yes I  
3 was distressed, that's the correct answer to your question, 84 pages,  
4 but considering the overall volume, I'm not perfect and people make  
5 mistakes, and I can see that my clerks made a lot of mistakes and  
6 which I was very unhappy about.

7 Q. Okay, and again the question is simply that were hundreds and  
8 hundreds of cases. You'd agree that there be more than 500 cases  
9 where excessive fines were imposed, correct?

10 A. Possibly.

11 Q. Okay, but that would be contained within your handwritten notes G--

12 A. --correct, yeah, I can go through and count everyone if you'd like--

13 Q. --I'm not asking you to do that, I didn't know that in your--

14 A. --no, no, like I said--

15 Q. --time reviewing these documents--

16 A. --if the fine was wrong and it was my fault I put court error. If the fine  
17 was wrong and I felt it was a clerk error, I put clerk error. And then if  
18 the fine by fault that your investigation was wrong, I pointed out why I  
19 thought that was wrong.

20 MR. MULDOON: If I might ask, how do  
21 you differentiate between court error and clerk  
22 error--

23 THE WITNESS: --yes--

24 MR. MULDOON: --and how, how can  
25 you tell that it was a clerk who had done

(Hon. Andrew N. Piraino)

1 something--

2 THE WITNESS: --well--

3 MR. MULDOON: --rather that yourself?

4 THE WITNESS: Well, I, I can tell

5 because, unfortunately I had some part-time  
6 clerks that would assess their own fines on  
7 seatbelts without my knowledge. And that's since  
8 changed, one of them is retired, they both retired  
9 actually. And I, when I say court error, because I  
10 know what my handwriting is and my  
11 handwriting would be up in the, as you can see  
12 from Exhibit A, that's my lousy handwriting,  
13 35081655, I know that I assessed the fine. Give  
14 you an example of a clerk error go right to  
15 number one, Ms. Rushlow's, my review of the  
16 court documents show that I did not assess that  
17 fine, my clerk did.

18 Q. What I'm doing for record purposes in case there's noise, is I'm  
19 moving next to Mr. Muldoon so that he can review Judge's Schedule  
20 C, as I review them.

21 A. I was very distressed about that.

22 MR. MULDOON: Okay.

23 Q. And with regard to the errors that you found, what excessive fines did  
24 you have occasioned to total, the excessive amount of fines that were  
25 imposed, judge?

(Hon. Andrew N. Piraino)

1 A. No, I, I did not. With the time frame that we had it was an impossible  
2 task. We basically finished up yesterday getting all these fines pulled  
3 from the basement.

4 Q. Okay and for future reference, just know we would gladly extend the  
5 time. I believe counsel confirmed that you indicated that you would be  
6 prepared, today--

7 MR. ZIMMERMAN: --we are prepared--

8 MR. DUGUAY: --okay--

9 THE WITNESS: --I'm prepared today, but  
10 to total up, I, I, I, I did not do that.

11 MR. DUGUAY: Okay, would you agree  
12 that there was more than \$10,000.00 in excessive  
13 fines collected by your court between May of  
14 2006, excuse me, between January of 2006 and  
15 May of 2006--

16 MR. ZIMMERMAN: --I've got to object  
17 to this line of questioning. It's inflammatory,  
18 serves no purpose. The records are in front of the  
19 Commission, the judge has made notations as to  
20 each individual one, and so I just object to the  
21 characterization and inflammatory nature of the  
22 question.

23 MR. DUGUAY: Okay, if --

24 MR. MULDOON: I'm gonna, I'm gonna,  
25 no, I'm gonna overrule the objection. You can

41.

(Hon. Andrew N. Piraino)

1 address it. The judge's testimony can address it.  
2 You can address it both upon summation,  
3 questioning the judge, or afterwards with the  
4 question, as asked as proper.

5 THE WITNESS: I, I can't--

6 Q. Okay, you can't tell me that you charged, you imposed more than  
7 \$10,000.00 in excessive fines between January 2006 and May of  
8 2008?

9 A. I, I can't agree to that one way or the other. I can't agree or disagree.

10 MR. MULDOON: Okay.

11 Q. Okay, judge, you indicated where there might be court error, and you  
12 referenced, you know, your handwriting.

13 A. Correct.

14 Q. Okay, would that be where you wrote down the wrong amount of fine,  
15 is that what you're referencing?

16 A. Yes, like Exhibit A. Obviously that's a court error because I wrote  
17 \$60.00 and it should've been \$50.00.

18 Q. Okay, and that would be referenced on Judge's exhibit number C,  
19 when you actually wrote court error.

20 A. Court error, correct.

21 Q. And that would be an indication that in checking your own files, that  
22 you in your own handwriting had written down the wrong amount,  
23 correct?

24 A. Correct, and you could go to page 80, on my exhibit you'll see that  
25 under over Ms. Scott, I said the lady filed a complaint, court mistake,

42.

(Hon. Andrew N. Piraino)

1 only assessed wrong fine, and that's how I came to that conclusion  
2 after I reviewed my records, seeing that I assessed the wrong fine.

3 Q. Okay, and Mr. Muldoon had asked you about clerk errors, correct?

4 A. Correct.

5 Q. I believe in your response you indicated that the clerks sometimes, of  
6 their own volition would just issue a fine, is that correct?

7 A. That's correct, the people walk in, or you know--

8 Q. --how would that occur, judge?

9 A. They would just do it. And I had no knowledge of it, obviously, until I  
10 reviewed each and every one of the 1390 files that are in front of me  
11 today.

12 Q. Okay, how many clerks did you find in your research actually  
13 indicated fines without your authority?

14 A. Hard to say, probably one, maybe two.

15 MR. MULDOON: The clerk's office for  
16 your court, you have your court clerk, your co-  
17 judge had his own--

18 THE WITNESS: --his own office--

19 MR. MULDOON: --and are there other  
20 clerks within the office?

21 THE WITNESS: Yes, it's an open, my, go  
22 in the door, I have my office, and then there's an  
23 open area where we have three clerk stations and  
24 then there's one clerk station in the back and  
25 there's the front desk.

43.

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MULDOON: Okay--

THE WITNESS: --it's an open area.

MR. MULDOON: And when you're saying that a clerk would assess that, are you saying that it's your court clerk that would assess that, or there's your court clerk, rather than the other clerks who are employed, in the, in the office?

THE WITNESS: Well, they're all my clerks, well, if you're making the determination between my head clerks and the other clerks, they're all my court clerks there. I, I have two full time clerks, the senior clerk and one, one other full time clerk, and right now I have three part time clerks, so they would just assess a fine and send out the notice.

MR. MULDOON: Okay, thank you.

Q. Judge, would that ever happen with your clerk Lee Mazzly, or Mazzey--

A. --I, I--

Q. --did she ever, did you discover in your review of the documents that she--

A. --I don't, I don't believe so.

Q. Okay, did you have any policy with regard to what fines would be imposed based upon the type of case?



(Hon. Andrew N. Piraino)

1 A. My policy was that I would impose the fine. Obviously when I impose  
2 a fine, that I would impose them within the range, or what I thought  
3 the range would be. Obviously I've mistakes.

4 Q. Okay, now you've indicated that you've made your own notation on  
5 Schedule A, Judge's Exhibit C, correct?

6 A. Correct.

7 Q. How many times approximately were clerk errors by default for  
8 excessive fines?

9 A. There, again I didn't, I didn't go back and count them, I just, I can't  
10 tell you.

11 Q. You're sitting here after going through the schedule, you have no idea,  
12 is that your testimony right now?

13 A. Basically, yeah, I'd have to go back and count them, it varies from me  
14 to the clerk.

15 Q. Can you even say from your recollection and from the work that you  
16 put into this schedule whether or not that it would've been the  
17 majority of errors were clerk errors, or majority of errors were judge  
18 errors?

19 A. It's hard to say. I just don't want to make a conclusion without  
20 knowing the exact number.

21 Q. Okay, but you're the one that actually went through this schedule case  
22 by case, correct?

23 A. Yes, I did.

24 Q. And you the one that put each notation on, correct?

25 A. That's correct.

(Hon. Andrew N. Piraino)

1 Q. And you were distressed given the nature of the allegation size,  
2 however, correct?

3 A. Of course.

4 Q. And yet, as you sit here today, you have no idea of even, whether or  
5 not they're all court error, more judge errors, more clerk errors?

6 A. No.

7 Q. That's your testimony?

8 A. Yeah, that's my testimony.

9 Q. Okay, judge, I had asked you before about typically the type of cases  
10 that your court would handle.

11 A. Yes.

12 Q. Okay and I believe you did indicate that it would be overwhelming, the  
13 vehicle and traffic cases, correct?

14 A. Well most, a high percentage would be vehicle and traffic.

15 Q. Well, probably close to seventy five to eighty percent, would that be a  
16 fair estimate?

17 A. Probably, yes, definitely.

18 Q. Okay and you've been doing that since 1994, correct?

19 A. Sixteen, fifteen and a half years.

20 Q. Okay, so it's fair to say that you were well acquainted with the laws  
21 and the fines and the surcharges, correct?

22 A. I thought I was, yes.

23 Q. Okay and you would also agree that 1229 C3, a No Seatbelt is a pretty  
24 common ticket, correct?

25 A. Yes, it is.

(Hon. Andrew N. Piraino)

1 Q. Okay and you would agree also from a review of Schedule A, that  
2 there were approximately 700 cases or actually, excuse me, over 700  
3 cases of Seatbelt, correct?

4 A. Possibly.

5 Q. Alright--

6 A. --I have, I admit that I made mistakes.

7 Q. But there were hundreds and hundreds of them, correct?

8 A. From what's in front of me, yes.

9 Q. Clearly over 500, correct?

10 MR. ZIMMERMAN: 500 Seatbelt cases --

11 A. --no, no, no, that's not accurate--

12 Q. --500 Seatbelt cases that were imposed--

13 A. --it's not, I don't think there's 500 Seatbelt cases here.

14 Q. Okay, how many do you think are there, judge?

15 A. I, I have no idea. I just, I do so many, I do every vehicle and traffic  
16 charge, I just don't think there's 500 there, I just, I, I just can't guess,  
17 I'm not gonna guess.

18 Q. Okay, now you didn't impose an incorrect fine in every Seatbelt case,  
19 did you judge?

20 A. No.

21 Q. Okay--

22 A. --no because--

23 Q. --can you explain why there would be some Seatbelt cases that were  
24 fined accurately and some that were fined in error?

25 A. I have no explanation other that I made a mistake, I, and these are two

47.

(Hon. Andrew N. Piraino)

1 individuals that I fined in different courts, but upon investigation I see  
2 that they were in the same car, which is interesting. Well let me, we're  
3 on the alphabet system in Salina, so Judge Carey, well that other court  
4 at the time was vacant, would have A to L and I have K to Z. That's  
5 why Ms. Scott was in my court, and Mr. Boise would be in the other  
6 court.

7 MR. MULDOON: A to L and M to Z?

8 THE WITNESS: A to K and L to Z. I have  
9 L to Z.

10 Q. Okay and judge, with regard to the surcharge, and I'll reference in  
11 Schedule A, both Commission Exhibit 3, and Judge's exhibit C--

12 A. --yes, sir--

13 Q. --you have the occasion to go through and actually review the files--

14 A. --yes--

15 Q. --on your own court files, correct?

16 A. Correct.

17 Q. They also contained your own handwritten notations, correct?

18 A. Correct.

19 Q. Okay and also on Judge's exhibit C then, you referenced where you  
20 believe there would be court error, clerk error with regard to--

21 A. --correct and Commission error--

22 Q. --the surcharges. Okay, and as I'm quickly perusing Judge's exhibit C,  
23 it's not clear that you indicated where there are circles both for  
24 incorrect fines and incorrect surcharges, whether--

25 A. --well the circles for, where, where the mistake was, and if I felt it was

(Hon. Andrew N. Piraino)

1 a Commission mistake, I would cross, I'll give you an example--

2 Q. --thank you--

3 A. --number, number 21--

4 MR. MULDOON: --21, on what page

5 are--

6 A. --on page three of exhibit--

7 MR. MULDOON: --okay--

8 A. --number 21 would be Zafar Mir. The defendant pled guilty to two  
9 other charges out of the same stop and was assessed surcharges on  
10 those two tickets. So it would be surcharges maxed out, that's why it  
11 was waived for that particular ticket. Obviously the Comptroller's  
12 report wouldn't show that, so, indeed the surcharge would've been  
13 \$50.00, \$55.00 but he had already pled in the same stop, to two other  
14 tickets, so what I would do is cross out where you, the Commission,  
15 made a mistake.

16 Q. Okay, now in cases that you're not referencing a Commission error.

17 A. Yes.

18 Q. Would you differentiate between court or clerk error in the separate  
19 categories of fine and surcharge?

20 A. Yes, if the clerk couldn't read my writing or if the, the, the mitigating  
21 factor, or aggravating factor for that case would call for a waiver of  
22 the surcharge. And to give you an example of that would be, on page  
23 four, number 44, I waived the surcharge, I didn't circle that one, I  
24 don't know why, but the defendant made restitution, so I waived the  
25 surcharge.

(Hon. Andrew N. Piraino)

1 Q. Okay, and just to clarify for restitution, are you indicating that  
2 restitution was paid prior to the conviction?

3 A. Prior to the conviction, yes.

4 Q. Okay, judge, just so we can be clear so I'll, we're reviewing Judge's  
5 exhibit C, anything that would only indicate court error, clerk error,  
6 would apply to whatever errors would be, if there are errors in both  
7 that would be indicated--

8 A. --correct, yeah, yeah, it would indicate it.

9 MR. MULDOON: Under your notations,  
10 if you have a slash mark, does that indicate your  
11 belief that it is a Commission error?

12 THE WITNESS: Commission error, yeah,  
13 you didn't have the right information, you're  
14 unable to ascertain the right information from the  
15 Comptroller's report.

16 MR. MULDOON: Okay, thank you.

17 THE WITNESS: And I'll give an example  
18 of that would be number 4, right on the first page,  
19 Cindy Lee Sibley, the date of the offense is  
20 8/25/02, \$35.00 is the correct surcharge for that  
21 date of offense, just an example. And I--

22 Q. --and that was a case however, that was reported to the State  
23 Comptroller in January 2006, correct?

24 A. Correct, but the original charge was 8/25/02.

25 Q. Great, thank you, judge.

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MULDOON: If I might ask--

THE WITNESS: --yes, sir--

MR. MULDOON: --the reason why it would be reported in January of 2006, is that because there was a scofflaw issued and the person failed to show up--

THE WITNESS: --most--

MR. MULDOON: --and, and--

THE WITNESS: --most likely. When there's that much of a lapse, I've got, there's some on here that go back '89, if you can believe that. At any one time, I have 9,000 open cases, which means scofflaws, bench warrants, all the way back to 1989, at any one time I'll have 9,000 open, unresolved cases.

Q. So judge, with regard to surcharges, as I had asked with fines, then you would agree that there were errors made where you charged a surcharge below the statutory requirements, correct?

A. Correct.

Q. Okay, and again, as before, you, in referencing the Commission's letter, May 14, 2009, Exhibit number 1, our letter had indicated that you imposed surcharges over \$15,000, we actually reference \$17,730.00 below the statutorily required minimum. Okay, when you referenced 349 cases, do you have reason to speak the accuracy of those figures?

(Hon. Andrew N. Piraino)

1 A. Sure.

2 Q. Okay.

3 A. Where mostly, as I call Commission errors were on the surcharges, and  
4 there again, I didn't count them up, but I would strongly dispute that  
5 number?

6 Q. Okay--

7 A. --based on my investigation.

8 Q. Okay and one of the areas clearly you reference was the area of the  
9 statutory limit, okay, where, again surcharges do get maxed out,  
10 correct?

11 A. Correct.

12 Q. Okay and then checking your files, the number of cases that might  
13 have been prosecuted or taken care of at a time, you went back and  
14 you indicated what the errors would be, correct?

15 A. Yes, yes.

16 Q. Thank you, judge. Judge, with regard to the Salina Town Court, in the  
17 prosecution of cases--

18 A. --yes, sir--

19 Q. --you indicated of course that the Onondaga County District  
20 Attorney's office has an Assistant District Attorney that works in the  
21 court, correct?

22 A. I have one assigned to my court, yes, but he hasn't come, he doesn't  
23 come on actual court nights. He'll come in whenever he's not busy in  
24 other courts, and there'll be fines waiting for him to send dispositions.

25 Q. Okay and with regard to the Assistant District Attorney would be



(Hon. Andrew N. Piraino)

1 assigned to your court, that's on a rotating basis more or less, correct?

2 A. As a matter of fact a new one just started yesterday.

3 Q. Okay and typically that would be a number of months and then there  
4 would be another Assistant District Attorney, correct?

5 A. Correct.

6 Q. So during the course of time between January 2006 and May 2008, fair  
7 to say that you had two or three assigned District Attorneys--

8 A. --probably four.

9 Q. Okay.

10 A. Because the DA's office had a large exodus and a lot of the underlings  
11 are kicked up to senior status, so there was a lot of fluctuation over the  
12 last two years.

13 Q. Okay, and with regard to the type of cases that the Onondaga County  
14 District Attorney would prosecute, that certainly be the penal law  
15 cases, correct?

16 A. Correct, and now the, the DA that's assigned to my court would handle  
17 vehicle and traffic. The District Attorney in Onondaga County has a  
18 Special Victims Unit, has a DWI unit, so any of those types of  
19 criminal cases would be directed to that unit. The DA that would  
20 come to my court would have no authority to give a disposition on a  
21 DWI or a Special Victim, meaning an Assault, Rape. They'd have to  
22 deal with the, that unit at the District Attorney's office.

23 Q. Okay and with regard to other types of cases, in other words  
24 Transportation law, would that be handled by the DA--

25 A. --DA that would, any, anything dealing with vehicle and traffic,

(Hon. Andrew N. Piraino)

1 transportation, tax, meaning the trucks tax permit, would be dealt by  
2 the, by the DA assigned to my court. Unless there's an attorney and  
3 they have their own favored DA and they go down and get their own  
4 paper disposition.

5 Q. Okay, are there any type of cases that came in front of your court that  
6 would not be handled by Onondaga County--

7 A. --no--

8 Q. --District Attorney's office--

9 A. --oh, well, that's not accurate. Dangerous Dog cases are handled by the  
10 town attorney Robert Ventre.

11 Q. Okay, Ventre, V-E-N-T-R-I?

12 A. V-E-N-T-R-E.

13 Q. I should've had Mr. Zimmerman's spelling probably there.

14 MR. ZIMMERMAN: Actually it is.

15 A. Oh, yes, thank you. We also have Worker's Compensation Fraud cases  
16 are processed in my court, because several of the insurance companies  
17 are situated in the Town of Salina, including the state's biggest  
18 worker's comp insurance, "State Insurance Fund", so the claimant that  
19 lives in Rochester mails in the forms to Syracuse, and those forms are  
20 fraudulent, that case is, starts off in my court.

21 Q. Okay.

22 A. So, the AG's office sometime is involved in that. Right now the  
23 District Attorney's office seems to be doing them. But they, don't ask  
24 me how, but they take turns, but the AG will come in on some of  
25 those.

54.

(Hon. Andrew N. Piraino)

1 Q. Okay, thank you, judge. You started to describe a little bit about the  
2 procedure that might be employed by the District Attorney's office--

3 A. --yes, sir--

4 Q. --in vehicle and traffic cases, correct?

5 A. Yes.

6 Q. Okay and you indicated that it was not common that, in fact the DA,  
7 assistant DA would not appear in your court initially on vehicle and  
8 traffic cases, is that accurate--

9 A. --unless the person asked for a non-jury trial, then obviously he would  
10 be there with his, with the subpoenaed deputy or trooper.

11 Q. Okay, that wouldn't be on the first appearance though, correct?

12 A. Oh no, oh no.

13 Q. Okay--

14 A. --there's no DA on the first appearance, the, the DA that's assigned to  
15 my court basically handles mail-in pleas. They have a Justice Court  
16 DA right down at the DA's office that the attorney's use, normally.

17 Q. Okay, would that be a Fineberg, Allison Fineberg?

18 A. She is the senior for all justice courts. The, Christine Stuckmeller, and  
19 I can't spell that for you, is the, is her assistant. Ms. Fineberg is the  
20 Senior District Attorney for justice courts.

21 Q. Okay and you said there was some type of a letter, or write in process,  
22 or procedure for vehicle and traffic in Onondaga County, correct--

23 A. --yes, yes, if they, if they plead not guilty and they want to write to the  
24 District Attorney, or if they appear at the bench and they want to write  
25 to the District Attorney enter a not guilty plea, note their appearance,

55.

(Hon. Andrew N. Piraino)

1 give them a letter of instruction on how to write to the District  
2 Attorney and so it's done properly. It's mailed back to my court, but  
3 for the DA, so it doesn't get lost downtown in their maze of mail--

4 Q. --okay, so--

5 A. --that's how most the, I don't want to speak for the other courts, but  
6 I'm sure that's how most of the other courts handle it. Some of the  
7 smaller courts do have the DA there at night.

8 Q. Okay, so in handling a lot of vehicle and traffic cases, you would  
9 actually letters from the DA's office, is that correct?

10 A. No they would--

11 Q. --in other--

12 A. --they would write to the, the defendant would write to the District  
13 Attorney.

14 Q. And the District Attorney can also--

15 A. --he would sign a disposition, and mail it back to them, and then they  
16 would either agree to it or ask for a trial.

17 Q. Okay, so--

18 A. --they agree to it, then it would come back in the mail to me and then I  
19 would assess the fine based on whatever reduction.

20 Q. Okay, so there would be, there would be vehicle and traffic cases that  
21 would have letter from the District Attorney's office--

22 A. --disposition letters--

23 Q. --agreeing to a reduced disposition of the charge--

24 A. --correct--

25 Q. --correct--

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. --signed on the back by the defendant.

Q. Okay--

A. --or they would be coming in with the attorney, if they have an attorney.

Q. Okay and you would keep a copy of that for the file of that disposition--

A. --certainly, and I, and I believe where there were disposition letters, my clerks copied them after we received the, there's a short form disposition for, for traffic infractions, and obviously there's more for plea bargains for DWI's and Assaults, there's a more detailed, three or four page plea bargain letter.

Q. And you said those would go through a separate unit at the DA's office, correct?

A. Correct, the DWI unit, the Special Victims Unit, the White Collar Fraud unit, whatever the case may be.

Q. Okay, so for processing purposes in your court, it was very advantageous to have a defendant come in with an agreed upon disposition from the DA's office, a letter, correct?

A. So we could close the file, yeah, but I don't take a plea until they have the fine money.

Q. Okay--

A. --so like, like on a DWI if it calls for, whatever, \$1,500.00 or \$3,000.00, I will give them, I won't, I won't take the plea because I can't process that papers until I have the fine money.

Q. Okay--

(Hon. Andrew N. Piraino)

1 A. --so--

2 Q. --and when an individual would appear in court with that, we'll call  
3 that the disposition letter from or proposed disposition letter from the  
4 District Attorney's office, would there be a need to have the assigned  
5 District Attorney in the court at that time or not?

6 A. No.

7 Q. Okay.

8 A. He's already agreed to it.

9 Q. Okay, and then procedurally, would it be accurate to say then, upon  
10 plea to the reduction you would actually take a copy of that  
11 dispositional letter signed by the defendant, on back, and make it part  
12 of file?

13 A. Definitely.

14 Q. Okay.

15 A. That won't do without it, yep.

16 Q. Okay, with regard to pleas looking at vehicle and traffic cases first,  
17 were there any restrictions that you would have as far as plea  
18 reductions in vehicle and traffic cases?

19 A. Did I set my own restrictions?

20 Q. Correct.

21 A. Unless it was really offensive, no, I mean if he was charged with  
22 reckless driving doing 190 to 50 in a 40 and he comes back with an  
23 equipment violation, I would probably not accept it, but it's very rare--

24 Q. --okay--

25 A. --to have something like that. The DA's are more knowledgeable in

58.

(Hon. Andrew N. Piraino)

1 that, but very rare. I can probably count on one hand the number of  
2 dispositions that I refused to accept over the years.

3 Q. And again as we sit here today, would there be any particular type of  
4 cases, say speeding cases, did you have any set policy with regard to  
5 how you would allow or not allow reductions on speeding cases?

6 A. No, if the equities were proper I would allow the reduction.

7 Q. Okay--

8 A. --unless, there again unless it was egregious but really the last DA I  
9 had was, would like, if the person had six points speed they would  
10 only reduce it to a three point speed, which I felt was appropriate.

11 Q. Okay.

12 A. Because of the volume, it's hard to, not to accept a disposition unless  
13 it's, unless it really offends my senses, because we just don't have the  
14 ability to have that many trials. I fight with the senior citizen to get  
15 trial dates, because the town hall is the court hall and it's the bingo  
16 hall and they play poker and everything else in there. So my, my  
17 criminal jury trials are held on a Monday morning at 9:00, that's the  
18 only time I can get a court for an all day jury trial. We don't have a  
19 dedicated court.

20 Q. Okay, judge, I'm gonna direct your attention at this point to Schedule  
21 B, I believe its Commission Exhibit number 4.

22 A. Yes, sir, I did not pull those files.

23 Q. Okay, judge, Exhibit number 4, which is Schedule B from the  
24 Commission, we had referenced a number of cases where there were  
25 finals pleas to an 1101 charge, vehicle and traffic, 1101, correct?

59.

(Hon. Andrew N. Piraino)

1 A. Correct.

2 Q. Okay, now, Salina Town Court did utilize the VTL section 1101 for  
3 plea purposes, correct?

4 A. Correct.

5 Q. Okay, can you just explain a little bit about the history of the use  
6 within your court and maybe even your county?

7 A. The history of 1101's in my county, well, I've been a practicing  
8 attorney for 25 years, they go back at least 25 years. The District  
9 Attorney utilizes 1101. The courts accept 1101's and, and there again,  
10 I can't speak for other courts, but in general conversation I don't know  
11 of any court that doesn't accept an 1101.

12 Q. Okay--

13 MR. MULDOON: What is an 1101, if you  
14 would put for the record?

15 THE WITNESS: Under the Vehicle and  
16 Traffic Law, 1101 is Failure To Obey Rules of  
17 The Road.

18 MR. MULDOON: Okay.

19 Q. Okay, now you had told me earlier that there'd be dispositional letters  
20 from the DA for cases, correct?

21 A. Correct, the short form disposition letters.

22 Q. Okay, now, short form letters would they reference 1101 as part of  
23 their dispositions?

24 A. Correct.

25 Q. Okay and those--



(Hon. Andrew N. Piraino)

1 A. --I don't change the disposition, I, if they don't like it I send it back.

2 Q. Okay, so, you said you did or did not go to any of the 1101 files in  
3 your court?

4 A. No, I didn't even pull them, I didn't even look, I, I, looked through the  
5 exhibit, but I didn't pull any of those files.

6 Q. Okay, would there be no reason believe that they would be treated any  
7 differently as far as disposition letters, correct?

8 A. No, they'd be the same.

9 Q. Okay.

10 A. I, I, I do, I do not reduce charges, I don't have the authority to do that.

11 Q. So, would it be a belief, based upon your experience and actually  
12 being in the court and accepting pleas, you would have many of the  
13 files on Schedule B with dispositional letter for 1101's?

14 A. Probably every one.

15 Q. Okay, and again you had occasion to review Schedule B and the  
16 different charges, correct?

17 A. Yes, I did.

18 Q. Okay and they contained a number of different initial charges, correct?

19 A. Correct.

20 Q. Okay, they would include DWI cases, correct, there was situations  
21 where DWI were reduced to 1101's?

22 A. No, that's not accurate, the, you would have to have the whole file.  
23 The DWI would be an ACD, and any, obviously there'd be another  
24 ticket involved and most likely during a probable cause stop that  
25 would be reduced to an 1101, but there was never a DWI reduced to

61.

(Hon. Andrew N. Piraino)

1 an 1101. The plea bargain would be ACD on the DWI Adjournment in  
2 Contemplation of Dismissal, where it would be dismissed after six  
3 months, and the 1101 would be an additional charge for one of the  
4 other tickets--

5 Q. --like a companion, like a Speed, or some Seatbelt ticket--

6 A. --Speed, Seatbelt, or Talking On The Cell Phone, whatever the  
7 officer's probable cause was to pull the vehicle over.

8 Q. Okay, now in accepting a plea in the reduction you mentioned it was  
9 common practice within the county, how did you make the  
10 determination as far as fine amounts?

11 A. Depending on the charge, I would fine up to \$100.00.

12 Q. Okay, where there occasion where you would file, or excuse me, when  
13 you would impose fines in excess of \$100.00?

14 A. I don't believe so.

15 Q. Okay, you reviewed Schedule B, correct?

16 A. Not as well as I reviewed Schedule A--

17 Q. --okay--

18 A. --I'll look at it.

19 Q. I grabbed Commission Exhibit number 4 from Mr. Muldoon--

20 A. --thank you--

21 Q. --and hand it across. And I don't necessarily need you to look page by  
22 page, your testimony is--

23 A. --I just wanted to look for my, for my own edification, and vaguely I  
24 see where there's only one in here where it was \$110.00, and I'm sure  
25 that's because my clerk thought my zero was a one--

62.

(Hon. Andrew N. Piraino)

1 Q. --so, typically you would use that range?

2 A. Yeah, between \$25.00 and a \$100.00.

3 Q. Okay and you had mentioned before that you referred to Gould's or  
4 McGill's, how did you come up with the fine range for an 1101  
5 charge?

6 A. Well, in Gould's or McGill's there is no fine range for an 1101 charge.

7 Q. Okay, and at what point were you aware that there was no fine range?

8 A. I, at all points, from the beginning--

9 Q. --okay, what, what's your understanding of why an 1101 plea would  
10 be used? Well, let's take your court, you can only speak for your  
11 court, why would you use an 1101 plea in your court--

12 A. --I would use 1101 plea because the District Attorney's office is one  
13 authority, would reduce to an 1101. The vehicle and traffic, I'm sorry,  
14 the Department of Motor Vehicles, even though I believe their counsel  
15 says it's not a chargeable offense. They do accept 1101's if the person  
16 doesn't pay the fine, allow us to scoff on an 1101, and my personal  
17 conviction is, 1101 is a fair charge, than having somebody with a  
18 speeding ticket plead to a faulty muffler.

19 Q. Okay, what are the consequences, from your understanding, of an 1101  
20 plea to a defendant?

21 A. No points.

22 Q. Okay, so you're aware of that in agreeing to the reduction, correct?

23 A. I'm sorry?

24 Q. You would be aware of that in agreeing to 1101 reduction--

25 A. --there would be no points, correct--

(Hon. Andrew N. Piraino)

1 Q. --okay--

2 A. --as, as with an equipment violation, or a, the DA for some reason  
3 starting to use Section 1214 now, which is opening your door unsafely  
4 in traffic, it's no points, but there is a surcharge attached.

5 Q. Okay and--

6 A. --I had to look that one up because I thought that was a new--

7 Q. --it's a new one--

8 A. --yeah.

9 Q. And with regard then to surcharges, what was your understanding of  
10 surcharges with an 1101 cases?

11 A. There were no surcharges--

12 Q. --okay--

13 A. --at least not in my court, some other courts may have assessed  
14 surcharges.

15 Q. Okay--

16 MR. MULDOON: --if I might--

17 THE WITNESS: --yes, sir.

18 MR. MULDOON: You said that 1101 was  
19 no chargeable, or not chargeable?

20 THE WITNESS: It's my understanding  
21 that the counsel of the Motor Vehicles  
22 Department says it's not a chargeable offense.  
23 Well, I don't know his statutory authority is for  
24 that. I disagree, as do most of the courts in my  
25 county, because everybody accepts 1101's. The

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DA reduces to 1101's, and the Department of Motor Vehicle scofflaws 1101's if they don't pay the fines.

Q. Okay, have you ever had occasion to look up Section 1101 in McGill's as far as fine purposes?

A. There is no fine assessed, and there is no fine assessed under the, the Vehicle and Traffic Law--

Q. --right, so--

A. --the actual law itself is in Gould's.

Q. Section 1809?

A. 1809 is surcharges, 1800 is penalty, is the fines for infractions, 1801 is the fine for misdemeanor vehicle and traffic.

Q. Okay, okay, you said you had been on the bench going on sixteen years now, correct?

A. Sixteen years, yes, sir.

Q. Okay, and when you first took the bench did there come a time when you, at any time in your sixteen years, had you researched Section 1101, the Vehicle and Traffic Law with regard to use as a plea vehicle?

A. Other than looking in the book and seeing that Failure to Obey Rules Of The Road, no.

Q. Okay, and that comes in your research, you discovered that that came under article 23?

A. I'm sorry.

Q. In your research, are you aware that, that came out of article 23, the

(Hon. Andrew N. Piraino)

- 1 Obedience To Effective Traffic Laws, correct?
- 2 A. Yes.
- 3 Q. Okay, there's also an 1102, which is a similar type charge, correct--
- 4 A. --that's a 2.9 moving violation, yes--
- 5 Q. --okay, and you can--
- 6 A. --that's Failure to Obey Police Officer.
- 7 Q. Okay, you've used that as well in your courtroom, correct?
- 8 A. Correct, and that's a surcharge able offense.
- 9 Q. Okay, so you're aware that the distinction is that there would be a
- 10 surcharge, correct?
- 11 A. There would be points--
- 12 Q. --and there would be points as well. Were you aware of any fine range
- 13 employed with regard to vehicle and traffic, Section 1102?
- 14 A. There is a fine range, but I have to look in the book. I don't, right off
- 15 the top of my head, I couldn't tell you.
- 16 Q. Okay, your understanding of surcharges, you're aware that surcharges
- 17 go to the state, correct?
- 18 A. Correct.
- 19 Q. With a small portion to the municipality, correct?
- 20 A. To the municipality, correct.
- 21 Q. With regard to the fines on 1101, are you aware where the fine money
- 22 would be sent? Would it be kept in locality or sent to the state?
- 23 A. I believe it goes to the state, I could be wrong.
- 24 Q. Okay, that's your understanding as you sit here right now?
- 25 A. Yeah, but I could be wrong, but that is my understanding.

(Hon. Andrew N. Piraino)

1 Q. Okay and has that been your understanding the entire amount of time  
2 that you sat on the bench?

3 A. Yes, sir.

4 Q. Okay, okay, since you have used both 1101, and 1102 in your court,  
5 correct--

6 A. --well I, I only use what the DA reduces to. I don't tell them what to, I  
7 don't sit in there with the DA, give me 1101's, give me this, give me  
8 that, whatever the DA sends in, that's what I use. Sometimes it will be  
9 an 1102, sometimes it will be an 1101, sometimes it will be an  
10 equipment, 1214, various.

11 Q. Okay, you've had a chance to review the cases listed on Schedule B,  
12 correct?

13 A. Yes, sir.

14 Q. Okay and you indicated now that, basically you would agree and you  
15 would not overrule the DA when they made the recommendation,  
16 correct? To a reduction to an 1101--

17 A. --no, because I didn't find it repulsive or offensive to my, and they  
18 would present equities also.

19 Q. Okay, and again, in referencing Schedule B and you did go through  
20 many of the cases, correct?

21 A. I did not pull the cases individually, no, I did not.

22 Q. But you did review the--

23 A. --I reviewed the schedule.

24 Q. Okay and in reviewing the schedule, you could see what the initial  
25 charge was, correct?

(Hon. Andrew N. Piraino)

1 A. Correct, yes.

2 Q. And you said that there would be a number of cases of DWI, I think  
3 that we talked about that, that were reduced to 1101, correct?

4 A. I, I don't believe, if, if it says a DWI was reduced to an 1101, I would  
5 have to say that, that's a mistake. I just don't recall the DA ever  
6 amending, like I said, the DWI part would be an ACD, it would not be  
7 a direct 1101.

8 Q. Okay and in your experience again with the ways things are in Salina--

9 A. --I don't think I would accept an 1101 reduction on a DWI. That  
10 would be to me, would be offensive.

11 Q. Okay, and that be--

12 A. --An Adjournment in Contemplation of Dismissal, it's like six months  
13 of probation as far as I'm concerned.

14 Q. Okay and we're referencing now with DWI, that it be the 1192 or 1193  
15 charges, correct?

16 A. Correct.

17 Q. And would it be--

18 A. --two and three--

19 Q. --and would it be more common to reduce it to an 1192-1, DWAI  
20 charge?

21 A. Correct.

22 Q. Okay and that would be the more common practice in your court,  
23 would that accurate?

24 A. The DA's practice, correct. Now we have the new charge of  
25 aggravated DWI, so they're re-evaluating their policies on AI's now.



(Hon. Andrew N. Piraino)

1 That's pretty much new, so we don't know what they're gonna do  
2 with that. Aggravated DWI is just two times the legal limit, doesn't  
3 mean the person had priors or anything. If they have priors, then they  
4 have big problems, it could be a felony too.

5 Q. And again in your review of Schedule B from the Commission, you  
6 noted also that there would be Speeding charges, correct?

7 A. Speeding, Red Lights, Stop Signs.

8 Q. Okay, so, with the speeding, that would include Speeding Through  
9 Work Zones, correct?

10 A. 1180 F--

11 Q. --1180 F, correct--

12 A. --yes, correct.

13 Q. In reviewing Schedule C you saw that there were a number of 1180-F  
14 charges that were reduced as well, correct?

15 A. Not, a large amount, but yeah, there's some here.

16 Q. What about misdemeanor charges, and I reference specifically AUO  
17 charges, 511-1A, 511-2A, are you aware of those criminal charges--

18 A. --yes--

19 Q. --being reduced to an 11--

20 A. --yes, and most of those would be where the person has taken care of  
21 the underlying suspension or revocation would have the green card  
22 from Motor Vehicles showing that the revocation, a suspension has  
23 been paid up and any civil fines attached that are paid up, or they  
24 would have a notice from the court where they didn't pay their fine,  
25 showing that they made their appearance and paid the fine, and that

(Hon. Andrew N. Piraino)

1 | would be part of the DA's equities, I'm sure, in reducing it an 1101.

2 | Q. Okay and generally for the AUO charges they would not, would they  
3 | be reduced or not to 501 Unlicensed Operator charges, 509-1 charges?

4 | A. They've done that too.

5 | Q. Okay, in your experience, what would be the more common practice of  
6 | the Onondaga County DA's office?

7 | A. Probably, they'll keep it right in the 509.

8 | Q. Okay--

9 | A. --but, there again it depends on if it was my DA, or DA downtown, or  
10 | had an attorney and the attorney went to DA that they know. It's hard  
11 | to say.

12 | Q. Okay, judge, in making a reduction, or allowing a reduction out of the  
13 | AUO charges, 511 charges--

14 | A. --correct.

15 | Q. Would you require that District Attorney to put on the record the  
16 | reasons why they would be making such a recommendation--

17 | A. --there would be, there's, on that short from there's an equity section.  
18 | If people would come into court with that green form or proof that  
19 | they appeared, I would not reduce the criminal charge. I would have  
20 | them write to the District Attorney, or have them get an attorney to do  
21 | that, or if they're unable to afford an attorney because it's a  
22 | misdemeanor, I'd let them have assigned counsel.

23 | Q. Okay and judge, from your experience in practice in the court with  
24 | regard to reducing Ppeeding cases, 1180 cases--

25 | A. --sure--

(Hon. Andrew N. Piraino)

1 Q. --could you know whether there would be a preference of the  
2 Onondaga County DA's office to reduce to 1101's or would they  
3 chose to reduce to 1110-A's as a more common practice?

4 A. Probably 1101's, 1102's, there again it depends on the person record.  
5 If they have a large number of priors in the last 18 months, the DA's  
6 not so liberal.

7 MR. ZIMMERMAN: May I just at this  
8 point Mr. Referee, note my objection. We've had  
9 a lengthy back and forth from the judge about  
10 District Attorney's processes and procedures, and  
11 I candidly don't understand where we're going  
12 with this, and I think that the whole line of  
13 questioning is improper in light of the issues  
14 presented by judge, for Judge Piraino.

15 MR. MULDOON: I think that I'm gonna  
16 overrule it, I believe that this information is  
17 important to his background information for the  
18 Commission and whoever may be reviewing,  
19 once, if this case were to go forward, and I don't  
20 know that it will be, but if that, I note your  
21 objection. I'm going to overrule it. And it is not  
22 necessarily by any means reflective upon the  
23 judge's, you know, the issues relating to the  
24 judge. But it is, in sense background information,  
25 in case they need to move forward.

(Hon. Andrew N. Piraino)

1 Q. Ultimately judge, you would have to sign to allow any reduction in  
2 your court, correct?

3 A. I'm sorry.

4 Q. You allow reduced pleas in your court--

5 A. --I have to, well, obviously I have to approve it, but I don't do the  
6 reductions myself obviously.

7 Q. Okay, is the District Attorney's office or any individual from the  
8 District Attorney's office ever indicated why they've reduced charges  
9 to 1101?

10 A. To me personally, no, I can't, other than it's, it's like a tradition and  
11 has been common practice. I go back 25 years and, and older  
12 attorneys, older than that, they have been doing it at least that long.

13 Q. Okay, have you ever inquired from anyone from the District  
14 Attorney's office why they would--

15 A. --no, no, and there again, this is a volume issue. If I don't accept the  
16 disposition, the person or case may be set down for a trial, or the DA  
17 will just not do anything. I really never thought about it other than,  
18 there again with the volume I have, the number of 1101's is a small  
19 percentage of the overall reductions I receive on traffic files for the  
20 period in question.

21 Q. Okay, I believe you indicated then it's the District Attorney that makes  
22 the motion for the reduction, correct?

23 A. Yes, it's a--

24 Q. --okay, ultimately--

25 A. --written, written, written motion affirmed by the defendant and his

(Hon. Andrew N. Piraino)

1 attorney if he has one.

2 Q. Okay, would it always be in writing, a reduction down to an 1101 plea  
3 in your court?

4 A. It would have to be, because the DA's not present.

5 Q. Okay, so what you're indicating, if I understood you correctly, is that  
6 for every case listed in Schedule B, if it's accurate, there, you would  
7 anticipate there'd be a dispositional letter from the DA--

8 A. --I would anticipate that, yes--

9 Q. --okay--

10 A. --I don't see how else I could--

11 Q. --allowing the reduction--

12 A. --yeah, I wouldn't, unless on the rare, I can't even think when the DA  
13 would be present, no, yeah, it would have to be in writing.

14 Q. Okay, if there would be an occasion where there wasn't a letter,  
15 something might have been negotiated in court, would you make an  
16 indication in that particular file?

17 A. I would note the DA's presence obviously.

18 Q. Okay, and would you make any further notes--

19 A. --and I can--

20 Q. --as to why a reduction would be allowed--

21 A. --I'm sorry. I can give you an example of that.

22 Q. Please.

23 A. One Wednesday every month, the DA will come in to do traffic trials,  
24 what the, where he would subpoena the officer and the person would  
25 come in either represented or unrepresented. If the DA would

(Hon. Andrew N. Piraino)

1 obviously try to negotiate with the people ahead of time and on those  
2 rare occasions there may not be a handwritten 1101, but even on those  
3 occasions I believe that he writes out a disposition, but there could be  
4 somewhere that was done at the bench without one. I'd be hard  
5 pressed to say that, that was a common practice. This is more, even  
6 when he was there, it'd be done in writing.

7 Q. Okay--

8 A. --and the file would be noted accordingly.

9 Q. Okay and judge, you said that it's been a long standing policy, or a  
10 long standing use of 1101's in Onondaga County, correct?

11 A. Yes.

12 Q. Okay and you indicated you're aware that, you're unaware of any legal  
13 source, be some unlawful for that reduction, correct?

14 A. I'm sorry.

15 Q. You're unaware of any legal source, okay, or any statute that would  
16 make it unlawful to accept an 1101, correct?

17 A. I'm not aware of anything.

18 Q. Right, okay, nonetheless you have changed your policy of allowing  
19 reductions, correct?

20 A. For the time being, yes.

21 Q. Okay, you had sent us a letter--

22 A. --yes, I did; I was, I'm being investigated for, which I feel is a small  
23 percentage, like I said, based on the volume and obviously the  
24 Commission must have a problem with it if they're investigating me  
25 on it, I, that, that was my, that was my assumption--

74.

(Hon. Andrew N. Piraino)

1 Q. --okay--

2 A. --maybe I was too hasty, but I've made a rule which I'm entitled to do,  
3 that I no longer for the time being accepting 1101's.

4 Q. Okay, you've had a chance to review our letter of May 14, correct,  
5 with your counsel?

6 A. The original complaint?

7 Q. Correct.

8 A. Yes.

9 Q. Okay and you clearly in your responsive letter to us, perhaps I'll mark  
10 it as an exhibit now. What I'm gonna do judge, you sent us, actually,  
11 counsel actually sent us two different letters. You had recently sent us  
12 a letter dated May 28, 2009, by facsimile, where you indicated that  
13 there was gonna be a change in procedure in the court, okay--

14 A. --that's correct.

15 Q. And then we did not initially receive the referenced attached letters--

16 A. --that was an oversight, but I believe my counsel corrected it--

17 MR. ZIMMERMAN: --why don't we  
18 simply just mark the document, then we can let  
19 the judge respond to any questions you may  
20 have--

21 MR. DUGUAY: --well, I'd like to clarify  
22 for the record, if it's okay with counsel. So you  
23 did then fax us a letter dated June 2<sup>nd</sup>, and that  
24 included two attached letters, A letter that went to  
25 Judge Tormey, and a letter that went to the

75.

(Hon. Andrew N. Piraino)

1 Onondaga County District Attorney's office, the  
2 Onondaga County Magistrates Association, and  
3 the Bar Association, correct?

4 A. Correct.

5 Q. Okay, mark as Commission Exhibit number C--

6 MR. ZIMMERMAN: --6--

7 MS. SAMPSON: --6.

8 Q. Excuse me see my eyes aren't working very well. A letter dated June  
9 2<sup>nd</sup>, as well as the accomplished two letters I just referenced. Thursday  
10 May 28<sup>th</sup>, are the dates on both letters.

11 (Commission Exhibit 6 was marked for identification)

12 A. Yes, sir--

13 Q. --I'm gonna hand it to you at this point.

14 A. That's correct.

15 Q. Judge, in reviewing our letter dated May 14, 2009, which is  
16 Commission Exhibit number 1, there is no request that you make any  
17 change in policy, correct?

18 A. There's no specific request other than I'm being investigated for  
19 accepting 1101's.

20 Q. Okay, you understand that an investigation is merely an investigation  
21 of, to determine facts of allegations that exist, correct?

22 A. That's correct.

23 Q. And just to clarify information, correct?

24 A. Correct.

25 Q. Okay, you understand that there are situations, where bail is allowed to



(Hon. Andrew N. Piraino)

1 be set, it's how bail is set sometimes that could make it an issue for  
2 our investigation, correct?

3 A. I guess.

4 Q. Okay and the same would apply to 1101's, would that be accurate?

5 MR. ZIMMERMAN: --well--

6 THE WITNESS: --well--

7 MR. ZIMMERMAN: --I'm gonna object

8 Mr. Referee. We have a circumstance here where  
9 the Commission as a matter of law, it can choose  
10 not to act upon complaints. They can also choose  
11 to initiate an investigation. The fact that they've  
12 chosen to initiate investigation is, is something  
13 that is within the power of the Commission.

14 Judge Piraino issued a responding, or letter in  
15 response to that, and to imply some sort of  
16 impropriety, or that the Commission is somehow  
17 directing it, is an improper line of questions.

18 MR. MULDOON: I don't believe that the  
19 question as asked is necessarily suggestive of  
20 impropriety on the judge's part, by the judge's  
21 response to, with his letter Exhibit C, so I'm  
22 going to overrule that objection.

23 Q. The Commission made no request that you change your policy, correct  
24 judge?

25 A. I've already answered that, that's correct.

77.

(Hon. Andrew N. Piraino)

1 Q. Okay and you were aware that there was a date of June 11<sup>th</sup>, today, to  
2 come in and provide information to clarify the fact and circumstances  
3 of the information that we sent you, correct?

4 A. That's correct.

5 Q. Okay, so it wasn't any request by the Commission to change policy.  
6 What was it that caused you to change policy?

7 A. No request, but the investigation enough was a cause for me to  
8 reevaluate the situation and for the time being I took it upon myself to  
9 inform, to form a local rule, obviously only for my court, and that's  
10 what I did.

11 Q. Why judge? Why did you make--

12 A. --because I'm being investigated for over, I don't know how many  
13 cases. For every case, for that time period that I assessed an 1101. So  
14 obviously if it wasn't a problem, I don't think I'd be investigated, but  
15 that, that's my reaction to the investigation and that was, is exactly  
16 what I did. That was my reaction to your, to the Commission's  
17 investigation, and I don't think there's any impropriety in me  
18 changing--

19 Q. --okay, I'm not the one who was suggesting it was, counsel suggested  
20 that, not myself--

21 A. --no, that's fine, I made my reaction to the investigation, and I felt that  
22 it be in the best interest for the investigation, that I change my policy.

23 Q. Okay, but let's be clear, it was not a request by the Commission, was  
24 it?

25 A. No, you did not request that I not take 1101's.

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. ZIMMERMAN: I'm gonna object, let's be clear. The Commission has the power to recommend this judge be removed from the bench. So to the extent that they investigate it, that is an indication that the Commission is considering removal, ultimately removal from the bench for that conduct. So I think the record needs to be clear on that point Mr. Duguay--

MR. DUGUAY: --counsel, are you speaking for the judge at this point, counsel? Are you speaking of your own opinion--

MR. ZIMMERMAN: --I'm making my objection. It's a matter of law.

MR. MULDOON: What I, what my ruling is, is that Mr. Duguay is making the point is that the investigation, while it is an investigation, did not request a change in the judge's policy as such. And whatever it may be suggestive of, or be inferred from an investigation their, reasonable minds can differ with. The judge's change in policy is, is not necessarily by any means, an indication of anything other than it is a change in policy.

MR. ZIMMERMAN: Mr. Referee if I might, what Mr. Duguay is doing is in effect

(Hon. Andrew N. Piraino)

1 making a statement for the record. He's not  
2 asking the judge questions, so I have an objection  
3 to that conduct.

4 MR. MULDOON: And I will overrule that  
5 objection.

6 Q. Okay, judge, can you state specifically why you changed the policy  
7 that you're no longer accepting 1101 pleas in your court--

8 A. --I believe I have but see re-state it. I, I have a Schedule B that mailed  
9 to me for a period of time with several hundred 1101 dispositions.  
10 And I felt that there must be a problem with it and because you do  
11 have the power to take, to refer this to a regular hearing and to take a  
12 different sanction against me, I changed my policy.

13 Q. Okay, I asked you previously, you understand--

14 A. --yes--

15 Q. --that there's no law saying that you cannot accept that plea, is that  
16 accurate?

17 A, There's no law saying, I thought you asked if there's no law saying I  
18 can't accept that plea?

19 Q. Let me clarify it's a confusing question that, okay--

20 A. --is there any--

21 Q. --you understand that there's no direction. You don't believe that  
22 you're doing anything unlawful or illegal in accepting that plea, do  
23 you?

24 A. No, because I've done it for as long as I've been on the bench and I  
25 actually, when I was, the occasion when I can appear in front of a non-

(Hon. Andrew N. Piraino)

1 attorney judge, or before I took the bench. I would get 1101  
2 dispositions from the DA's office for my clients. It was in very rare  
3 times that I did traffic, when I was on the assigned counsel mostly.

4 Q. Okay, do you believe that in each and every case listed on Schedule B,  
5 okay, that it was proper to accept the plea to 1101, given the facts and  
6 circumstances of those cases?

7 A. Yes.

8 Q. Okay, I had used a term before, and I believe that's used in McGill's,  
9 and perhaps by DMV counsel, non-chargeable offense, are you  
10 familiar with that term?

11 A. Yes.

12 Q. Okay and again, the way I'm using it, it would indicate that when you  
13 go to the statute, okay, it's not listed as a charge with specific fine  
14 ranges, surcharges and such, correct?

15 A. Correct.

16 Q. Okay and our letter of May 14, which is Commission Exhibit number  
17 1, I also referenced charges 319-3 of Vehicle Traffic Law, you saw  
18 that in the letter, correct?

19 A. --uh, let me read--

20 Q. --okay, I'm sorry, I'll hand you Commission Exhibit number 1, on  
21 page--

22 A. --you're switching things on me here, okay--

23 Q. --two, there you go, judge.

24 A. Yes, 319-3.

25 Q. Okay and you had the ability, check and I believe it'd be on Schedule

81.



(Hon. Andrew N. Piraino)

1       A. I'm gonna hand that to you at this point--

2       A. --I got, I got that--

3       Q. --oh, and referencing the statute, you're familiar with the 319-3 is also  
4       a non-chargeable offense, correct?

5       A. According to the statute it may, yes.

6       Q. Okay--

7       A. --the officer charged the 319-3, he charged it as an infraction, again, I  
8       see it right here, number 93 is an example of 319-3, page seven,  
9       Tamela Long--

10      Q. --thank you, judge.

11      A. If that's what you're asking me. Sheriff wrote the ticket, charged it as  
12      a 319-3, which is, there's a misdemeanor 319-1, but he charged it as  
13      an infraction, so they court assessed the fine as an infraction, whether  
14      that was an error or not, I don't know. I guess it was but--

15      Q. --do, would you feel that it be proper to accept a plea to a Section 319  
16      -3 VTL charge?

17      A. Yeah, because I did.

18      Q. Okay--

19      A. --and I believe the sheriff was, I don't want to call it a roadside  
20      reduction, but he charged 319-3, instead of charging the person with a  
21      misdemeanor.

22      Q. Okay, did you believe that was accurate, with the, what would you do,  
23      let me ask you another question. If there was a faulty accusatory  
24      instrument, or you perceived there to be a faulty instrument, would  
25      you allow a plea to that faulty instrument?

(Hon. Andrew N. Piraino)

1 A. If there was a motion made that it was defective, I'd entertain the  
2 motion.

3 Q. Okay and then you assessed again, you pointed out on page seven, I  
4 believe you have referenced Judge's Exhibit C, which is a marked  
5 docket--

6 A. --yeah--

7 Q. --okay, it's on page seven, the second case from the top, which would  
8 be, I believe, case number 93, Tamela Long. Okay, so you issued, or  
9 imposed a \$50.00 fine, correct?

10 A. Yeah and I--

11 Q. --how did you make a determination of the amount of the fine?

12 A. It appears, according to my writing, I investigated the fine, and I wrote  
13 that down as, the sheriff wrote for 319-3, instead of 319-1, the court  
14 mistakenly set a fine and surcharge, so that probably was, could've  
15 been a mistake.

16 Q. Okay, you said you've been on the bench for almost sixteen years,  
17 correct?

18 A. Yes, sir.

19 Q. Fair to say you've handled thousands of 319-1 cases--

20 A. --I, I can't say that, that's accurate.

21 Q. Okay, you would have resources at your disposal, if you're setting a  
22 fine in the courts, 319-1, correct?

23 A. Same resources that I've cited, yes.

24 Q. Okay, are you, are you aware as you sit here today, that a 319-1 would  
25 have a minimum fine of \$150.00?

(Hon. Andrew N. Piraino)

1 A. Yes, and I reviewed it and the 319-3 charge, I shouldn't have fined.

2 Q. Okay and the 319 then, you've read the statute for 319-3, correct?

3 A. Correct.

4 Q. And it references that it, it's presumptive evidence for 319-1, I believe  
5 you stated that previously on the record--

6 A. --correct.

7 Q. Okay and with regard to establishing the surcharge, you also charged  
8 surcharges in all the 319-3 cases on Schedule A, correct--

9 A. --well, probably, without looking at all of them, I did on that particular  
10 example, yes.

11 Q. Is it your understanding or belief that a surcharge is appropriately  
12 received on a 319-3 plea?

13 A. Now it's not. I, there again, that could've been done when I was doing  
14 my tickets and I just looked at it, never gave it a second thought, and  
15 just assessed a fine and surcharge. There could've been a lot of  
16 factors.

17 Q. Okay, is there a particular reason why in the cases referenced on  
18 Schedule A, after your review of the cases and looking at the files,  
19 that you allowed the plea to a 319-3, instead of a 319-1?

20 A. Complete oversight, or a mistake, I--

21 Q. --okay, any--

22 A. --they were charged with a 319-1, so they couldn't plea to it obviously.  
23 They don't know what they-re, and it was marked as an infraction on  
24 the ticket, so it wasn't marked as a misdemeanor.

25 Q. Okay and that would be true on all cases on Schedule A, is that your





(Hon. Andrew N. Piraino)

1 understanding?

2 A. Probably.

3 Q. Okay, but you would've marked in each and every case when you went  
4 through Schedule A--

5 A. --I marked, yeah, I put my evaluation of what went wrong, if anything  
6 went wrong.

7 Q. Okay and, just, at this point I want to thank you very much, I know it's  
8 a tremendous amount of work, but it's incredibly helpful in  
9 ascertaining accurate facts.

10 A. Okay--

11 Q. --as you pointed out we're, at this point, not in receipt of each and  
12 every file marked, and we're going off of other reports as well, so it's  
13 very helpful, thank you. And judge, finally, are you aware of any other  
14 non-chargeable offenses that you allow in your court?

15 A. Off the top of my head, I can't think of any.

16 Q. Okay and judge, what, if any, changes do you feel would be  
17 appropriate given your investigation of the allegations forwarded to  
18 you in schedules--

19 A. --what have I done--

20 Q. --that were reviewed, correct--

21 A. --what I've done? Well, obviously you can see what I do with the  
22 1101's. As far as the, I had a meeting with my clerks and reiterated  
23 and I have a new head clerk, and reiterated nobody sets fines but me.  
24 If there's a mistake, I'm gonna make the mistake, not the clerks. And  
25 there's a better, we do have another, I call her a part, part time clerk

(Hon. Andrew N. Piraino)

1 because she's allowed to work ten hours a week. They squeezed  
2 another one in for me, so freeing up the more seniors clerks to review  
3 and not just mail everything out. So, if I do make an error, they can  
4 call me on it, so I've instituted those changes since this came down  
5 two weeks ago, or three weeks ago. That's all I can say, I've made  
6 mistakes, my clerks made mistakes, there, again, when you put in front  
7 of me an 84 page document, with hundreds of cases on it, I was very  
8 distressed, but based on the amount and volume for that period of  
9 time, I'm actually surprised it wasn't more, because it's just, the court  
10 were overloaded and we do the best we can with the staff we have  
11 available. And that's basically what I have to say.

12 Q. Thank you very much judge, referee, I have no further question at this  
13 time.

14 MR. MULDOON: Do you have any  
15 questions that you wish to ask of the judge?

16 MR. ZIMMERMAN: I do Mr. Referee,  
17 but first I'd like take about a five minute break--

18 MR. MULDOON: --yep--

19 MR. ZIMMERMAN: --I have papers out  
20 there I'd like to bring in, and if you don't mind  
21 take a small, short bathroom break.

22 MR. MULDOON: Absolutely, that's fine.  
23 We'll be in recess for five minutes--

24 THE WITNESS: --thank you, thank you,  
25 sir.

86.

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

face sheet. Then there would be a second sheet, which would contain the actual ticket, or complaint. And then there is typically a third sheet, which would show judges and court clerk notes. So if you could simply mark all of that as one, it covers the time period January '06, up until and including May 2008.

MR. MULDOON: Okay. Do you understand what he proposing to do?

MR. DUGUAY: I am, I do--

MR. MULDOON: --okay, just for the logistic purposes, does that, if, if--

MR. DUGUAY: --If I could ask just a few quick questions? With regard to--

MR. ZIMMERMAN: --we still have to mark them, we should mark it.

MR. DUGUAY: It would be the Judge's D, I believe?

MR. ZIMMERMAN: Yes, and that would contain--

MR. MULDOON: --Judge's D--  
(Judge's D was marked for identification)

MR. ZIMMERMAN: --two banker box, boxes full of records, we'll just put it on top of one of the boxes.

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MULDOON: Okay, okay, with that being accomplished, being marked for identification--

MR. DUGUAY: --okay, just--

MR. MULDOON: --for logistic purposes, Mr. Duguay--

MR. DUGUAY: --for reference, with regard to what we just marked, two boxes as Judge's exhibit number D. Okay, counsel, you indicated that each and every case that you could find of the 1,336 cases, okay, are enclosed within those two boxes, correct?

MR. ZIMMERMAN: That's correct, they're photocopies of the original court documents.

MR. DUGUAY: Okay, do you know who placed those documents in the box?

MR. ZIMMERMAN: Well, why don't we ask Judge Piraino since he's here--

MR. DUGUAY: --Judge Piraino, do you know, you did?

THE WITNESS: I did it. I went through each and every one myself after the clerks pulled them. I numbered the sheet, as we already testified. Number 1 Ms. Rushlow, to number

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1336, Mr. Reed. Those are the accurate copies. The only changes, you'll see at the top where I numbered the documents, those are the only additions to those records. On this sheet you may, I'll give you an example, number 2 will not be in there, because I couldn't locate the file, that'd be Brian Perry, number 2--

Q. --okay, now judge, I'm looking over across the table, you have it starred.

A. Just, number 2, can't locate file, so number 2 won't be in there. I numbered your sheet independently before we had the files.

Q. Great, so any files that you could not locate would be marked on Judge's Exhibit C, correct--

A. C would be, can't locate file.

Q. Okay, do you know approximately how many files were not able to be located out of the 1,336?

A. Probably, probably less than 30.

MR. MULDOON: So you're saying that in those two boxes, there's approximately 1,300 different traffic dispositions?

THE WITNESS: Well yeah, well also their, if the person had multiple tickets, it may show up as three lines on your, but it may be one stop. It may show up as three lines. So on that one I would number it like 1,400, 1,402, or

(Hon. Andrew N. Piraino)

1 depending on the order.

2 MR. MULDOON: Okay.

3 Q. It would be marked upon the face of the document--

4 A. --correct--

5 Q. --within--

6 A. --within--

7 Q. --the two boxes in Exhibit D, correct--

8 A. --and would match up with Exhibit C. I did the best I could, but that  
9 was all done by me. The only thing the clerks did was pull the files.

10 Q. Okay, but if I understood you, you did not keep a list of what files you  
11 could not locate, separately, so we could not find out what's not in the  
12 box?

13 A. No, you'd have to look for it. I did, I didn't go through the list.

14 Q. Okay, as you were putting the documents in the box, did you check  
15 against the list to make sure that you don't--

16 A. --yes--

17 Q.--indicate that files are in the boxes, that are not in the box--

18 A. --yes, double check, but there again, there's a lot of them. But I could  
19 testify that to the best of my knowledge if we found the file then its in  
20 the box and it's duly numbered.

21 Q. Okay and you did the actual putting the documents in the box, all on  
22 your own without the assistance of any clerk, is that what your  
23 testimony is?

24 A. All they did was pull the files and put them in order of your sheet, then  
25 I took over from there.

91.

(Hon. Andrew N. Piraino)

1 Q. Okay, and again, I just want to be clear so if we have a question, we  
2 will go to you, you're the only individual who actually placed each  
3 and every--

4 A. --correct--

5 Q. --exhibit, any document within the exhibit, within the box?

6 A. What they did was pull every file, put it in order as it was on your  
7 sheet, then I individually went through every file so I could make my  
8 notations accordingly, and then they were boxed.

9 Q. Okay.

10 MR. ZIMMERMAN: Thank you. Judge,  
11 I'd like to ask you some questions in general  
12 about your background as a judge, and the  
13 training you've received. Since 1994, you've  
14 indicated that you've received some training. Can  
15 you tell the Commission in general, how much  
16 training per year you receive?

17 THE WITNESS: Mandatory training is  
18 twelve hours, which would be two sessions. So I  
19 attended fifteen and a half years, so it'd be twelve  
20 hours every year, it'd be 33 sessions up to today,  
21 there'll be another one in September.

22 MR. ZIMMERMAN: Now--

23 THE WITNESS: --those are six hour  
24 sessions.

25 MR. ZIMMERMAN: Are you also

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

involved with the Onondaga County Magistrates Association?

THE WITNESS: Yes, I am, I'm past president and still active, obviously.

MR. ZIMMERMAN: Judge, in the course of handling the responsibilities of the Town of Salina matters, you've describe the events that occur on open court night. Is that every Wednesday?

THE WITNESS: Every Wednesday, unless it's a holiday eve.

MR. ZIMMERMAN: Now, do you keep a court reporter present when court is in session?

THE WITNESS: No, recently we have our new computers, so there's a record, an audio record taken of everything.

MR. ZIMMERMAN: When, when did you commence that, give or take, if you can recall.

THE WITNESS: I just changed the disc for the first time. I believe it was probably after the September of '07, I believe. Oh, actually, oh, yes, September, I guess September of '07.

MR. ZIMMERMAN: Between January of '06 and January of '07, was there any record kept of open court room proceedings?



(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Just my own notes.

MR. ZIMMERMAN: You've indicated that your court clerk sits next to you?

THE WITNESS: To the right, correct.

MR. ZIMMERMAN: And the file is then handed to you?

THE WITNESS: Yes, the people check in, and then the bailiff will bring up the files in order they checked in with attorneys, or without.

MR. ZIMMERMAN: And all matters are handled in open court?

THE WITNESS: All matters that are on the calendar, yeah, well, yeah, all matters definitely, arraignments, trials, there's nobody there, but it is open court.

MR. ZIMMERMAN: Okay, fine, now, in addition to open court where you resolve and dispose of cases, you've talked in general about the mail in procedure. Do you accept guilty pleas to misdemeanors by mail?

THE WITNESS: No.

MR. ZIMMERMAN: Is it fair to say that you only accept guilty pleas by mail to traffic infractions, or other infractions in the law, non-criminal matters?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Correct.

MR. ZIMMERMAN: Can you describe for the Commission, how guilty pleas are received by mail, processed by the court, fined, and then disposed of afterwards?

THE WITNESS: Okay, if the person pleas straight out guilty to the ticket, without requesting a letter to the DA, the clerk upon receiving that in the mail, will pull it, date stamp it and put it in a pile on my desk. And when I come in either that day, or the next day, I'll sit there until the files that are in front of me for that mail, mail period are done. And that's done, unless I'm unavailable, which is very rare, it's done on a daily basis.

MR. ZIMMERMAN: So, when the, an individual pleads guilty, the clerks actually pull the original ticket?

THE WITNESS: Correct, the original file, which includes the ticket.

MR. ZIMMERMAN: And then is there a face sheet of some fashion?

THE WITNESS: Yes, there'd be, on a traffic infraction, you won't see it from the copies, it'd be a pink sheet.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. ZIMMERMAN: And that's court generated?

THE WITNESS: Yes.

MR. ZIMMERMAN: And that, that document, the court document and the original traffic ticket are placed in front of you?

THE WITNESS: Correct, with any other supporting letters, or if there's a disposition, yes.

MR. ZIMMERMAN: You then analyze the documents, determine whether you're going to accept the guilty plea?

THE WITNESS: Correct.

MR. ZIMMERMAN: If you do accept a guilty plea, do you then look to determine what the mitigating and aggravating factors are, if any?

THE WITNESS: Sometimes, yes, on traffic infractions, the really, the straight guilty plea, there's other factors, or not really nothing to consider, because they're not there, so I can't ask them any questions.

MR. ZIMMERMAN: Other than looking at the documents.

THE WITNESS: Other than looking at the documents.

MR. ZIMMERMAN: And then you set the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

fine?

THE WITNESS: Correct.

MR. ZIMMERMAN: How do you go about actually setting the fine?

THE WITNESS: Like I testified, either, if I'm sitting there, either by memory, or if I feel that I, I'm not knowledgeable about that particular charge I, I look in the statute. If I don't have the statute, I look it up on the computer.

MR. ZIMMERMAN: Did you physically handwrite it on any piece of paper?

THE WITNESS: Physically handwrite?

MR. ZIMMERMAN: The fine and surcharge, if any?

THE WITNESS: On my face sheet.

MR. ZIMMERMAN: And then what do you do with all the documents?

THE WITNESS: Then the documents are taken out by the clerk, and she processes them, and sends out the fine notices.

MR. ZIMMERMAN: Is that, for the mail-in procedure, is that the only time you see the documents?

THE WITNESS: Yes.

MR. ZIMMERMAN: Can I have another

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

document marked please?

MR. DUGUAY: There are actually four, four different pages--

MR. ZIMMERMAN: --yes--

MR. DUGUAY: --do you want to mark this as one document--

MR. ZIMMERMAN: --one, one documents fine.

MR. DUGUAY: Okay, I've marked as Judge's Exhibit E, a four page document, and I'll ask you to describe one side only. I'll ask to describe what these four documents are?

MR. ZIMMERMAN: Yes, these are summary report of cases started, running from page one, 1-1-06, to 12-31-06. Page two 1-1-07 to 12-31-07, page three 1-1-08 to 5-31-08. And the forth page says the Salina Town Court part two, 1-1-08 to 4-25-08. Judge, you got in front of you a copy of Exhibit E.

(Judge's E was marked for identification)

THE WITNESS: Correct.

MR. ZIMMERMAN: Can you tell me, what is the first page from 1-1-06 to 12-31-06 represent?

THE WITNESS: That represents for that

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

period of time, all the cases that were started, which means opened in my court, and all the cases that were closed, the fines and surcharges that were assessed, civil fee if any, that would be on filing fees for evictions and small claims. The closed column is, is an ongoing fluctuating column, and by that I mean, if the person comes in with a fine after this report is generated, for that period of time that, that number could actually change.

MR. ZIMMERMAN: Now, judge, is this document manually created or is it computer generated--

THE WITNESS: --this is computer generated by our computer program.

MR. ZIMMERMAN: Can you tell me when you began using the computer programs to assist in the administration of your court?

THE WITNESS: We've had computers as long as, programs, as long as I've been there, but obviously they, they're higher tech in the last couple of years.

MR. ZIMMERMAN: And this report was generated on a default basis through the computer program?

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Correct, after I received the, the, the letter from the Commission.

MR. ZIMMERMAN: Now, judge, would the similar information apply to 2007, and on the third page 1-1-08 to 5-31-08?

THE WITNESS: Same thing.

MR. ZIMMERMAN: Can you tell me what the forth page signifies, Salina Town Court, Part two?

THE WITNESS: Yes, as I previously testified, my counterpart court, Judge Carey, who's the judge now, that court was vacant for four months while the election in November of '07, went through a legal process because there was a challenge by Judge Carey's opponent, and it ended up that he, ended up winning by three votes, and that went all the way up to the Court of Appeals, and his victory was confirmed, and he took the bench approximately at the end of April.

MR. ZIMMERMAN: So the page four are, what does that show us? The cases that would've been--

THE WITNESS: --handled by me--

MR. ZIMMERMAN: --sitting in Judge Cary's part?

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Correct.

MR. ZIMMERMAN: Now can you tell us judge, from all of 2006, approximately how many cases in total were opened?

THE WITNESS: It says, started cases in 2006, 6,813.

MR. ZIMMERMAN: And for the computer print out, it lists on the left the statute applicable, what does that signify?

THE WITNESS: What the charge was as, number one would be penal law and down, down through vehicle and traffic. CIV would be our Civil Cases. TO is Town Ordinance--

MR. ZIMMERMAN: --let me hand the referee the original exhibit--

MR. MULDOON: --Okay, do you have a copy of this--

MR. DUGUAY: --no.

MR. ZIMMERMAN: Oh, it's okay, we're--

THE WITNESS: --TL is Transportation Law, AM would be Ag and markets, ABC is Alcohol Beverage and Control, ECL is Environmental Conservation Law, Tax Law, ANV was a typo mistake. NAV is a Navigation





(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Law, we, Onondaga Lake, half of Onondaga Lake is in the Town of Salina, and that would be sheriff's tickets for flotation devices, safety checks. Boating While Intoxicated in some occasions. WC would be the Workers Comp fraud that I previously testified to. DEC would also be Environmental Con Law that was, depending, sometimes it gets entered as DEC instead of ECL. And AGM would be Agriculture Markets Law.

MR. ZIMMERMAN: So you handle 5,173 tickets in the Town of Salina in 2006, in your part--

THE WITNESS: --there were, that's how many cases were open--

MR. ZIMMERMAN: --were received--

THE WITNESS: --received, new files.

MR. MULDOON: That's vehicle and traffic cases--

MR. ZIMMERMAN: --vehicle only--

MR. MULDOON: --yes--

THE WITNESS: --correct.

MR. MULDOON: Okay.

MR. ZIMMERMAN: And there were 623 Penal Law charges?

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Correct.

MR. ZIMMERMAN: Do we know how many of those, looking at the top half of the sheet, represented DWI charges?

THE WITNESS: Not looking at the sheet, no.

MR. ZIMMERMAN: So the VTL would include misdemeanor, Vehicle and Traffic Law, withdrawing. On the top half where it says VTL 5173, that would include misdemeanor charges under that statute?

THE WITNESS: Correct, I recharged it under the Vehicle and Traffic Law.

MR. ZIMMERMAN: Now that bottom half says additional information, what does that signify?

THE WITNESS: That signifies the number of DWI's, the number of AUO's, and the number of speeds which are all included in that top number.

MR. ZIMMERMAN: Thank you. Would you be able to give a similar evaluation for 2007?

THE WITNESS: Correct, there are some different codes on there. I'll just tell you the ones that are different. TRR is the Thruway Authority

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Rules and Regulations, sometimes the troopers will write under the Thruway Rules and Regulations to give the defendant a break, because there are no surcharges with those. And then PHL is the Public Health Law, and that's Growing Cannabis and we sometimes get those. And the bottom one's a mistake, it's TWI, that, referred thruway, so that's a mistake.

MR. ZIMMERMAN: And how many cases were opened by your part in the Town of Salina during 2007?

THE WITNESS: In total 6,883 cases.

MR. ZIMMERMAN: I'd like to go to 2008. From January 2008 to May 31, 2008, would a similar evaluation and commentary be made by you relative of that information?

THE WITNESS: January to May, yes.

MR. ZIMMERMAN: How many cases in total were opened by your court during that part of the year--

THE WITNESS: --as of that half of the year, 2,799, as far as the coding, that 0112 is a mistake, just a typo, it's not, it shouldn't be considered for anything. Other than that all the other ones I previously told you, all the

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

correction, it's a correction of the law, I think that might have been a mistake too.

MR. ZIMMERMAN: And finally the page four, which is Salina Town Court, Part two--

THE WITNESS: --yes--

MR. ZIMMERMAN: --for the period 1-1-08 to 4-25-08, a similar analysis by you would apply to that information?

THE WITNESS: Yes, when I was sitting in the other court, I would go into their office to do the fines because that's where they were, and their clerks would work with me for any cases in that court. We opened 1,786 files during that four month time period when the other judge had not been seated yet.

MR. ZIMMERMAN: Thank you, now, you told us that Judge Harding, before he retired after 1/1/06, was disable due to a double hip replacement--

THE WITNESS: --correct--

MR. ZIMMERMAN: --and that you sat in on his court?

THE WITNESS: Yes, but I don't have the dates for those.

MR. ZIMMERMAN: Those numbers for

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

when you sat in for Judge Harding would've been handled by Judge Harding clerks?

THE WITNESS: Correct, and I don't have those numbers with me. I don't think we pulled out those--

MR. ZIMMERMAN: --the question is, they would not be disclosed in the Exhibit E?

THE WITNESS: No, none of those, those dates would be enclosed in any of these exhibits, all the exhibits, that's correct? So that would another file of cases.

MR. ZIMMERMAN: Did you add up how many cases in total were handled by, were opened by your court, and that you handled from 1-1-06 to 4-25-08?

THE WITNESS: I really didn't add it up--

MR. ZIMMERMAN: --thank you. I would like to have one more document marked Mr. Duguay.

MR. DUGUAY: Judge's Exhibit F.

MR. ZIMMERMAN: Thank you.

MR. DUGUAY: I'm gonna put that on the bottom, right hand corner of the document you have, if you can reference--

MR. ZIMMERMAN: --certainly--

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. DUGUAY: --large number of pages, many, many cases.

MR. ZIMMERMAN: Exhibit F is a 177 page document which bares the title Salina Town Court, Pending Cases Report, Judge Andrew N. Piraino. Judge, let me hand you what's been marked as Exhibit F--

(Judge's F was marked for identification)

THE WITNESS: --yes, sir--

MR. ZIMMERMAN: --all 177 pages and a yellow post-it note on the top--

THE WITNESS: --yes--

MR. ZIMMERMAN: --can you tell the Commission what that exhibit, this references and constitutes?

THE WITNESS: Yes, I did previously testify to this that when I received the letter from the Commission, I had my clerk go back as far as she could to let me know how many open files there are in Salina as we sit here today, and she was able to go back to 1989, which is obviously five years before I took the bench, prior to that they didn't have any technology to do that. And from 1989 to the present, this is a handwritten note from my clerk, there's approximately 9,000

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

open charges in my court, open meaning that there's never been a resolution to those charges.

MR. ZIMMERMAN: So from your perspective, does that constitute a file that you still are responsible for and have to manage?

THE WITNESS: Correct, it's, it's there.

MR. ZIMMERMAN: Can you tell me why a file would be open from 1989, after all these years?

THE WITNESS: Yes, a person, a scofflaw, failure to appear, an arrest warrant would be generated if we didn't have jurisdiction, failure to appear, after I had jurisdiction, there'd be a bench warrant, basically that's why there wouldn't, why they're not, why they're unresolved.

MR. ZIMMERMAN: Thank you. Judge, you acknowledged that you have made mistakes over the last several years in handling these matters.

THE WITNESS: --Correct.

MR. ZIMMERMAN: Can you tell us judge, how often do you receive notice that the amount of fines which may be imposed in an upper or, or minimum limit are given to you?

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Up until the Commission's letter, I don't believe I've ever had a complaint.

MR. ZIMMERMAN: Well I--

THE WITNESS: --I've never received notice--

MR. ZIMMERMAN: --I asked a poor question. How often do you receive information that the amount of fines which you may assess, change? So the Legislature makes changes in--

THE WITNESS: --oh--

MR. ZIMMERMAN: --the law and how often, how many changes have there been?

THE WITNESS: Several, regular, constantly on a daily basis I receive changes. I'll give you an example, the cap on surcharges \$100.00 as of July 6<sup>th</sup>, why they pick July 6<sup>th</sup> is it goes up to \$180.00 because of the increase in surcharges--

MR. ZIMMERMAN: --July 6, 2009--

THE WITNESS: --2009--

MR. ZIMMERMAN: --is that on all, on all matters that come before you?

THE WITNESS: On the, on the, on the surcharge cap, yes.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. ZIMMERMAN: Surcharge cap  
alone--

THE WITNESS: --right--

MR. ZIMMERMAN: --can you explain to  
the Commission what that means?

THE WITNESS: Well, if a person has four  
or five tickets when they're stopped, I'm only  
allowed to surcharge a certain amount of money.  
So if they plead guilty to all five tickets, as I  
previously testified, that's why it would show  
that there was no surcharge assessed, because  
they may have already been surcharged on the  
other tickets, and that cap is going up to \$180.00  
as of July 6<sup>th</sup>.

MR. ZIMMERMAN: How do you know  
which charges are subject to a surcharge?

THE WITNESS: I review the documents,  
my own court knowledge, or by reviewing my,  
my manuals.

MR. ZIMMERMAN: Have you ever  
analyzed how many different statutes you're  
responsible for applying relative to the cases that  
come before you?

THE WITNESS: Any law that's broken in  
the Town of Salina, whether it be a felony,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

misdemeanor, or otherwise, conservation, well you saw the list. Basically that includes all the laws that I handle. All the way from Conservation Laws to Agricultural and Markets, Navigation, probably fifteen or twenty.

MR. ZIMMERMAN: Judge, all of these issues involving fines that were imposed above the limit or below the limit, as well as the surcharges, were they all based on guilty pleas, or findings of guilt?

THE WITNESS: Yes.

MR. ZIMMERMAN: To your knowledge, have any of those matters ever been appealed?

THE WITNESS: To my knowledge, no.

MR. ZIMMERMAN: So the fine was imposed by you after either a guilty plea, or a finding of guilt?

THE WITNESS: Correct.

MR. ZIMMERMAN: You imposed a fine?

THE WITNESS: Correct.

MR. ZIMMERMAN: The defendant then paid the fine, and or surcharge?

THE WITNESS: Correct, or not and they ended up on the big list there.

(Hon. Andrew N. Piraino)

1

MR. ZIMMERMAN: On Exhibit F?

2

THE WITNESS: Correct.

3

MR. ZIMMERMAN: No appeals ever  
taken from those determinations?

4

5

MR. DUGUAY: Okay, I believe it's been  
asked and answered, I also believe is not relevant  
to the issue, okay--

6

7

8

MR. MULDOON: --I'm gonna allow him  
to ask him.

9

10

THE WITNESS: That's true.

11

MR. ZIMMERMAN: Judge, let me talk  
about Section 1101?

12

13

THE WITNESS: Yes.

14

MR. ZIMMERMAN: That, that's A  
Violation Of The Rules Of The Road?

15

16

THE WITNESS: Failure to Obey Rules Of  
The Road, is the way it's stated in the statute of  
the Vehicle and Traffic Law.

17

18

19

MR. ZIMMERMAN: Now, now you've  
indicated judge, in prior testimony that you find it  
to be a better manner of handling traffic

20

21

22

infractions to allow dispositions to a reduced  
charge of 1101 than some other charge. Can you  
explain what you mean by that?

23

24

25

THE WITNESS: I testified to Mr. Duguay

112.

(Hon. Andrew N. Piraino)

1 that I, I feel it's a more accurate disposition then  
2 asking somebody that's Speeding or Running A  
3 Red Light to plead guilty to a Faulty Muffler,  
4 when they don't have that. It's not there. This is  
5 Failure to Obey Rules Of The Road. I believe it's  
6 a fair and accurate, accurate plea.

7 MR. ZIMMERMAN: That's all I have,  
8 thank you.

9 MR. MULDOON: Do you have any other  
10 questions?

11 MR. DUGUAY: Just quick follow up  
12 questions, if I may? Judge, just to clarify, counsel  
13 has asked you whether all matters were handled  
14 in open court. Okay, I believe you indicated, yes.  
15 Okay, that would not include plea negotiations,  
16 occasionally you had to work in chambers, didn't  
17 you?

18 A. Well fining, yeah I, I did my fines in chambers, the mail-ins--

19 Q. --okay, so the mail-ins were all done in chambers?

20 A. Of course, yeah--

21 Q. --and you and you entered into negotiations with counsel in chambers  
22 as well, wouldn't you prior to taking the bench?

23 A. No.

24 Q. Do you, you never had conferences on cases prior to taking the bench,  
25 with counsel?

113.

(Hon. Andrew N. Piraino)

- 1 A. Not, unless the DA was present--
- 2 Q. --I'm including the DA was present--
- 3 A. --yes--
- 4 Q. --when I say counsel I'm indicating both--
- 5 A. --yes--
- 6 Q. --prosecutor and defense attorney?
- 7 A. Only on my DA's day.
- 8 Q. Okay, would you, but you would have discussion about reductions and  
9 such in chambers, correct?
- 10 A Well, they would usually have that figured out, but yes.
- 11 Q. Okay--
- 12 A. --I wouldn't take any position till they did, until they had it to a plea  
13 bargain.
- 14 Q. Okay, when you're in the back room deciding on fines, you had  
15 materials, reference materials at hand, correct--
- 16 A. --in my office, yes.
- 17 Q. Okay and you had indicated that you would basically look at the file  
18 and then determine the fine, correct?
- 19 A. Yes.
- 20 Q. Was there a way, did you have driver's abstract for cases when you  
21 were giving fines--
- 22 A. --yes, yes.
- 23 Q. Okay, so every case that you would have, guilty plea by mail, had  
24 driver's abstracts?
- 25 A. Recently, that's recent we've been able to because of a new system

(Hon. Andrew N. Piraino)

1 that they've installed in our, in our software. We've been able to get  
2 the, the--

3 Q. --abstracts--

4 A. --abstracts, thank you.

5 Q. When was that installed, do you know?

6 A. Probably the last six months.

7 Q. Okay, so you can actually know when you get the tickets, say Speeding  
8 ticket comes in. It's not always accurate whether or not it's a first  
9 speed, or a second speed--

10 A. --correct--

11 Q. --or such, correct?

12 A. Correct.

13 Q. And prior to six or seven months ago, you would have no idea because  
14 you didn't have a driver's abstract, correct?

15 A. Correct.

16 Q. So you just set a fine based upon an assumption, correct?

17 A. Well the fine would be based on the speed.

18 Q. Right but you're--

19 A. --well--

20 Q. --not sure what I'm asking, if there's a second speed within, whatever  
21 it is, eighteen months or such--

22 A. --it would--

23 Q. --it would be a higher fine, correct--

24 A. --I would have no way of knowing that, yeah.

25 Q. Right, so that wouldn't be taken into consideration when you got

(Hon. Andrew N. Piraino)

1       Speeding tickets for instance, correct?

2       A. Not unless I have the abstract, no.

3       Q. Okay, so I had asked you earlier on how you decide on what the fine  
4       range. How did you employ fine range, if you were unaware of prior  
5       history in driving infractions--

6       A. --I would only go by the charge at hand. If it's a three point charge,  
7       it'd be under 90, if it was a four point charge it'd be over 90, if it's a  
8       six point charge, it'd be over 180, I believe.

9       Q. Okay, with regard to, I believe it was Judge's exhibit E--

10      A. --yes, sir--

11      Q. --it was a four page document--

12      A. --yes, sir.

13      Q. Okay and looking it over you would agree that the over whelming  
14      number of cases were vehicle and traffic, correct?

15      A. That's what is says, yes.

16      Q. Okay and without the document in front of me, would you agree that it  
17      was at least two thirds of the caseload in your court would be vehicle  
18      and traffic cases, based upon a review of your own records--

19      A. --that's probably more.

20      Q. Okay--

21      A. --cause the v&t, like I testified, the vehicle and traffic was the  
22      misdemeanor DWI's and AUO's and revocations also.

23      Q. Okay, now, judge, in preparing that document, and again it's a  
24      computer print out that his counsel pointed out, correct?

25      A. My clerk printed this out of the computer--

(Hon. Andrew N. Piraino)

1 Q. --do you know which clerk that was?

2 A. That would be Ms. Cronk, yes.

3 Q. Okay and did Ms. Cronk, you said she used a particular program, are  
4 you aware of the program that was employed?

5 A. No.

6 Q. Are you aware of the SEI program?

7 A. I believe that was, I, that sounds familiar, yes.

8 Q. Okay, judge, also with regard to, well, counsel had asked you a  
9 question regarding, that you obviously have a large caseload, correct?

10 A. Tremendous.

11 Q. You handle a large number of different charges and different laws  
12 within those, charges within those different laws, correct--

13 A. --yeah, Town of Salina is one of the three busiest courts in the county.

14 Q. Okay and but you indicated, you do have resources at your disposal  
15 that you're aware of, correct?

16 A. Yes.

17 Q. Okay, you've indicated you've been trained at least twice a year by  
18 OCA for the fifteen years, correct?

19 A. Correct.

20 Q. You've received handouts, handbooks, correct?

21 A. Correct.

22 Q. You're familiar with the website out of OCA that you can go on at any  
23 time and look for information, correct?

24 A. Correct.

25 Q. You're aware of the State Resource Center as well, that you can



(Hon. Andrew N. Piraino)

1 contact at anytime--

2 A. --I've called it several times--

3 Q. --very helpful--

4 A. --at all hours of the day and night.

5 Q. Okay and you also receive mail and information from the State  
6 Comptroller's office as well, correct?

7 A. Yes.

8 Q. Okay, so there's no shortage of help--

9 A. --plethora--

10 Q. --a plethora of help and particularly the state has made great strides,  
11 haven't they, in providing information for you and assisting you?

12 A. Yes. The State Legislature not so much.

13 Q. Which is a whole other issue, we won't go into at this time. Okay, I  
14 have no further questions.

15 MR. MULDOON: I have one other  
16 question.

17 THE WITNESS: Yes, sir.

18 MR. MULDOON: Looking at the last  
19 page of the Judge's exhibit E--

20 THE WITNESS: --yeah--

21 MR. MULDOON: --it lists five different  
22 types of statutes that are violated, correct?

23 THE WITNESS: Yes, sir.

24 MR. MULDOON: Okay, on the other  
25 three it list ten, eleven, twelve?

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Correct. That's just an anomaly when I was sitting for that period of time. Those were the cases that were opened under my, when I was sitting there. I don't know why, those are the charges that were opened. I don't know--

MR. MULDOON: --but in other one you didn't get any under the Navigation Law, Environmental Conservation Law--

THE WITNESS: --no--

MR. MULDOON: --or the ABC Law, Tax Law?

THE WITNESS: No.

MR. MULDOON: Okay--

THE WITNESS: --it's just a four month and the others ones are for a year and two and a half years. That was just for a four month period. I don't know why, that's the way it came out of the computer. I've got no reason to doubt that, that it's not accurate.

MR. MULDOON: Okay, that's fine. I have no further questions.

MR. DUGUAY: I have nothing further.

MR. ZIMMERMAN: I have no further questions. I would like to make a statement when

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

you're ready.

MR. DUGUAY: Okay, I was gonna remind.

MR. MULDOON: You are, as I stated before, the judge and the judge's attorney make closing statements and within seven days of receipt of the transcript, you may submit a statement in writing. If you wish to make a statement in writing after receipt of the transcript, or if you wish to make a statement, a closing statement at this time, you may do so.

MR. ZIMMERMAN: I'd like to make a closing statement and reserve my right to submit a formal written statement within seven days after the transcript, is that okay, sir--

MR. DUGUAY: --that's agreeable per the Commission--

MR. MULDOON: --yes--

MR. ZIMMERMAN: Thank you. I would identify that the Commission on Judicial Conduct is really an ethics commission for judges, and after listening to the testimony today and looking at the complaints, there is nothing which rises to the level of even discussing, impropriety, or unethical conduct. In fact, if you look at the

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Commission's own website, it talks about improper demeanor, conflicts of interest, intoxication, bias, prejudice, favoritism, corruption, prohibited business, or political activity, serious financial records mismanagement, assertion of the influence of judicial office for the private benefit of the judge or others and other misconduct on or off the bench. Most importantly, the Commission own website acknowledges that the Commission does not act as an appellate court, and does not review the merits of a judge's rulings, or alleged errors of law. I would point out that in each and every one of the issues identified on the Commission's Schedule A, the defendants were either found guilty, or pled guilty. The judge then assigned and assessed a fine and or surcharge. To the extent the judge made an error that was an error of law, subject to appellate review. No one sought appellate review. In fact, the original two inquiries received by the Commission from Regina Scott and Ronald Boise involve their pleading guilty by mail to the extent the court assessed an improper or illegal fine above or below the limits, that's an error of law which

(Hon. Andrew N. Piraino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

could be remedied by appellate review. Neither individual sought appellate review. To that extent I would identify that certainly the judge is human and makes mistakes. The extent of the mistakes does not, in any fashion, imply or infer that there was misconduct, or venal intent. For that reason it's, this Commission should never have opened a investigation, and should've dismissed the matter, identifying for Ms. Scott and Mr. Boise that they have the right to appeal and chose not to do so. Other than that, Judge Piraino has attempted to fully cooperate with this Commission, takes this matter seriously, recognizes the importance of this Commission's work and want to cooperate fully, to the extent that will make a better and better informed judiciary. Thank you.

MR. MULDOON: Very good. Thank you very much.

THE WITNESS: Thank you gentlemen, ladies--

MR. MULDOON: --this hearing's concluded.

MR. DUGUAY: Great, thank you.

(Hon. Andrew N. Piraino)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

(WHEREUPON the examination of Honorable Andrew N. Piraino was concluded at 3:29 P.M. on June 11, 2009.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATION

I, MINDY PROVIDENCE, a Secretary of the State  
Commission on Judicial Conduct, do hereby certify that the foregoing is a  
true and accurate transcript of the CD recording of the proceedings  
transcribed by me, to the best of my knowledge and belief, in the matter  
held on June 11, 2009.

Dated: July 22, 2009

*Mindy Providence*  
Mindy Providence



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

400 ANDREWS STREET  
ROCHESTER, NEW YORK 14604

585-232-3756 585-232-7834  
TELEPHONE FACSIMILE  
www.scjc.state.ny.us

**CONFIDENTIAL**

July 23, 2009

MEMBERS  
CHAIRMAN  
VICE CHAIRMAN  
CLERK

ADMINISTRATOR & COUNSEL  
DEPUTY ADMINISTRATOR  
SENIOR ATTORNEYS  
STAFF ATTORNEY



Aaron Mark Zimmerman, Esq.  
The Piraino/Zimmerman Legal Team, P.C.  
117 South State Street  
Syracuse, New York 13202

Re: Matter of Andrew N. Piraino  
File No. 2008/R-139

Dear Mr. Zimmerman:

Enclosed is a transcript of the testimony in the above matter on June 11, 2009.

Please note that you may submit any additional statement or written materials within seven days of receipt of the transcript.

Very truly yours,

John J. Postel  
Deputy Administrator

JJP:lp

Enclosure





# The Legal Team

An Association of Independent Non-Partner Attorneys-At-Law

Andrew N. Piraino, Esq. And Aaron Mark Zimmerman, Esq., P.C.  
117 South State Street in Syracuse, New York 13202  
315. 475.7777

July 30, 2009

Hon. 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  
Hon. Jill Konviser  
Nina M. Moore  
Hon. Karen K. Peters  
Hon. Terry Jane Ruderman

New York State Commission on Judicial Conduct  
400 Andrew Street  
Rochester, New York 14604

Re: Hon. Andrew N. Piraino  
Commission File # 2008/R-139

Dear Commissioners:

## INTRODUCTION

I represent Judge Andrew N. Piraino in the Investigation now pending before you. Thank you for allowing Judge Piraino to submit this statement.

Judge Piraino asks the Commission to close the Investigation. This request is based on the conclusion that he did not commit any acts of unethical judicial misconduct. It is submitted that the investigation will show that while Judge Piraino made errors in interpreting and applying the law, there was a complete lack of venality. There is no suggestion, let alone

evidence, that any error was due to an intentional act; nor was any error due to: improper demeanor, conflict of interest, intoxication, bias, prejudice, favoritism, corruption, prohibited business or political activity, serious financial or record mismanagement, assertion of the influence of judicial office for the private benefit of Judge Piraino or others, or other misconduct on or off the bench.

The Commission's analysis will conclude with a determination that a judge's mistaken action due to misinterpreting or misapplying the law -- can never without proof of an impure motive -- support a charge of unethical judicial misconduct.

#### JUDGE PIRAINO ACKNOWLEDGES ERRORS WERE MADE

Judge Piraino is a hard working, diligent town judge who takes his job seriously. Due to an election dispute, the Town only had one judge for several months. Without additional compensation Judge Piraino voluntarily handled the workload of both Town judgeships from January 1, 2008 to about April 8, 2008. Judge Piraino does his best to uphold the public's trust and has never committed any unethical act of judicial misconduct. Nonetheless, Judge Piraino acknowledges errors were made as he interpreted and applied the law. These errors resulted in sentences where fines and/or surcharges below the minimum and in excess of the maximum were imposed.

#### JUDGE PIRAINO IS CHANGING PROCEDURES TO PREVENT FUTURE ERRORS

Judge Piraino notes he has already instituted modifications to the internal workings of his court in an attempt to avoid future fine/surcharge sentencing errors. **Attached** is a flow chart Judge Piraino and his clerks have prepared summarizing the rules for applying surcharges. In addition, Judge Piraino is in the process of creating similar forms for each routine traffic and criminal charge that comes before him. The forms will list the applicable minimum and maximum fine allowed. In this way, if a defendant pleads or is found guilty, Judge Piraino will have a ready reference for setting the proper fine.

#### ILLEGAL SENTENCES WERE NOT APPEALED

#### JUDGE PIRAINO WAS UNAWARE HE HAD IMPOSED ILLEGAL SENTENCES

While every illegal sentence could have been appealed to an appellate court, no aggrieved individual ever appealed. [Judge Piraino Transcribed Testimony from June 11, 2009, (hereafter Transcript) at page 111, line 11] Prior to the Commission's contact that an investigation had been commenced, Judge Piraino had no knowledge that any sentencing error had occurred.

#### TOWN OF SALINA JUSTICE COURT

The Salina Town Justice Court is one of the busiest town or village courts in Onondaga County. The Town is intersected by Route 81 which runs north/south, and by the Thruway which runs east/west. Part of Hancock International Airport is physically located within the Town. All traffic leaving the City of Syracuse going north travels through the Town. The Onondaga County Sheriff's Department actively patrols the Town and the State Police maintains the Troop D, Zone 1 Headquarters just over the Town border on airport grounds. Due to the proximity of the Town to the City of Syracuse, Rt 81, the Thruway and the airport there is an extremely large volume of matters which come before the court.

Under Town Law §20(1)(a), every town with less than 50,000 inhabitants, is limited to two town judges. The Onondaga County Metropolitan Area has a population of over 500,000 and the Town of Salina a population of about 33,000. With an annual case load for the Town of about 15,000 matters [each judge handles about one-half of the case load], the Town obviously has a disproportionately large volume of justice court matters than would be anticipated by the local population base.

[See Generally, [www.salina.ny.us](http://www.salina.ny.us); and, [http://en.wikipedia.org/wiki/Salina,\\_New\\_York](http://en.wikipedia.org/wiki/Salina,_New_York)]

The Commission is investigating sentences imposed by Judge Piraino from January 1, 2006 to May 31, 2008. During this time period, Judge Piraino opened a total of about 18,250 matters and Judge Piraino's court transmitted approximately \$1,220,000 to the Comptroller. [Transcript, Judge's Exhibit E] The workload of Judge Piraino's court was so voluminous that the Town employed the equivalent of three full-time clerks to assist Judge Piraino [two full time clerks and two part-time clerks who each worked 20 hours a week]. Due to Judge Piraino's workload, as of January 1, 2009, the Town has employed yet another part-time clerk.

The Commission's investigation shows Judge Piraino's error rate is a relatively small percentage of the total number of cases handled. Nonetheless, Judge Piraino's own retrospective audit shows he did make errors when imposing fines and surcharges. And Judge Piraino admits he is chagrined and personally distressed that even one error occurred on his watch. [Transcript at page 38, line 15; page 46, line1]

It is important to highlight that no one has alleged Judge Piraino's mistakes were based on malice, bias, prejudice, favoritism, or other corruption. None of Judge Piraino's errors can in any fashion be characterized as unethical judicial misconduct.

Other than the always voluminous case load, and the crushing double case load from January to April 2008, Judge Piraino is unable to explain how these errors occurred. In retrospect, Judge Piraino postulates he may have memorized the wrong figures for various

finer and surcharges [eg. maximum seat belt fine \$60 vs. \$50]; or that simply due to his desire to “efficiently” handle an overwhelming number of cases, he made mental errors when setting the fines/surcharges. [Transcript at page 37, line 3; and page 85, line 21 ]

#### JUDGE PIRAINO HAS FULLY COOPERATED WITH THE COMMISSION

The pending Investigation was commenced pursuant to Judiciary Law §44(3). Under the statute the Commission’s activities are characterized as an Investigation. To date no charges have been filed by the Commission.

The Commission’s authority is based on the State’s Constitution [Art. 6 §22] and Statutes [Judiciary Law §40 *et. seq.*]. The Commission has exercised its powers to investigate Judge Piraino. Judge Piraino has fully cooperated with the investigation. Without being asked, Judge Piraino has submitted copies of all relevant court records for each and every matter that the Commission has identified as being of concern. [Transcript, Judge’s Exhibit D- 2 Boxes of Court Records]

#### BACKGROUND TO THE COMMISSION’S INVESTIGATION

The Commission received written complaints dated April 18, 2008, from two persons. Each person separately admitted that on March 2, 2008, they failed to wear their seat belt. Each person violated Vehicle & Traffic Law (hereafter VTL) §1229, a traffic infraction. One defendant was the unbelted driver, and the other defendant was the unbelted front seat passenger. Both defendants were in the same vehicle. Each defendant after receiving a ticket [Simplified Information-Criminal Procedure Law (hereafter CPL) §100.25], signed the reverse side of the ticket pleading guilty, and mailed their guilty plea to the court.

Judge Piraino reviewed the documentation and accepted each defendant’s guilty plea. A fine of \$60 and a surcharge of \$55 was imposed. The Court’s records show the fines were promptly paid. The defendants then complained to the Commission that Judge Piraino committed “misconduct” solely because a fine of \$60 was imposed. Defendants attached a portion of VTL §1800 which showed the maximum fine for a seat belt infraction was \$50.

Neither defendant sought appellate review of the excessive fine. Neither defendant notified Judge Piraino of the error; and neither defendant has made an application for the court to correct the sentencing error [CPL §440.10].

Upon receipt of the complaint the Commission’s staff did not initially contact Judge Piraino. Instead, it appears the Commission’s staff contacted the NYS Comptroller and obtained a printout of all fines and surcharges transmitted by Judge Piraino for the period January 1, 2006 to May 30, 2008.

Judge Piraino's records, for the period of January 1, 2006 to May 30, 2008, show he opened approximately 18,250 different matters. During the same time period, he closed approximately 15,850 matters. In addition, the court has an on-going open case load of approximately 9,000 unresolved matters due to scofflaw, bail jumping, pending warrants, etc. [Transcript, Judge's Exhibit E]

It is important to realize that "traffic related matters" encompass not only Vehicle & Traffic Law violations; but also numerous criminal and non-criminal violations under the Transportation Law, the Agriculture and Markets Law, the Environmental Conservation Law, the Navigation Law, the Alcohol Beverage Control Law, the Salina Town Ordinances, the New York Thruway Authority Regulations, and the Taxation Law. Each statute, regulation and ordinance has different fines and/or surcharges. Keeping track of the multitude of applicable fines and surcharges is a complex undertaking.

Without minimizing the impact of any mistake made by Judge Piraino, as an example of just how difficult it is to properly assess fines, **attached** are 2 flow-charts from the NYS Magistrate's Association attempting to explain the proper fine to be imposed for an infraction of Transportation Law §14-f, and Transportation Law §140-2d. [<http://nysmagassoc.homestead.com/>]

The Commission's staff audited the records of money transmitted to the NYS Comptroller. The records confirm Judge Piraino properly handled all money. Nonetheless, there are two main areas that were deemed to be of concern to the Commission. First, there were errors made by Judge Piraino when imposing fines and/or surcharges. The Commission's staff analysis showed Judge Piraino set fines above statutory maximums and also, on occasion, failed to impose mandatory surcharges. In essence, sometimes Judge Piraino imposed too great a monetary sanction and sometimes not enough. Second, Judge Piraino accepted plea bargained dispositions from the District Attorney allowing defendants to plead guilty to VTL §1101.

While the initial complaint was submitted on April 18, 2008, the Commission's first contact with Judge Piraino did not occur until some 11 months later, on May 14, 2009. The Commission wrote to Judge Piraino advising that an Investigation had been opened under Judiciary Law §44(3). The Commission submitted a listing of cases, styled as Schedule A and Schedule B. The Commission's initial contact also directed Judge Piraino to appear in Rochester on June 11, 2009, to give testimony under oath. The Commission's staff offered to grant Judge Piraino an extension of time to arrange for a convenient time to give testimony. Recognizing the significance of the Commission's work, Judge Piraino re-arranged his

schedule and appeared on June 11, 2009. He also quickly arranged for copies to be made of all of the Court's records relating to the matters deemed to be of concern to the Commission.

#### Erroneous Sentences-Schedule A

The Commission's Schedule A dealt with sentencing errors involving fines and/or surcharges. There were some 1,336 cases listed. Without being asked, Judge Piraino and his court staff went to the original court records and made copies of the records related to each matter. In general, these records consist of the original charging documents from the police, the court's internal documentation, and any communication from the People and/or defendant.

Once the relevant court records were organized, Judge Piraino performed his own retrospective audit. As part of his testimony, Judge Piraino submitted two banker boxes of records [Transcript, Judge's Exhibit D]. These court records definitively show what actions were taken by Judge Piraino on each and every case. Judge Piraino also made handwritten notes on the Commission's Schedule A detailing the actions taken by him.

#### Judge's Errors

In performing his own retrospective audit, Judge Piraino indeed found a number of sentencing errors. Judge Piraino misinterpreted or misapplied the law. As a result of these errors illegal sentences were imposed.

#### Clerk's Errors

In addition to Judge Piraino's errors, his retrospective audit found that unbeknownst to him-- and in violation of the express instructions he has always given the court staff-- one, perhaps two, of the prior part-time clerks had taken it upon themselves to set fines or to change fines set by Judge Piraino [Transcript at page 43, line 5]. It is noted that the clerks in question had already left the court's employment by the time the Commission notified Judge Piraino of its Investigation.

#### Misinterpretation of Comptroller's Records

Judge Piraino's retrospective audit also found the Commission's Schedule A listed a number of sentences which were correctly imposed, but which the Commission's staff alleged were illegal. In large part, the Commission's staff's unjustified concerns seem to be due to: 1] timing differences between when a charge was placed and when a fine/surcharge was paid; 2] the maximum number of surcharges which may be assessed for any one event, no matter how many tickets are issued; 3] on criminal matters when the defendant paid restitution, Judge Piraino correctly waived the surcharge, and 4] when the defendant pled guilty to a reduced speed per a plea agreement, Judge Piraino correctly imposed a lesser fine.

- 1] Based on issues of due process, when an individual violates the law, the penalties which may be imposed are limited to the fines and surcharges in effect as of the date the charge was originally made. It is believed Schedule A discloses only the date the fine/surcharge payment was received by the court, not the date of the original charge.

The Commission's staff simply listed every ticket where the statutory fine did not jibe with the date payment was made. Thus, the Commission's staff erroneously listed many matters as being of concern even though Judge Piraino properly set the fine and/or surcharge.

- 2] VTL §1809(2) provides that when an individual is stopped by the police and given multiple tickets, the court is limited to the maximum amount of surcharges it shall impose for any one event. For example, if an individual is stopped for speeding, the police may also issue tickets for expired registration, no license or AOU [driving with a suspended license], equipment violations, and the like. Thus, one stop generates multiple tickets. It is believed the Comptroller's records do not show how many tickets were issued "per stop." [See also, Magill's Vehicle and Traffic Law Manual for Local Courts (February 2009) at page 4]

The Commission's staff simply listed every ticket where Judge Piraino did not impose a surcharge. The Commission listed many matters as being of concern even though Judge Piraino properly set the amount of the surcharge.

- 3] Under the Penal Law (hereafter PL) §60.35, when a defendant pays restitution, the court is authorized to waive the surcharge. The records secured from the Comptroller's office did not show if restitution had been paid.

The Commission's staff simply listed every criminal matter where Judge Piraino did not impose a surcharge. Thus, the Commission listed many matters as being of concern even though Judge Piraino properly waived the surcharge.

- 4] Under VTL §1809, the minimum and maximum fines for speeding charges is based on the speed the defendant is convicted of. It is believed the Comptroller's records show only the speed originally charged. When the People agreed to a plea bargain which allowed the defendant to plead to a reduced speed, the Comptroller's records do not show the speed to which the



defendant actually pled guilty.

The Commission's staff simply listed every speeding matter where the fine did not jibe with the speed originally charged. Thus, the Commission's staff erroneously listed many matters as being of concern even though Judge Piraino properly set the fine and/or surcharge.

#### Dispositions under VTL §1101-Schedule B

The second area of concern dealt with VTL §1101. Based on disposition memos from the District Attorney, Judge Piraino accepted guilty pleas from defendants to the amended charge of VTL §1101. Schedule B is a listing of those cases. Judge Piraino did not participate in the plea negotiations [Transcript at page 67, line 4; page 72, line 1 to page 73]. The record confirms all fines imposed were properly transmitted to the Comptroller.

It is Judge Piraino's position that accepting VTL §1101 pleas based on negotiations between the District Attorney and defendant is valid. There is no law, regulation nor decision from a higher level court which prohibits VTL §1101 dispositions.

It is noted that if a defendant pleads guilty, but does not pay the fine imposed, the Department of Motor Vehicles will treat the defendant as a scofflaw, just like any other traffic related infraction. Further, the Comptroller accepts the fine money imposed on VTL §1101 without dispute. While one or more General Counsel to one or more State agencies may opine VTL §1101 is a "non-chargeable" offense, those opinions are not in any way controlling on the courts.

VTL §1101 dispositions constitute the standard, custom and practice used throughout Central New York. Every judge and attorney who handles traffic related cases knows from first-hand experience that VTL §1101 dispositions have been the standard of practice for many decades. [Transcript at page 60, line 5; and page 72, line 7]

VTL §1101 provides:

It is unlawful and . . . it is a traffic infraction for any person to do any act forbidden or fail to take any act required [by the vehicle and traffic law].

It is Judge Piraino's position that allowing VTL §1101 dispositions instills public confidence in the justice system; and shows that judges both respect the integrity of the judicial system and have personal integrity.

The courts have previously determined that agreed dispositions of traffic related matters is generally an acceptable practice. The Criminal Procedure Law and constitutional due process requires the People to provide detailed facts which support every element of a charge. Thus, the People must always provide detailed specific facts, no matter if the charge is speeding, running a stop sign, or anything else. Judge Piraino submits the practice of amending charges and allowing defendants to plead guilty to noisy mufflers [VTL §375(31)] or parking violations [VTL §1200(d)] when those persons clearly did not have noisy mufflers, nor illegally park, is suspect and should be discouraged. This type of artful, but artificial, disposition suggests that it is “ok” to game the system to avoid points against a driver’s license, or to pay a smaller fine/surcharge. When the courts allow a citizen to admit to specific facts which are simply not true, the judicial system is tarnished. Nonetheless, Judge Piraino is aware these types of dispositions are an accepted standard, custom and practice throughout the State.

VTL §1101 is a charge based on a non-fact specific infraction-- that is the defendant is charged with violating the rules of the road. Judge Piraino submits this type of disposition is an honorable and honest manner of resolving traffic infractions. [See OCA Opinion at: <http://www.nycourts.gov/ip/judicialethics/opinions/07-22.htm>]

#### THE COMMISSION’S MANDATE

The Commission’s mandate is clear. The Commission on Judicial Conduct is the State’s “judicial ethics enforcer.” [Statement of Robert H. Tembeckjian, Administrator and Counsel, Commission on Judicial Conduct to New York State Senate Standing Committee of the Judiciary, January 29, 2007, at page 10]

The Commission’s purpose is to oversee the judiciary, and its objective is to hold judges accountable for unethical misconduct. The Commission has publically identified that it will investigate complaints involving:

- improper demeanor
- conflicts of interest
- intoxication
- bias
- prejudice
- favoritism
- corruption
- prohibited business or political activity

- serious financial and records mismanagement
- assertion of the influence of judicial office for the private benefit of Judge Piraino or others, and
- other misconduct on or off the bench  
[\[http://www.scjc.state.ny.us/Publications/brochure.htm\]](http://www.scjc.state.ny.us/Publications/brochure.htm)

The Commission acknowledges its job is not to correct errors of law. And it is inevitable every judge will make mistakes when interpreting the law and then applying the law. Fixing those errors is the responsibility of the appellate courts. Further, it is not the job of the Commission to oversee the training of Judge Piraino, or the manner in which the courts are administered. Those functions lie within the purview of the Office of Court Administration.

The Commission states in its public disseminations that:

The Commission does not act as an appellate court and does not review the merits of a judge's ruling or alleged errors of law. The Commission does not have the authority, for example, . . . to change the sentence imposed upon a defendant.  
<http://www.scjc.state.ny.us/Publications/brochure.htm>

Contrary to the published pronouncements of the Commission, this investigation is being conducted solely because of erroneous sentences imposed by Judge Piraino. Unless the Commission suspects errors made by Judge Piraino were motivated by unethical desires [corruption, prejudice, bias, etc.] this investigation should be immediately closed.

There is no question this Commission serves an important function by investigating judicial acts of unethical misconduct. However, the Commission must employ self-discipline and never attack a judge who has misinterpreted or misapplied the law. Overzealousness on the part of the Commission will act to chill an independent judiciary -- to the detriment of a free society. Judges must not be forced to "look over their shoulder" when making decisions and hope their good faith decisions are acceptable to the Commission.

Put simply, a judge's mistaken action due to misinterpreting or misapplying the law -- can never without proof of an impure motive -- support a charge of unethical judicial misconduct.

The only case which even remotely touches upon illegal sentences is In Re: Bauer 3

NY3d 158 [2004]. In this case the Court of Appeals removed a judge for violating several defendants' fundamental right to counsel and for jailing defendants on minor matters by setting "punitive bail." [at page 171] While the Commission's charges included allegations of excessive fines, the only comment regarding the illegal sentences came from the dissent of Judge Read. She said ". . . the Commission's charges [i.e. excessive fines] relating to matters other than right to counsel and bail [are] of relatively little moment." [at page 173]

It is noteworthy, that the majority decision which defrocked the judge did not even mention the illegal sentences. Thus, it must be concluded the illegal sentence issue was not used by the Court of Appeals as a basis for any sanction.

Speaking to the fundamental issue of what constitutes judicial misconduct, the vigorous dissents by Judge Read and Judge Smith state "the Commission . . . may consider complaints that judges have used the bail procedure for other than its intended purpose, e.g. to punish a defendant or to coerce a guilty plea." [at page 165], but "without an improper motive" there is no basis to imply judicial misconduct. [at page 167] Finally, the dissent described that without bias, prejudice or the like "mistakes" by a judge may not be "transform(ed) from ordinary judicial error into judicial misconduct." [at page 168]

Of course, the seminal case on when an error may be considered misconduct is In Re: Greenfield 76 NY2d 293 (1990). In this case the Court of Appeals said "serious administrative failings" without "persistent or deliberative neglect" does not constitute judicial misconduct. [at page 294] The Court of Appeals added that until a judge's actions show he/she has "defied administrative directives or has attempted to subvert the system by, for instance, falsifying, [or] concealing" misconduct has simply not occurred.

## DISCUSSION

Judge Piraino did not engage in any act of unethical judicial misconduct. The worst that can be said is that Judge Piraino is overloaded with work. Judge Piraino is doing the very best he can with limited resources.

It is again noted that Judge Piraino's judicial workload was doubled from January 1, 2008 until April 8, 2008. Due to the retirement of the other Salina town judge, the open seat was to be filled through the November 2007 general election, with the new judge taking office on January 1, 2008. However, that race was numerically so close, that a victor was not declared for several months. In an attempt to keep the Town courts operating as smoothly as possible Judge Piraino volunteered [without additional compensation] to handle

the work-load of both courts. It was during this time period two persons complained to the Commission about erroneous seat belt fines having been imposed.

[[http://www.syracuse.com/news/index.ssf/2008/04/paul\\_carey\\_sworn\\_in\\_as\\_salina.html](http://www.syracuse.com/news/index.ssf/2008/04/paul_carey_sworn_in_as_salina.html); and Alessio v Carey 49 AD3d 1147 (4<sup>th</sup> Dept, 2008)]

There is no pattern to the illegal sentences. The Commission's letter notifying Judge Piraino of its Investigation identifies instances where Judge Piraino mistakenly set the fines/surcharges both too high and too low. However, there is no suggestion Judge Piraino intentionally or maliciously imposed an illegal sentence. Further, there is no pattern of illegal sentences being imposed. This lack of pattern is highlighted by the randomness of both excessive fines and Judge Piraino's failure to impose mandatory surcharges. Without adjusting for the Commission's Staff's errors, Schedule A alleges excessive fines/surcharges totaling approximately \$17,000, and an undercharging of mandatory fines/surcharges totaling approximately \$13,000. Once the Commission has properly audited the court's records -- the difference between the correct fines/surcharges when compared to the fines/surcharges actually imposed, will figure to be less than 1% of the total amount [\$1,220,000] transmitted to the Comptroller.

As to VTL §1101 dispositions, Judge Piraino continues to believe this is a valid means of resolving traffic related matters. However, until the Commission expressly rules that accepting VTL §1101's does not constitute judicial misconduct, Judge Piraino has imposed a Local Court Rule refusing to allow any plea bargain which includes a disposition by VTL §1101 [See **Attached** Letters of Judge Piraino dated May 28, 2009].

By statutory design, the Commission's activities are intentionally secret. As a result, there is no means to research when the Commission reviewed a judge's actions and determined ethical misconduct did not occur. While the Commission's Annual Reports over the years have provided generalized discussions and warnings about judicial conduct resulting in private cautions and private admonitions, only matters resulting in a judge's removal, public censure or public admonition provide public detail of the unethical misconduct. Moreover, there has never been even one comment made in any Annual Report about judicial conduct the Commission has deemed acceptable.

A careful review of the Commission's many Annual Reports does not disclose any Commission decision concluding a judge engaged in unethical misconduct because of sentencing errors.

As the Commission considers this investigation it is highlighted that no defendant

appealed any of the sentencing errors. And if they had, the appellate courts would certainly have corrected an illegal sentence. Further, if an error of any type had been called to Judge Piraino's attention he would have taken action to correct the mistake. Most importantly, there is not one iota of proof Judge Piraino's actions were impure by design.

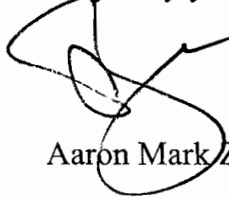
## CONCLUSION

Judge Piraino is always mindful of his oath of office, and he takes his oath seriously. He has never intentionally committed any sentencing error nor any other error of law. Judge Piraino endeavors to uphold the public's trust in his conduct as a judge. He regrets that any errors occurred on his watch. However, it is respectfully submitted that none of these mistakes constitute unethical judicial misconduct.

As to the Commission's concern regarding dispositions to VTL §1101, the Commission is urged to issue an objective rule either allowing or disapproving of these plea agreements. Judges are entitled to know when and under what circumstances allowing a particular style of plea bargain will be considered unethical judicial misconduct by this Commission.

Based on the factual evidence and complete lack of venality, Judge Piraino asks the Commission to close the Investigation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Aaron Mark Zimmerman', with a large, stylized flourish at the end.

Aaron Mark Zimmerman, Esq., P.C.

# Mandatory Surcharges

**MANDATORY SURCHARGES Date of Offense 11/11/03 - 6/30/08**

	MS	CVA	TV	Add SC	Alcoh Fee	Misc SC	TOTAL
DWAI 1192.1	45	5	5		25		\$80
Traffic Infractions VTL 1809(1)(c)	45	5	5				\$55
Speeding in a Work Zone VTL 1809-d(1)	45	5	5			50	\$105
Equipment VTL Art 9	25	5	5				\$35

**VTL 1809(2) \$100 Cap Combo Examples for Offenses Committed 11/11/03 - 06/30/08  
Cap on M/S & CVA Columns Only**

#1 \$80 DWAI	45	5	5		25		\$80
\$55 Trf Inf	45	5	5				\$55
\$35 Equip	25	5	5				\$0
#2 \$55 Trf Inf	45	5	5				\$55
\$55 Trf Inf	45	5	5				\$55
\$55 Trf Inf	45	5	5				\$0
\$55 Trf Inf	45	5	5				\$0
#3 \$55 Trf Inf	45	5	5				\$55
\$55 Trf Inf	45	5	5				\$55
\$35 Equip	25	5	5				\$0
#4 \$55 Trf Inf	45	5	5				\$55
\$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$25
\$35 Equip	25	5	5				\$0
#5 \$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$15
\$35 Equip	25	5	5				\$0
#6 \$105 WZ Speed	45	5	5			50	\$105
\$35 Equip	25	5	5				\$35



**MANDATORY SURCHARGES 07/01/08-07/31/08**

	MS	CVA	TV	Add SC	Alcoh Fee	Misc SC	TOTAL
DWAI 1192.1	55	5	5		25		\$90
Traffic Infractions VTL 1809(1)(c)	55	5	5				\$65
Speeding in a Work Zone VTL 1809-d(1)	55	5	5			50	\$115
Equipment VTL Art 9	25	5	5				\$35

**VTL 1809(2) \$100 Cap Combo Examples for Offenses Committed 07/01/08 – 07/31/08  
Cap on M/S & CVA Columns Only**

#1 \$80 DWAI	55	5	5		25		\$90
\$55 Trf Inf	55	5	5				\$45
\$35 Equip	25	5	5				\$0
#2 \$55 Trf Inf	55	5	5				\$65
\$55 Trf Inf	55	5	5				\$45
\$55 Trf Inf	55	5	5				\$0
#3 \$55 Trf Inf	55	5	5				\$65
\$55 Trf Inf	55	5	5				\$45
\$35 Equip	25	5	5				\$0
#4 \$55 Trf Inf	55	5	5				\$65
\$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$15
\$35 Equip	25	5	5				\$0
#5 \$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$15
\$35 Equip	25	5	5				\$0
#6 \$115 WZ Spd	55	5	5			50	\$115
\$55 Trf Inf	55	5	5				\$45
\$35 Equip	25	5	5				\$0
#7 \$115 WZ Spd	55	5	5			50	\$115
\$35 Equip	25	5	5				\$35
#8 \$115 WZ Spd	55	5	5			50	\$115
\$35 Equip	25	5	5				\$35
\$35 Equip	25	5	5				\$15
#9 \$115 WZ Spd	55	5	5			50	\$115
\$55 Trf Inf	55	5	5				\$45
\$55 Trf Inf	55	5	5				\$0

**MANDATORY SURCHARGES 08/01/08 - Present**

	MS	CVA	TV	Add SC	Alcoh Fee	Misc SC	TOTAL
DWAI 1192.1		55	5	5	170	25	\$260
Traffic Infractions VTL 1809(1)(c)	55	5	5	20			\$85
Speeding in a Work Zone VTL 1809-d(1)	55	5	5	20		50	\$135
Equipment VTL Art 9	25	5	5	20			\$55

**VTL 1809(2) \$100 Cap Combo Examples Offenses Committed 08/01/08 - 07/05/09  
Cap on M/S & CVA Columns Only**

#1 \$260 DWAI	55	5	5	170	25		\$260
\$85 Trf Inf	55	5	5	20			\$65
\$55 Equip	25	5	5	20			\$20
#2 \$85 Trf Inf	55	5	5	20			\$85
\$85 Trf Inf	55	5	5	20			\$65
\$85 Trf Inf	55	5	5	20			\$20
#3 \$85 Trf Inf	55	5	5	20			\$85
\$85 Trf Inf	55	5	5	20			\$65
\$55 Equip	25	5	5	20			\$20
#4 \$85 Trf Inf	55	5	5	20			\$85
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$35
\$55 Equip	25	5	5	20			\$20
#5 \$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$35
\$55 Equip	25	5	5	20			\$20
#6 \$135 WZ Spd	55	5	5	20		50	\$135
\$85 Trf Inf	55	5	5	20			\$65
\$55 Equip	25	5	5	20			\$20
#7 \$135 WZ Spd	55	5	5	20		50	\$135
\$55 Equip	25	5	5	20			\$55
#8 \$135 WZ Spd	55	5	5	20		50	\$135
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$35
#9 \$135 WZ Spd	55	5	5	20		50	\$135
\$85 Trf Inf	55	5	5	20			\$65
\$85 Trf Inf	55	5	5	20			\$20

**MANDATORY SURCHARGES 08/01/08 - Present**

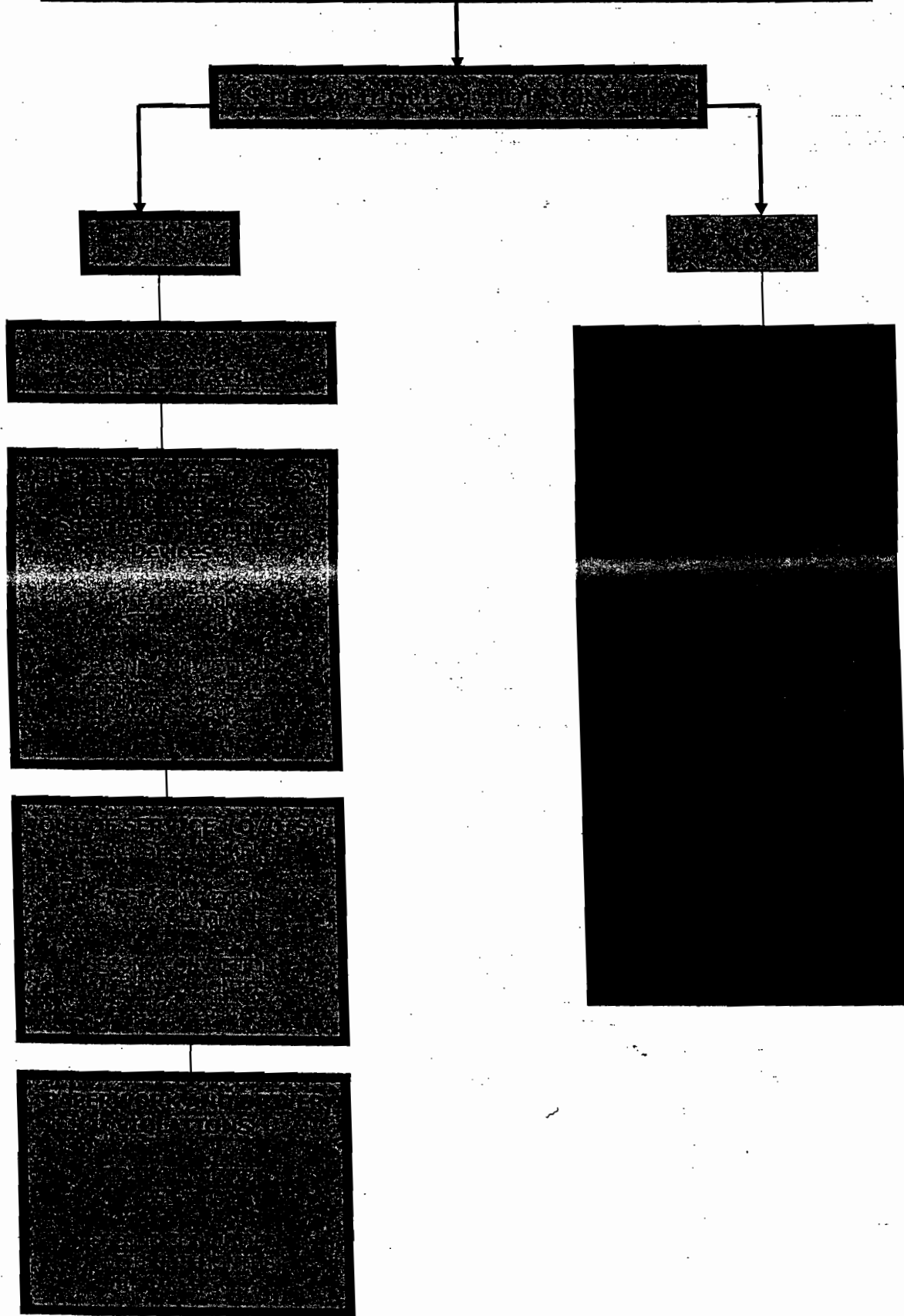
	MS	CVA	TV	Add SC	Alcoh Fee	Misc SC	TOTAL
DWAI 1192.1	55	5	5	170	25		\$260
Traffic Infractions VTL 1809(1)(c)	55	5	5	20			\$85
Speeding in a Work Zone VTL 1809-d(1)	55	5	5	20		50	\$135
Equipment VTL Art 9	25	5	5	20			\$55

**VTL 1809(2) \$180 Cap Combo Examples for Offenses Committed 07/06/09 - Present  
Cap on M/S & CVA Columns Only**

#1 \$260 DWAI	55	5	5	170	25		\$260
\$85 Trf Inf	55	5	5	20			\$85
\$55 Equip	25	5	5	20			\$55
#2 \$85 Trf Inf	55	5	5	20			\$85
\$85 Trf Inf	55	5	5	20			\$85
\$85 Trf Inf	55	5	5	20			\$85
#3 \$85 Trf Inf	55	5	5	20			\$85
\$85 Trf Inf	55	5	5	20			\$85
\$55 Equip	25	5	5	20			\$55
#4 \$85 Trf Inf	55	5	5	20			\$85
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
#5 \$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
#6 \$135 WZ Spd	55	5	5	20		50	\$135
\$85 Trf Inf	55	5	5	20			\$85
\$55 Equip	25	5	5	20			\$55
#7 \$135 WZ Spd	55	5	5	20		50	\$135
\$55 Equip	25	5	5	20			\$55
#8 \$135 WZ Spd	55	5	5	20		50	\$135
\$55 Equip	25	5	5	20			\$55
\$55 Equip	25	5	5	20			\$55
#9 \$135 WZ Spd	55	5	5	20		50	\$135
\$85 Trf Inf	55	5	5	20			\$85
\$85 Trf Inf	55	5	5	20			\$85

# Magistrate's Association Flow Chart

NEW YORK STATE TRANSPORTATION LAW  
(SECTION 14F) HAZARDOUS MATERIALS





SPECIAL CONSIDERATION

**VTL 510-a, 3 (c)**

(c) A commercial drivers license shall be suspended by the commissioner for a period of sixty days where the holder is convicted of a violation of subdivision (g) of section eleven hundred eighty of this chapter, and (i) the recorded or entered speed upon which the conviction was based exceeded the applicable speed limit by more than twenty miles per hour or (ii) the recorded or entered speed upon which the conviction was based exceeded the applicable speed limit by more than ten miles per hour and the vehicle was either (A) in violation of any rules or regulations involving an out-of-service defect relating to brake systems, steering components and/or coupling devices, or B) transporting flammable gas, radioactive materials or explosives.

**HELPFUL WEBSITES**

**NEW YORK STATE ASSEMBLY WEBSITE LINK TO STATE LAWS**

<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

**CDL Suspension and Revocation Section.**

This site will guide you to all relevant sections of the Commercial Driver License revoke and suspensions sections under Section 510a of the Vehicle and Traffic Law. Special attention should be given to this section of law when specified sections of law are determined to be **SERIOUS TRAFFIC VIOLATION** that would mandate further sanctions in addition to fines and fees.

**VTL Sections 1805 and 1806 (Authorized Pleas by mail)**

## **1. Access to Federal Motor Carrier Safety Regulations**

**Federal Motor Carrier Safety Administration Website**

<http://www.fmcsa.dot.gov/>

Or

**New York State Department of Transportation Website**

<https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/truck/regulations>

Or

**NATIONAL JUDICIAL COLLEGE CDL WEBSITE**

<http://www.cdlresources.org/>

## **2. ACCESS to 17 NYCRR, PART 820 (NYS adoption of Federal Regulations)**

<https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/truck/regulations>

## **3. Statement of Correction Forms**

[https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/repository/STATEMENT OF CORRECTION.pdf](https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/repository/STATEMENT%20OF%20CORRECTION.pdf)

## **4. WEBSITE ACCESS TO SENTENCING FLOWCHARTS**

**New York State Magistrates Association**

<http://nysmagassoc.homestead.com/>

Or

**Town and Village Justice Court Website**

[http://nycourts.gov/courts/townandvillage/judges\\_only/educationTraining.shtml](http://nycourts.gov/courts/townandvillage/judges_only/educationTraining.shtml)

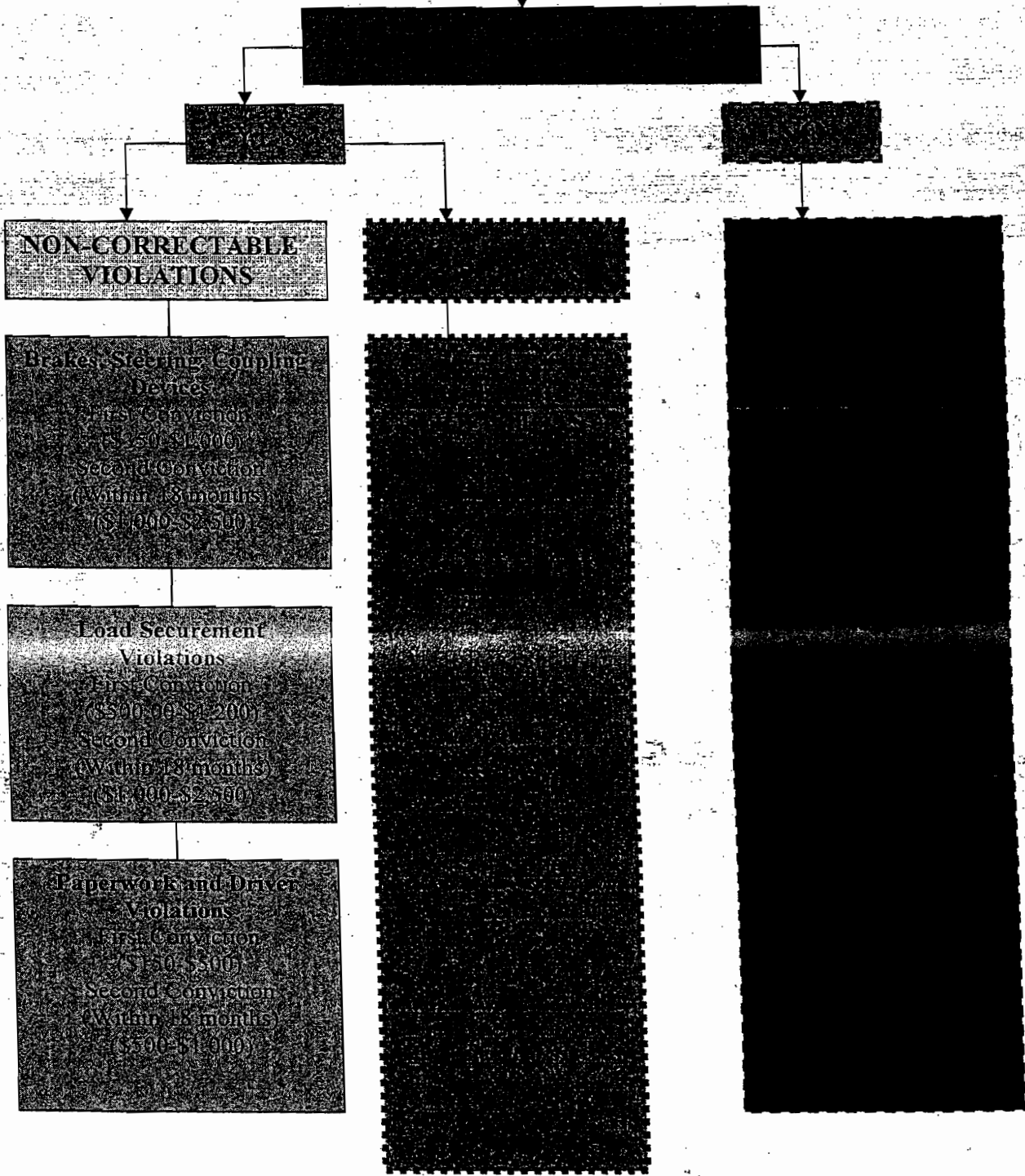
Or

**National Judicial College CDL Website**

<http://www.cdlresources.org/>

**Note: The National Judicial College site also has some very good resources and links to every state.**

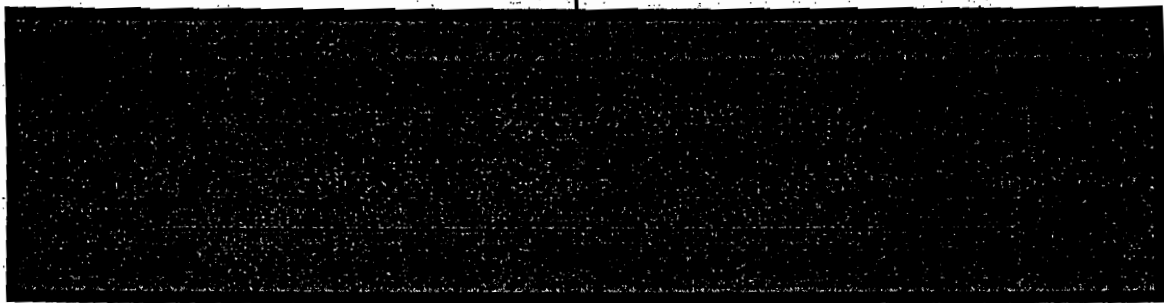
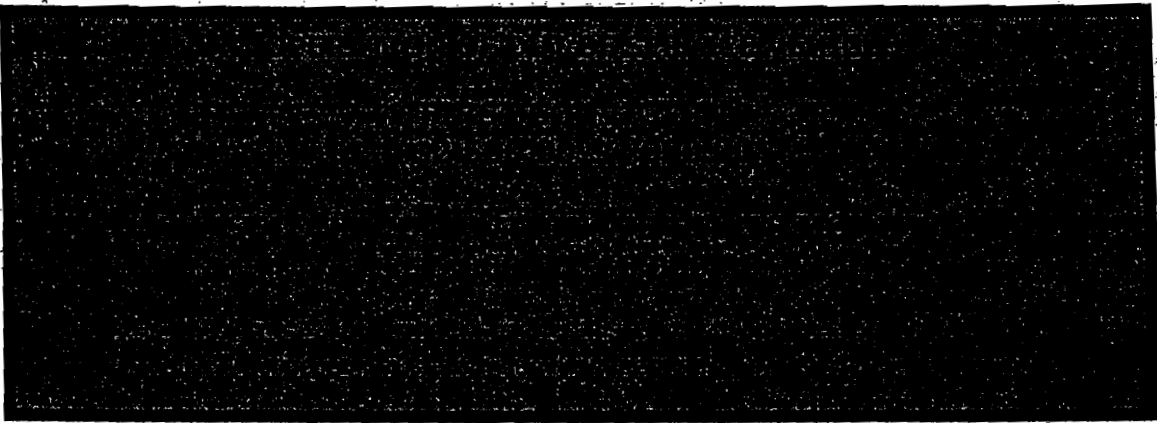
**NEW YORK STATE TRANSPORTATION LAW  
(SECTION 140-2d) COMMERCIAL VEHICLES SAFETY**



**NOTE: FOLLOWING PAGES CONTAIN FARM PLATED VEHICLES, OPERATING OUT OF SERVICE, HOURS OF SERVICE AND HELPFUL WEBSITES.**







**SPECIAL CONSIDERATION**

VTL 510-a, 3 (c)

(c) A commercial drivers license shall be suspended by the commissioner for a period of sixty days where the holder is convicted of a violation of subdivision (g) of section eleven hundred eighty of this chapter, and (i) the recorded or entered speed upon which the conviction was based exceeded the applicable speed limit by more than twenty miles per hour or (ii) the recorded or entered speed upon which the conviction was based exceeded the applicable speed limit by more than ten miles per hour and the vehicle was either (A) in violation of any rules or regulations involving an out-of-service defect relating to brake systems, steering components and/or coupling devices, or B) transporting flammable gas, radioactive materials or explosives.

**HELPFUL WEBSITES**

**NEW YORK STATE ASSEMBLY WEBSITE LINK TO STATE LAWS**

<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

**CDL Suspension and Revocation Section.**

This site will guide you to all relevant sections of the Commercial Driver License revoke and suspensions sections under Section 510a of the Vehicle and Traffic Law. Special attention should be given to this section of law when specified sections of law are determined to be SERIOUS TRAFFIC VIOLATION that would mandate further sanctions in addition to fines and fees.

**VTL Sections 1805 and 1806 (Authorized Pleas by mail)**

## **1. Access to Federal Motor Carrier Safety Regulations**

**Federal Motor Carrier Safety Administration Website**

<http://www.fmcsa.dot.gov/>

Or

**New York State Department of Transportation Website**

<https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/truck/regulations>

Or

**National Judicial College CDL Website**

<http://www.cdlresources.org/>

## **2.ACCESS to 17 NYCRR, PART 820 (NYS adoption of Federal Regulations)**

<https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/truck/regulations>

## **3.Statement of Correction Forms**

[https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/repository/STATEMENT OF CORRECTION.pdf](https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/repository/STATEMENT_OF_CORRECTION.pdf)

## **4.WEBSITE ACCESS TO SENTENCING FLOWCHARTS**

**New York State Magistrates Association**

<http://nysmagassoc.homestead.com/>

Or

**Town and Village Justice Court Website**

[http://nycourts.gov/courts/townandvillage/judges\\_only/educationTraining.shtml](http://nycourts.gov/courts/townandvillage/judges_only/educationTraining.shtml)

Or

**National Judicial College CDL Website**

<http://www.cdlresources.org/>

**Note: The National Judicial College site also has some very good resources and links to every state.**



# Judge Piraino Letters of 5/28/09

**HON. ANDREW N. PIRAINO**  
SALINA TOWN JUSTICE  
201 SCHOOL ROAD  
LIVERPOOL, NEW YORK 13088

---

Thursday, May 28, 2009

Hon. William Fitzpatrick  
Onondaga County District Attorney  
Criminal Court Building  
505 South State Street  
Syracuse, NY 13202

Hon. Thomas Miller, President  
Onondaga County Magistrate's Association  
c/o Town of Manlius Village Court  
One Elmbrook Drive West  
Manlius, NY 13104

Neil Gingold, President  
Onondaga County Bar Association  
1000 State Tower Building  
109 South Warren Street  
Syracuse, NY 13202

**Re: Local Rule--Effective Immediately  
Court Will No Longer VTL §1101 Dispositions**

Dear District Attorney Fitzpatrick, Judge Miller and Mr. Gingold:

Effective immediately, my Part of the Justice Court of the Town of Salina will no longer accept any disposition based upon a plea to VTL § 1101.

Please be advised that this change of policy is premised on communication from the Office of Court Administration/Commission on Judicial Conduct that VTL § 1101 does not constitute a "chargeable offense" under New York State Law.

I realize that, for many years, it has been the standard of practice for the District Attorney's Office and Defense Bar to amicably dispose of various charges through the use of a VTL § 1101 plea.

Without pre-judging any cases and without giving any advice or recommendations

to either the People or the Defense Bar, it is noted that other communities and counties throughout Upstate New York resolve charges originally based upon Vehicle & Traffic Law infractions by dispositions to VTL § 1200(d) as well as various subsections of VTL § 375.

Please keep the court's Local Rule in mind as new matters come before you.

Very truly yours,



Andrew N. Piraino, Esq.  
Salina Town Justice

ANP/ap

cc: Honorable James C. Tormey  
Fifth Judicial District  
) Office of Court Administration  
401 Montgomery Street  
Syracuse, NY 13202

Alison Fineberg, Senior Assistant District Attorney  
Justice Courts  
P Criminal Court Building  
505 South State Street  
Syracuse, NY 13202

**HON. ANDREW N. PIRAINO**  
SALINA TOWN JUSTICE  
201 SCHOOL ROAD  
LIVERPOOL, NEW YORK 13088

---

Thursday, May 28, 2009

Honorable James C. Tormey III  
Fifth Judicial District  
Office of Court Administration  
401 Montgomery Street  
Syracuse, NY 13202

**Re: Revision of Local Justice Court Policy  
Disposition by VTL §1101 No Longer Acceptable**

Dear Judge Tormey:

As Fifth District Administrative Judge, I want to inform you of a Local Rule which has recently been made effective. By this Local Rule the Salina Town Court-Judge Piraino's Part will no longer entertain motions to amend any charge to VTL §1101; nor will the court accept guilty pleas to VTL §1101.

The Office of Court Administration/Commission on Judicial Conduct has expressed concerns that VTL §1101 is not a "chargeable" offense. Therefore they believe it is improper to accept a plea to this section or to assess fines/surcharges based on VTL §1101. While I disagree with this view, until a court of competent jurisdiction rules VTL §1101 is a chargeable infraction the Local Rule will be enforced.

I have been a practicing attorney for more than 25 years and have been one of two presiding justices in the Town Court of Salina since 1994. Antidotally, I am aware that generations of defense counsel and District Attorneys have resolved various offenses related to use and operation of motor vehicles by our local courts [city, town and village] approving motions to amend to VTL §1101, then accepting guilty pleas and assessing fines.

All fines have been transmitted to the New York State Comptroller's Office and reported to the Department of Motor Vehicles. This practice has been acceptable to both of these State agencies during the years I have been on the Bench.

The propriety of VTL §1101 has previously been considered by NYS Attorney General, the Department of Motor Vehicles and the Office of the State Comptroller. In the Comptroller's Opinion No. 79-196 [July 29, 1973], it was determined that "a violation of VTL] section 1101 should be treated as valid." At 1975 Opin Attorney General 102, it was



determined an indigent defendant charged with of VTL §1101 was not entitled to a public defender because VTL §1101 was merely a "traffic infraction" not a crime.

**Enclosed** is a copy of the letter I am sending to the District Attorney's Office, Onondaga County Magistrate's Association and Onondaga County Bar Association confirming the substance of this policy change.

If you have any advice, counsel or recommendations relative to this matter, do not hesitate to contact me.

Very truly yours,



Andrew N. Piraino  
Salina Town Justice

ANP/ap  
'enc.



# The Legal Team

As Association of Independent Non-Partner Attorneys-At-Law

Andrew N. Piraino, Esq. And Aaron Mark Zimmerman, Esq., P.C.  
117 South State Street in Syracuse, New York 13202  
315. 475.7777

Tuesday, September 1, 2009

Hon. 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.  
Hon. Jill Konviser  
Nina M. Moore  
Hon. Karen K. Peters  
Hon. Terry Jane Ruderman

✓ New York State Commission on Judicial Conduct  
400 Andrew Street  
Rochester, New York 14604

**Re: Hon. Andrew N. Piraino  
Commission File # 2008/R-139**

Dear Commissioners:

At present, there is a pending Investigation. By correspondence dated 7/30/09, a response was submitted on behalf of Judge Piraino showing why the Commission should conclude that Judge Piraino had not engaged in any acts of unethical judicial misconduct--and close the Investigation with a finding of No Cause For Action.

We ask that this letter and the cited case of People v Coston 63 AD3d 41(1st Dept, 3/24/09) be accepted as a supplement to our prior submission.

The Commission's inquiry focused on two issues. First, Judge Piraino made sentencing errors. Second, Judge Piraino accepted plea bargains which allowed individuals charged with traffic infractions to plead guilty to VTL §1101.

As has been previously outlined at length, the Commission has not alleged nor in any way intimated Judge Piraino acted as a result of improper demeanor, conflict of interest, intoxication, bias, prejudice, favoritism, corruption, prohibited business or political activity, serious financial record mismanagement, assertion of the influence of judicial office for the private benefit of Judge Piraino or others, or other misconduct on or off the bench. As such, the Commission is left with the question as to whether or not a judge should be investigated, let alone sanctioned, for sentencing errors.

Our submission on behalf of Judge Piraino showed that it is a complex and difficult task to properly assess fines, surcharges and otherwise impose penalties based on the myriad of statutes which routinely come before a town judge. Unfortunately, the statutory complexity makes it inevitable that judges will make sentencing errors. And that is why our system of justice provides for appellate review-- so that judicial errors can be corrected.

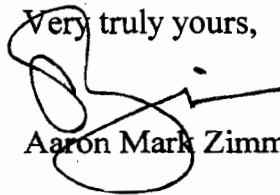
In the recent case of People v Coston 63 AD3d 41(1st Dept, 3/24/09), an Appellate Division was required to review sentences imposed by a Supreme Court Judge sitting in Bronx County. It is respectfully submitted the factual complexities and interplay between the various criminal and traffic infraction statutes is not unique to the issues faced by the presiding Supreme Court Judge, nor the First Department.

This supplemental letter highlights the day-to-day difficulties faced by judges who are required to impose sentences. After a multi-page analysis, the Appellate Division effectively concluded an illegal sentence had been imposed, but affirmed the sentence nonetheless. Perhaps most telling, the Appellate Division affirmed the "illegal sentence" but instructed the parties as follows:

"Our affirmance, however, should not be construed to preclude the People or the Court from taking whatever actions they may believe to be authorized or appropriate." (at pg 49) [Presumably the appellate court's comment was made so that the sentencing court could correct the illegal sentence that had just been affirmed by the appellate court.]

In summary, the Commission's Investigation affirmatively shows Judge Piraino has always acted in good faith in the performance of his judicial responsibilities. On behalf of Judge Piraino we ask the Investigation be concluded with a finding of No Cause For Action.

Very truly yours,



Aaron Mark Zimmerman, Esq., P.C.

AMZ/ap

cc: Honorable Andrew N. Piraino

[877 NYS2d 1]

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v ANTHONY COSTON, Appellant.

First Department, March 24, 2009

## SUMMARY

APPEAL from (1) a judgment of the Supreme Court, Bronx County (Troy K. Webber, J.), rendered July 27, 2006, and (2) an order of that court, entered March 17, 2008. The judgment resentenced defendant upon his conviction of reckless endangerment in the first degree and other crimes to a term of four months' intermittent weekend imprisonment, five years' probation and a fine. The order denied defendant's motion pursuant to CPL 440.20 to set aside the resentence.

## HEADNOTES

**Crimes — Appeal — Waiver of Right to Appeal by Guilty Plea**

1. Defendant, by pleading guilty and waiving his right to appeal the plea and sentence, did not waive the right to assert two illegal sentence claims that arose out of events that occurred after the plea and the imposition of the original sentence, when defendant was resentenced in order to rectify a sentencing error with regard to the length of the intermittent term of imprisonment imposed. Even assuming the validity of the waiver of the right to appeal generally, a defendant may not waive the right to challenge the legality of a sentence. Moreover, a valid waiver of the right to appeal does not preclude review of all claims of error arising out of judicial or prosecutorial actions that occur after sentencing, regardless both of whether the actions were unlawful and of whether they were or reasonably could have been foreseen at the time of sentencing.

**Crimes — Sentence — Resentence — Fine**

2. Defendant, who pleaded guilty to, among other things, the traffic infraction of operating a motor vehicle while under the influence of alcohol (Vehicle and Traffic Law §§ 1192, 1193 [1] [a]), was not entitled to have the fine component of the original sentence returned to him on the ground that the court failed to pronounce or mention that the sentence included a fine. The court never stated at the resentencing proceeding that it was vacating the sentence in its entirety. Because the fine component was pronounced orally by the court at the original sentencing proceeding and was not vacated thereafter, it did not have to be repronounced. In any event, a fine was mandated by Vehicle and Traffic Law § 1193 (1), and each of the sentence orders signed by the court expressly stated that the sentence included a fine.

**Crimes — Sentence — Fine**

3. Defendant, who pleaded guilty to, among other things, the traffic infraction of operating a motor vehicle while under the influence of alcohol (Vehicle and Traffic Law §§ 1192, 1193 [1] [a]), was not entitled to have the fine component of the original sentence returned to him on the ground that the court made no mention of a fine during the plea proceeding and erroneously

stated at the original sentence proceeding that a fine of \$500 was mandatory. Defendant was not seeking the proper remedy of vacatur of the plea, and sought only relief, return of the entire fine, that would render the sentence illegal since a fine of at least \$300 was mandated by statute.

**Crimes — Double Jeopardy — Effect of Resentencing to Correct Illegal Sentence**

4. Where defendant pleaded guilty to criminally negligent homicide and related charges stemming from a fatal drunk driving accident and received an illegal sentence, as revised, of five months' intermittent weekend incarceration and five years' probation (see Penal Law § 60.01 [2] [d]), his double jeopardy rights were not violated when the sentencing court, sua sponte, "vacated" the illegal original and revised sentences and resentedenced him to the lawful sentence of four months' intermittent imprisonment and five years' probation after he had completed four months of intermittent imprisonment. Nor did imposition of the corrected lawful sentence violate defendant's double jeopardy rights with regard to the probation component of the sentence, regardless of defendant's subjective awareness of the illegal nature of the original sentence. The statute authorized the court to impose both a sentence of intermittent imprisonment and a sentence of a period of probation. Consequently, defendant was not being punished twice for the same offense when he was resentedenced to correct only the illegal imprisonment component of the original sentence.

**RESEARCH REFERENCES**

By the Publisher's Editorial Staff

AM JUR 2d, Appellate Review § 582; AM JUR 2d, Criminal Law §§ 296, 672, 674, 858, 859, 861.

CARMODY-WAIT 2d, Criminal Procedure §§ 172:1565, 172:1566, 172:1583, 172:1585.

LAFAVE, ET AL., CRIMINAL PROCEDURE (3d ed) §§ 21.6, 26.7, 27.5.

MCKINNEY'S, Penal Law § 60.01 (2) (d); Vehicle and Traffic Law § 1192 (1); § 1193 (1).

NY JUR 2d, Criminal Law Procedure §§ 1483, 1486, 1487, 1506, 1931, 1958, 2927, 2990, 3192.

**ANNOTATION REFERENCE**

Validity and effect of criminal defendant's express waiver of right to appeal as part of negotiated plea agreement. 89 ALR3d 864.

**FIND SIMILAR CASES ON WESTLAW®**

Database: NY-ORCS

Query: plea /s waiv /3 right /3 appeal & illegal /2 sentence & imprisonment

**APPEARANCES OF COUNSEL**

*Steven Banks, The Legal Aid Society, New York City (Laura Boyd of counsel), for appellant.*

Robert T. Johnson, District Attorney, Bronx (Jean Soo Park and Karen Swiger of counsel), for respondent.

OPINION OF THE COURT

McGUIRE, J.

The principal issue on this appeal may be a novel one—the parties cite no precedent squarely on point—concerning the scope of the right secured by the double jeopardy provisions of the federal and state constitutions (US Const 5th Amend; NY Const, art I, § 6) not to be punished twice for the same offense. We need not, however, survey double jeopardy precedents to resolve this issue. The parties each rely on two decisions of the United States Supreme Court, *Ex parte Lange* (18 Wall [85 US] 163 [1873]) and *In re Bradley* (318 US 50 [1943]), that are pillars of the third protection afforded by the double jeopardy clauses of the federal and state constitutions, “the protection against multiple punishments for the same offense” (*Jones v Thomas*, 491 US 376, 381 [1989] [internal quotation marks omitted]; see also *People v Biggs*, 1 NY3d 225, 228-229 [2003]). Both cases held that the right not to be punished twice for the same offense was violated by sentences that are similar to both the original and revised sentences imposed in this case. The sentences imposed in *Ex parte Lange* and *In re Bradley*, however, differ in a critical respect from the original and revised sentences. That difference requires the conclusion that defendant’s double jeopardy claim is without merit.

Defendant was convicted upon his plea of guilty to every count remaining in the indictment at the time of the guilty plea, a misdemeanor drug possession charge previously having been dismissed. As is clear from the prosecutor’s statements, the People insisted that defendant plead guilty to the entire indictment in light of their opposition to the promised sentence. Specifically, defendant pleaded guilty to reckless endangerment in the first degree, criminally negligent homicide, criminal mischief in the fourth degree, operating a motor vehicle while under the influence of alcohol and two counts of leaving the scene of an incident without reporting.

In the plea colloquy defendant admitted under oath that on March 29, 2003, after consuming alcohol, he drove a motor vehicle at a speed in excess of the posted limit on a street in the Bronx before striking and causing more than \$250 in damage to a parked car. He admitted that he thereafter drove

his vehicle in reverse, striking his passenger, Ida Benitez, with the back door of the vehicle as she exited, inflicting fatal injuries. Defendant also admitted that although he knew he had struck Ms. Benitez, he fled the scene without reporting to the police either that he had caused damage to the parked car or injured Ms. Benitez. Finally, defendant did not dispute the results of a breathalyzer test indicating that he had a blood alcohol level of .08%.

At the outset of the plea proceedings, defendant's attorney stated that defendant was offering to plead guilty on the understanding that he would be sentenced to a "six month split," by which, as is clear from the subsequent discussion, counsel meant a period of six months' intermittent incarceration (to be served on weekends) and a period of five years' probation. Counsel further stated that although he had discussed with defendant the option of pleading guilty and receiving a sentence of intermittent prison of one year to be served on weekends, defendant had "opted to take the six months and the probation offer rather than one year." The court promised defendant that he would be sentenced to a term of six months' intermittent imprisonment, which would be served on weekends, and five years' probation. Following the allocution, the prosecutor expressed satisfaction with the allocution itself but stated the People's position that the appropriate sentence was a prison sentence of 1 to 3 years' incarceration.

At the sentencing proceeding on October 5, 2005, defense counsel stated that defendant was relying on the promised sentence. The court noted that defendant had pleaded guilty to a violation of subdivision (1) of Vehicle and Traffic Law § 1192, operating a motor vehicle while under the influence of alcohol, and that the court did not recall whether it had stated at the plea proceeding that a fine of \$500 was "mandatory" upon a conviction for that crime. When defense counsel stated he was not sure if such a fine was required, the court asserted that it and a 90-day suspension of defendant's driver's license were required.<sup>1</sup> The court asked defense counsel if he had anything else to say, and counsel responded, "I think that's it." When the court asked defendant if he had anything to say before sentence was imposed, defendant stated, "No."

The court then pronounced the sentence. Specifically, the court stated that "the sentence of the Court . . . on defendant's

---

1. The court erred. As discussed below, the maximum authorized fine is \$500; a fine of at least \$300 is mandated (Vehicle and Traffic Law § 1193 [1]).



plea of guilty to reckless endangerment in the first degree, criminally negligent homicide, operating a motor vehicle while under the influence of alcohol, leaving the scene of an incident without reporting two counts, is a term of incarceration of six months plus a term of probation of five years." In addition, the court stated that "there's a fine imposed in the amount of five hundred dollars" and directed both a 90-day suspension of defendant's driver's license and the imposition of surcharges that are not relevant to the issues presented on appeal. The court went on to state that defendant's weekend incarceration would commence on November 11, 2005, with the final weekend commencing on May 12, 2006 and ending on May 14, 2006. Finally, the court set December 30, 2005 as the date by which defendant was required to pay the \$500 fine, but made clear that if defendant did not have the money by that date he would be given additional time to pay it. Defendant voiced no objection to any aspect of the sentence.

The court's comments prior to pronouncing sentence make clear that the \$500 fine was imposed on the conviction for operating a motor vehicle while under the influence of alcohol (Vehicle and Traffic Law § 1192), which is a traffic infraction under the particular facts of this case (Vehicle and Traffic Law § 1193 [1] [a]) as defendant was convicted under subdivision (1) of Vehicle and Traffic Law § 1192 for driving while his ability to operate a motor vehicle was impaired by the consumption of alcohol. The court otherwise failed to specify the sentence for each offense and also failed to mention the conviction for the class A misdemeanor of criminal mischief in the fourth degree (Penal Law § 145.00). Although the parties do not discuss either failure, or mention the latter, we briefly discuss both below, as well as another problem with the sentence that the parties do not mention.

Thereafter, the court modified the sentence on several occasions by changing the dates on which defendant would serve the remaining period of intermittent imprisonment and by resentencing defendant on one of those occasions, December 13, 2005, to an intermittent prison term of five months. The legality of neither the modifications nor the resentencing to an intermittent prison term of five months is in dispute on this appeal.

Defendant's double jeopardy claim arises from another resentencing proceeding, conducted on July 26, 2006.<sup>2</sup> Penal Law § 60.01 (2) (d) provides as follows:

"In any case where the court imposes a sentence of imprisonment not in excess of sixty days[ ] for a misdemeanor or not in excess of six months for a felony or in the case of a sentence of intermittent imprisonment not in excess of four months, it may also impose a sentence of probation or conditional discharge provided that the term of probation or conditional discharge together with the term of imprisonment shall not exceed the term of probation or conditional discharge authorized by article sixty-five of this chapter. The sentence of imprisonment shall be a condition of and run concurrently with the sentence of probation or conditional discharge" (emphasis added).

Thus, the intermittent imprisonment component of both the original (six months) and revised (five months) sentences was illegal.

At the July 26, 2006 resentencing the court stated that it had erred and that defendant should have been sentenced to a term of four months' intermittent imprisonment. The court stated that "the sentence is vacated" and that defendant is now sentenced "to a term of four months' intermittent imprisonment to be served on weekends and five years' probation. Although not pronounced orally before the court, the sentencing order signed by the court expressly states that the sentence included a fine of \$500 to be paid on or before 12/30/05," the same date for payment specified in the original and the revised sentences. Defendant voiced no objection to this revised sentence.

[1] Before addressing defendant's appellate claims—his double jeopardy challenge to the probation component of the sentence and his claim relating to the fine component—we first discuss the two failures noted above. A threshold issue, however, also must be addressed and it can be disposed of summarily. At the plea proceeding, defendant answered "yes" when the court asked if he understood that he was "waiving [his] right to appeal this plea and sentence." We need not pause to consider the

2. The transcript of this proceeding is dated July 26, 2006, but the sentencing order is dated July 27, 2006. The discrepancy is immaterial.

People's dubious argument that defendant validly waived his right to appeal. As defendant correctly argues, even assuming the validity of the waiver generally, "a defendant may not waive the right to challenge the legality of a sentence" (*People v Seaberg*, 74 NY2d 1, 9 [1989]). Moreover, the two illegal sentence claims defendant raises arise out of events that occurred after the plea and the imposition of the original sentence. A valid waiver of the right to appeal cannot plausibly be thought to preclude review of all claims of error arising out of judicial or prosecutorial actions that occur after sentencing, regardless both of whether the actions were unlawful and of whether they were or reasonably could have been foreseen at the time of sentencing.

## A

As pronounced, but putting aside the effect of Penal Law § 60.01 (2) (d), the sentence is lawful with respect to the convictions for the two felony offenses, the class D felony of reckless endangerment in the first degree (Penal Law § 120.25) and the class E felony of criminally negligent homicide (Penal Law § 125.10). A five-year period of probation is specified whenever the court determines to impose a period of probation (Penal Law § 65.00 [3] [a] [1]) for class D and E felonies for which a definite sentence of one year or less is authorized (Penal Law § 70.00 [4]), and the five-month term of the intermittent imprisonment satisfies the requirement of Penal Law § 85.00 (9) that the term not exceed the term of the definite sentence that could have been imposed.

On the other hand, if the probation and intermittent prison components of the sentence as pronounced were to be viewed as having been imposed as well on the other offenses for which the court stated it was imposing sentence, the sentence would be illegal to that extent. With respect to the two convictions for leaving the scene of an incident without reporting (Vehicle and Traffic Law § 600), one of them (Vehicle and Traffic Law § 600 [2] [a]) is a class B misdemeanor (Vehicle and Traffic Law § 600 [2] [c]) and the other (Vehicle and Traffic Law § 600 [1] [a])—like the conviction under Vehicle and Traffic Law § 1192 (1)—is a traffic infraction (Vehicle and Traffic Law § 600 [1]). For a class B misdemeanor, when the court determines to impose a period of probation, a one-year period is specified (Penal Law § 65.00 [3]), and the term of imprisonment may not exceed three months (Penal Law § 70.15). Because a traffic infraction is not a

"crime" (Penal Law § 10.00 [6]), the sentence may not include a period of probation (Penal Law § 65.00 [1]), and the term of imprisonment may not exceed 15 days (Vehicle and Traffic Law § 600 [1]). Although a sentence of intermittent imprisonment is authorized for a class B misdemeanor and a traffic violation (Penal Law § 85.00 [2] [a]; see also Penal Law § 60.20 [1] [d]), the term of the intermittent imprisonment component of the original and revised sentences exceeds the maximum definite sentences of imprisonment authorized for these offenses.

If the probation and intermittent prison components of the sentence as pronounced were to be viewed as having been imposed only on the two felonies, it would follow that the court failed to impose any sentence on the two Vehicle and Traffic Law § 600 offenses, i.e., the B misdemeanor and the traffic infraction. That would raise an additional issue, one which arises in any event on account of the court's failure to pronounce any sentence on the conviction for criminal mischief in the fourth degree. Penal Law § 60.01 [4] states that "[e]xcept as otherwise specified in this article, when the court imposes sentence upon a person convicted of an offense, the court *must* impose a sentence prescribed by this section" (emphasis added). It appears that no provision of article 60 would apply here so as to negate this mandate, but the parties do not address the issue and we need not decide it. Although lawful concurrent terms of intermittent imprisonment presumably could have been imposed for the Vehicle and Traffic Law § 600 offenses, the court did not pronounce such sentences and for that reason alone they cannot be viewed as having been legally imposed (*People v Sparber*, 10 NY3d 257 (2008)). For the same reason, it is of no legal moment that the sentencing order signed by the court on the date of the original sentence states that the criminal mischief crime was one of the offenses for which sentence was imposed. Even if the sentence as pronounced lawfully could be viewed as having been imposed on the criminal mischief conviction, the period of probation exceeds the three-year period specified for such a class A misdemeanor (Penal Law § 65.00 [3] [b] [i]).

3. Penal Law § 85.00 (2) (b) precludes a sentence of intermittent imprisonment when "the court is . . . imposing any other sentence of imprisonment upon the defendant at the same time." Although we need not decide the point, it seems reasonable to construe the phrase "any other sentence of imprisonment" to mean any sentence of imprisonment other than a sentence of intermittent imprisonment.

A final problem with the sentencing pronouncement, which also makes it difficult to view the sentence as having been imposed on the misdemeanor violation of Vehicle and Traffic Law § 600, is an ironic one, given defendant's appellate claim that he is entitled to get back the \$500 fine he paid for the Vehicle and Traffic Law § 1192 (1) conviction. The problem is that upon conviction for that misdemeanor, the Legislature has mandated a fine of not less than \$250 nor more than \$500 (Vehicle and Traffic Law § 600 [2] [c]). The court, however, did not impose any fine for this offense.

Defendant is not aggrieved by any of these failures and omissions. Although the People are aggrieved, the one-year period in which they may move to set aside a sentence as invalid as a matter of law has elapsed (CPL 440.40 [1]). Whether a partial failure of the sentencing court to comply with the mandate of Penal Law § 60.01 (1) is subject to that time limitation is a matter we need not address. Similarly, whether we or the sentencing court have the authority under the circumstances of this case to correct the sentence *sua sponte* also is an issue we need not address. Nor would it be prudent to determine what if any corrective action we might take on account of these failures and omissions given that the parties do not address them in their briefs. For the reasons stated below, we affirm the judgment. Our affirmance, however, should not be construed to preclude the People or the court from taking whatever actions they may believe to be authorized and appropriate.

#### B

In *People v Sparber* (10 NY3d 457 [2008]), the Court of Appeals held that the failure of the sentencing courts in each of the five cases before it to pronounce orally a term of postrelease supervision at the sentencing proceeding was contrary to statutory mandates (*id.* at 469-471). As the sentences would be unlawful without a period of postrelease supervision (*id.* at 469, 471), the Court held that the "sole remedy" for the "procedural error" was "to vacate the sentence and remit for a resentencing hearing so that the trial judge can make the required pronouncement" (*id.* at 471). According to defendant, the sentence was vacated entirely at the July 26, 2006 resentencing proceeding. Because the court did not then pronounce that the sentence included a fine of \$500, defendant argues that under *Sparber* the sentence imposed on July 26, 2006 does not include that fine. He further contends not only that the omission of the fine

was lawful and that *Sparber* therefore does not require a remand for the purpose of reimposing the fine, but that this Court lacks authority under CPL 470.15 (1) and (2) (c) to direct such a remand. For these reasons, defendant claims he is entitled to have the \$500 he paid in satisfaction of the fine component of the original sentence returned to him.

[2] This claim is without merit. At the July 26, 2006 resentencing proceeding, the court stated that “[i]t should be four months with probation so the sentence is vacated.” As the immediately preceding statement of the court makes clear, the “[i]t” to which the court referred was the imprisonment component of the sentence. At no point during the proceeding did the court state that it was vacating the sentence in its entirety. The linchpin in defendant’s claim—that the fine component of the sentence was vacated—thus disintegrates. Because the fine component was pronounced orally by the court at the original sentencing proceeding and was not vacated thereafter, it did not have to be repronounced. Moreover, our conclusion that the fine component was not vacated is buttressed by the written sentencing order signed by the court stating that the fine was to be paid “on or before 12/30/05,” the same date specified in the original sentencing order and in each of the two prior sentencing orders that modified the intermittent prison component of the sentence.

Even, assuming that defendant had met his burden as appellant (see *Appleby v Erie County Soc. Serv. Bd.*, 62 NY 12, 18 [1875]) to establish the illegality of the fine component of the sentence by showing that it was vacated at the July 26, 2006 proceeding, we would be unwilling to extend the holding of *Sparber* to a case in which a component of a sentence was not repronounced in the defendant’s presence at a subsequent resentencing proceeding. The original sentence imposed a fine of \$500 that was pronounced by the court. What if defendant has not been convicted within the preceding five years of a violation of Vehicle and Traffic Law § 1192 (1), the substance of the offense of “Operating a motor vehicle while under the influence of alcohol or drugs” under which defendant was convicted, a fine of at least \$300, but not more than \$500, is mandated by statute (Vehicle and Traffic Law § 1193 (1)). As noted, each of the sentencing orders signed by the court expressly states that the sentence includes a \$500 fine. Under these circumstances, we would be loathe to require a proceeding that would be pointless precisely because its outcome would be inevitable (see CPL 470.05 [1]

[“An appellate court must determine an appeal without regard to technical errors or defects which do not affect the substantial rights of the parties”]). Even if a remand were required, defendant’s claim that it would be unauthorized because the ostensible “omission of the fine from the resentencing was lawful” is erroneous. A fine of at least \$300 is mandated by statute.

[3] Finally, defendant is entitled to no relief on account of his separate argument premised on the court having made no mention of a fine during the plea proceeding and its erroneous statement at the original sentencing proceeding that a fine of \$500 for the Vehicle and Traffic Law § 1192 (1) offense was “mandatory.” After all, defendant does not seek the “proper remedy [of] vacatur of the plea” (*Sparber*, 10 NY3d at 469) and seeks only relief, return of the entire fine, that would render the sentence illegal.<sup>4</sup>

### C

Turning to the double jeopardy claim, defendant does not and cannot make the broad assertion that the court lacked all authority to correct the illegal original sentence. Unquestionably, the court “had the inherent power to correct an illegal sentence” (*People v DeValle*, 94 NY2d 870, 871-872 [2000] [internal quotation marks omitted]). Accordingly, at least prior to defendant’s completion of four months of intermittent imprisonment, the illegal original and revised sentences could have been corrected at any time (*Matter of Lionel F.*, 76 NY2d 747, 749 [1990] [“There is no constitutional impediment to a court’s power to modify its decisions, provided such a modification does not subject an individual to double jeopardy”]).

Defendant’s double jeopardy claim is based on the fact that as of July 26, 2006, the date the illegal revised sentence containing a five-month intermittent imprisonment component was corrected, he had already completed four months of intermittent imprisonment.<sup>5</sup> By a motion under CPL 440.20 dated October 18, 2007, defendant asserted that the imposition of the corrected sentence violated his double jeopardy rights, arguing that because he had already completed an “authorized, alternative

4. Defendant’s present failure to seek vacatur of the plea, like his failure to object to the fine at sentencing, is far from puzzling. If he now sought vacatur of the plea or if he had objected at sentencing, the “proper remedy [of] vacatur of the plea” would expose him to the sentence the People recommended, a state prison term.

5. As discussed below, defendant’s claim also depends on one other fact.

sentence, the court could not impose any further sentence." Accordingly, he maintained that the term of the corrected sentencing imposing a period of five years' probation had to be vacated. Although he now argues that no fine was imposed on July 26, 2006, he maintained as well that Supreme Court should not have "reimposed" the \$500 fine on that date. Supreme Court denied the motion in a written decision dated March 13, 2008. Thereafter, defendant was granted leave to appeal from the order denying his CPL 440.20 motion and that appeal was consolidated with defendant's appeal from the underlying judgment.

[4] Defendant's double jeopardy claim is without merit.<sup>6</sup> If defendant were correct, we would agree that it would not matter even if he knew that the intermittent imprisonment component of the original and revised sentences was illegal and chose to wait until after he served the four months before asserting such illegality and raising the bar of double jeopardy. Defendant's double jeopardy rights, however, were not violated when the court corrected the illegal revised sentence of five months' intermittent imprisonment and five years' probation, and resentenced defendant to the lawful sentence of four months' intermittent imprisonment and five years' probation.

*In re Bradley* does not support defendant's position. In *Bradley*, the petitioner was sentenced to a fine and a term of six months' imprisonment even though the statute specified that the court was authorized to impose either a fine or imprisonment but not both. After the petitioner had been committed to prison his attorney paid the fine. Later that same day, the court

---

6. We are not persuaded by the People's contention that defendant's double jeopardy claim is not preserved for review because defendant did not object at all to the imposition of the revised sentence at the resentencing proceeding on July 26, 2006. To be sure, a double jeopardy claim premised on the third protection afforded by the double jeopardy clause is subject to preservation requirements (*People v Gonzalez*, 99 NY2d 78, 82-83 [2002]). However, defendant raised precisely this double jeopardy argument in his motion under CPL 440.20 to set aside the probation component of the sentence, and that is sufficient to preserve the claim for review (*cf. People v Moon*, 225 AD2d 826, 827 [1996] [holding that challenge to sentence on direct appeal was not preserved for review where defendant had failed, inter alia, to move to set aside the sentence on this ground in a motion under CPL 440.20], *in denied* 88 NY2d 939 [1996]). Relatedly, we need not address separately defendant's reliance on the double jeopardy clause of the New York Constitution (*see Matter of Suarez v Byrne*, 10 NY3d 523, 534 [2008] ["The Double Jeopardy Clauses in the State and Federal Constitutions are nearly identically worded, and we have never suggested that state constitutional double jeopardy protection differs from its federal counterpart"]).



“realizing that the sentence was erroneous, delivered to the clerk an order amending it by omitting any fine and retaining only the six months’ imprisonment. The court instructed the clerk, who still held the money, to return it to the petitioner’s attorney” (318 US at 51-52). The lawyer refused to accept the money (the practice of law being quite different then), the petitioner sought a writ of certiorari and the Supreme Court directed that the petitioner be discharged from custody. The Court reasoned as follows:

“When . . . the fine was paid to the clerk and receipted for by him, the petitioner had complied with a portion of the sentence which could lawfully have been imposed. As the judgment of the court was thus executed so as to be a full satisfaction of one of the *alternative penalties* of the law, the power of the court was at an end. It is unimportant that the fine had not been covered into the treasury; it had been paid to the clerk, the officer of the United States authorized to receive it, and petitioner’s rights did not depend on what that officer subsequently did with the money.

“It follows that the subsequent amendment of the sentence could not avoid the satisfaction of the judgment, and the attempt to accomplish that end was a nullity. Since one valid *alternative* provision of the original sentence has been satisfied, the petitioner is entitled to be freed of further restraint” (*id.* at 52 [footnotes omitted; emphasis added]).

Here, by contrast, the statute authorized the court to impose a sentence of intermittent imprisonment *and* a sentence of a period of probation (Penal Law § 60.01 [2] [d]). The sentence of intermittent imprisonment and the sentence of probation are not alternative sentences. Both are authorized. Indeed, although our analysis does not depend on it, they are interconnected components of *the* sentence.<sup>8</sup> To be sure, the statute does not authorize a sentence of a period of probation when a sentence

7. The Court did not mention the double jeopardy clause in its opinion, but it twice cited *Ex parte Lange* in footnotes to the first paragraph quoted above. The facts of *Ex parte Lange* are indistinguishable from those in *In re Bradley* and the holding in *Ex parte Lange* is predicated on the double jeopardy clause (18 Wall [85 US] at 175).

8. The last sentence of Penal Law § 60.01 (2) (d) states that “[t]he sentence of imprisonment shall be a condition of and run concurrently with the sentence of probation or conditional discharge.” As the Court of Appeals has observed,

(*n. cont’d.*)

of intermittent imprisonment in excess of four months is imposed. The invalidity of one of the two components of the original sentence, however, cannot negate the statutory authority to sentence a defendant both to a fine and a period of intermittent imprisonment.

The holding in *Ex parte Lange* is based on reasoning that is identical to the reasoning in *In re Bradley*. There, too, the Court emphasized “[t]he error of the court in imposing the two punishments mentioned in the statute, when it had only the *alternative* of one of them” (18 Wall [85 US] at 174 [emphasis added]; *id.* at 175 [“The court, through inadvertence, imposed both punishments, when it could rightfully impose but one”]). The reference in *Ex parte Lange* to a “valid judgment” is of no moment. The Court rhetorically asked, after stressing that the petitioner had paid the fine and served a portion of the prison sentence; “all under a *valid* judgment, can the court vacate that judgment entirely, and without reference to what has been done under it, [and] impose another punishment on the prisoner on that same verdict?” (*id.* at 175 [emphasis added].) The Court appears to have concluded that the judgment was “valid,” as opposed to “void,” because “[i]t was rendered by a court which had jurisdiction of the party and of the offence, on a valid verdict” (*id.* at 174).

In any event, it makes no sense to suppose that if the fines imposed and paid in *Ex parte Lange* and *In re Bradley* had exceeded the statutory limits—if, in other words, the sentences were doubly flawed—the Court would have concluded that the petitioners’ double jeopardy rights had not been violated. The ratio decidendi of both cases is that the petitioners would be “put to actual punishment twice” (*id.* at 175) if, after suffering in full one of the alternative punishments authorized by law, they were made to suffer as well the other alternative.

Acceptance of defendant’s position would entail startling consequences. Consider a criminal statute authorizing a sentence of, for example, a fine of up to \$1,500, a prison term of up to 15 years, or both such a prison term and fine. If a sentencing court mistakenly sentenced the defendant, perhaps for a violent felony offense, to 15 years in prison and a fine of \$1,600, under defendant’s view of double jeopardy the defendant would not

---

however, “the meaning of the additional directive that [t]he sentence of imprisonment shall be a condition of . . . probation’ remains obscure” (*Matter of Pirro v Angiolillo*, 89 NY2d 351, 358 [1996], quoting Penal Law § 60.01 [2] [d]).

have to serve a day in jail if he paid the \$1,600 fine immediately after sentence was imposed. Alternatively, the statute might authorize a sentence of up to 14 days in jail and a fine of up to \$1,500. If a sentencing court mistakenly sentenced the defendant to 15 days in jail and a fine of \$1,500, the defendant would not have to pay a penny of the fine if he first served the jail sentence.

*Ex parte Lange* and *In re Bradley* implicitly foreclose any argument that a defendant's subjective awareness of the illegal nature of the sentence is relevant to the constitutional analysis. Accordingly, it would not matter in either case if the defendant knew the sentence was illegal and waited until after the illegal component of the sentence was satisfied before raising the bar of double jeopardy to the remaining, perfectly legal component of the sentence. The prospect of such quixotic consequences flowing from defendant's position brings to mind the memorable words of the estimable Mr. Bumble. The views of neither Mr. Bumble nor Dickens do not of course shed any light on the original understanding of the double jeopardy provisions of the federal and state constitutions. Mr. Bumble's familiar words merit quotation just the same: "If the law supposes that, the law is a ass—a idiot." Another, far from questionable authority has made much the same point, albeit in less colorful terms: "neither the Double Jeopardy Clause nor any other constitutional provision exists to provide unjustified windfalls" (*Jones v Thomas*, 491 US at 387).

That defendant's double jeopardy claim lacks merit also can be seen when it is recognized that it depends on the fortuitous fact that the illegal revised sentence was corrected after the court realized its error.<sup>9</sup> Had the error not been corrected at the resentencing proceeding on July 26, 2006, defendant could not claim that because he had already served four months of intermittent imprisonment the court punished him twice for the same offense when it resented him on that date to four months of intermittent imprisonment and five years' probation. Defendant's position thus entails the equally startling proposition that although the *illegal* original and revised sentences (with intermittent terms of imprisonment of six and five

---

9. Regardless of whether a court must exercise its "inherent power to correct [an] error made at sentencing" (*People v Wright*, 56 NY2d 613, 614 [1982]) when it becomes aware that the sentence is illegal, the point is that defendant's illegal sentence was corrected only because the court realized it had erred and sua sponte corrected the error.

months, respectively) did not violate his double jeopardy rights, the *legal* revised sentence did violate those rights. By contrast, the double jeopardy violations in *Ex parte Lange* and *In re Bradley* inhered in the illegal sentences originally imposed, developing into actual violations when one component of the sentences was satisfied, and were unaffected by the revised sentences imposing punishments authorized by the statutes.

Regardless of whether defendant knew the intermittent imprisonment component of the sentence could not exceed four months and waited until after serving more than four months before pressing his double jeopardy claim, one of the two punishments imposed on him by the sentence was more severe than the statute authorized. That is certainly most unfortunate and would be all the more so if defendant did not know until after serving more than four months of intermittent imprisonment that no more than four months of intermittent imprisonment is authorized when a sentence of probation also is imposed. Some sentencing mistakes, like mistakes generally, cannot be undone at all, let alone consistently with double jeopardy protections. But not all uncorrectable sentencing mistakes violate these protections. The Legislature authorized both punishments and defendant was sentenced to both. Excessive punishment is not necessarily double punishment; defendant was punished excessively but not "twice for the same offence" (*Ex parte Lange*, 18 Wall [85 US] at 175).

Accordingly, the judgment of resentence, Supreme Court, Bronx County (Troy K. Webber, J.), rendered July 27, 2006, resentencing defendant upon his conviction of reckless endangerment in the first degree and other crimes to a term of four months intermittent imprisonment to be served on weekends, five years probation and a \$500 fine, should be affirmed. The appeal from the order, same court and Justice, entered on or about March 17, 2008, which denied defendant's CPL 440.20 motion to set aside the resentence, should be dismissed as academic.

ANDRIAS, J.P., SWEENEY and DEGRASSE, JJ., concur.

Judgment of resentence, Supreme Court, Bronx County, rendered July 27, 2006, affirmed. Appeal from order, same court, entered on or about March 17, 2008, dismissed as academic.



# The Legal Team

An Association of Independent Non-Partner Attorneys-At-Law

**Andrew N. Piraino, Esq. And Aaron Mark Zimmerman, Esq., P.C.**  
117 South State Street in Syracuse, New York 13202  
315. 475.7777

Tuesday, February 23, 2010

Hon. 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.  
Hon. Jill Konviser  
Nina M. Moore  
Hon. Karen K. Peters  
Hon. Terry Jane Ruderman

New York State Commission on Judicial Conduct  
400 Andrew Street  
Rochester, New York 14604

**Re: Hon. Andrew N. Piraino**  
**Commission File # 2008/R-139**

Dear Commissioners:

At present, there is a pending Investigation. By correspondence dated 7/30/09, a response was submitted on behalf of Judge Piraino showing why the Commission should conclude that he had not engaged in any acts of unethical judicial misconduct--and that Investigation be closed with a finding of No Cause For Action. In a Supplemental Letter Submission of 9/1/09 it was highlighted that the Supreme Court Appellate Division in People v Coston 63 AD3d 41(1st Dept, 3/24/09 affirmed a criminal conviction even though the appellate court determined the sentence imposed was illegal.

Now, we have the recent Court of Appeals case entitled In Re: Gilpatric 13 NY3d 586 [2009].

It is respectfully submitted that based on the standards set forth in Gilpatric-- as a matter of law-- Judge Piraino's actions show he has not committed any acts which would support a finding of judicial misconduct. As such, the pending Investigation by this Commission should end, with a finding of No Cause For Action.

As previously identified, the Commission's inquiry focused on two issues. First, Judge Piraino made sentencing errors. Second, Judge Piraino accepted plea bargains which allowed individuals charged with traffic infractions to plead guilty to VTL §1101.

The Commission has not alleged, nor in any way intimated, Judge Piraino acted as a result of improper demeanor, conflict of interest, intoxication, bias, prejudice, favoritism, corruption, prohibited business or political activity, serious financial record mismanagement, assertion of the influence of judicial office for the private benefit of Judge Piraino or others, or other misconduct on or off the bench. As such, the Commission is left with the question as to whether or not a judge should be investigated, let alone sanctioned, for sentencing errors.

In Gilpatric, the Court of Appeals clarified its view on when a judge's administrative failures may support this Commission's sanction. The Court said:

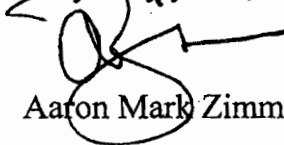
It still remains true that a judge's failure to promptly dispose of pending matters is primarily a matter for administrative correction . . . In Greenfield itself, we recognized that when a judge "has defied administrative directives or has attempted to subvert the system by, for instance, falsifying, concealing or persistently refusing to file records indicating delays," the Commission has the authority to sanction a judge . . . we now hold that lengthy, inexcusable delays may also be the subject of disciplinary action, particularly when a judge fails to perform judicial duties despite repeated administrative efforts to assist the judge and his or her conduct demonstrates an unwillingness or inability to discharge those duties. . .

As the Commission's investigation confirms, Judge Piraino was unaware of any sentencing errors prior to the Commission's contact with him, as no appeals had been filed. Upon learning of the Commission's interest in his judicial conduct, Judge Piraino immediately notified Supreme Court Justice James C. Tormey, the Administrative Judge of the Fifth Judicial District, of this Investigation and provided his office with copies of all of the Commission's written communications. Judge Piraino sought out the advice, recommendations and administrative assistance of the Administrative Judge. To date, the Administrative Judge has not made any recommendations, nor has the Administrative Judge found it necessary to intercede or to otherwise provide Judge Piraino with any form of administrative assistance.

To the extent sentencing errors were caused by mistake in the application or interpretation of law or fact, that is not judicial misconduct. No judge is infallible. This is why the State Constitution created a judicial system with appellate courts.

In summary, the Commission's Investigation affirmatively shows Judge Piraino has always acted in good faith in the performance of his judicial responsibilities. On behalf of Judge Piraino we ask the Investigation be concluded with a finding of No Cause For Action.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Aaron Mark Zimmerman', with a horizontal line extending to the right.

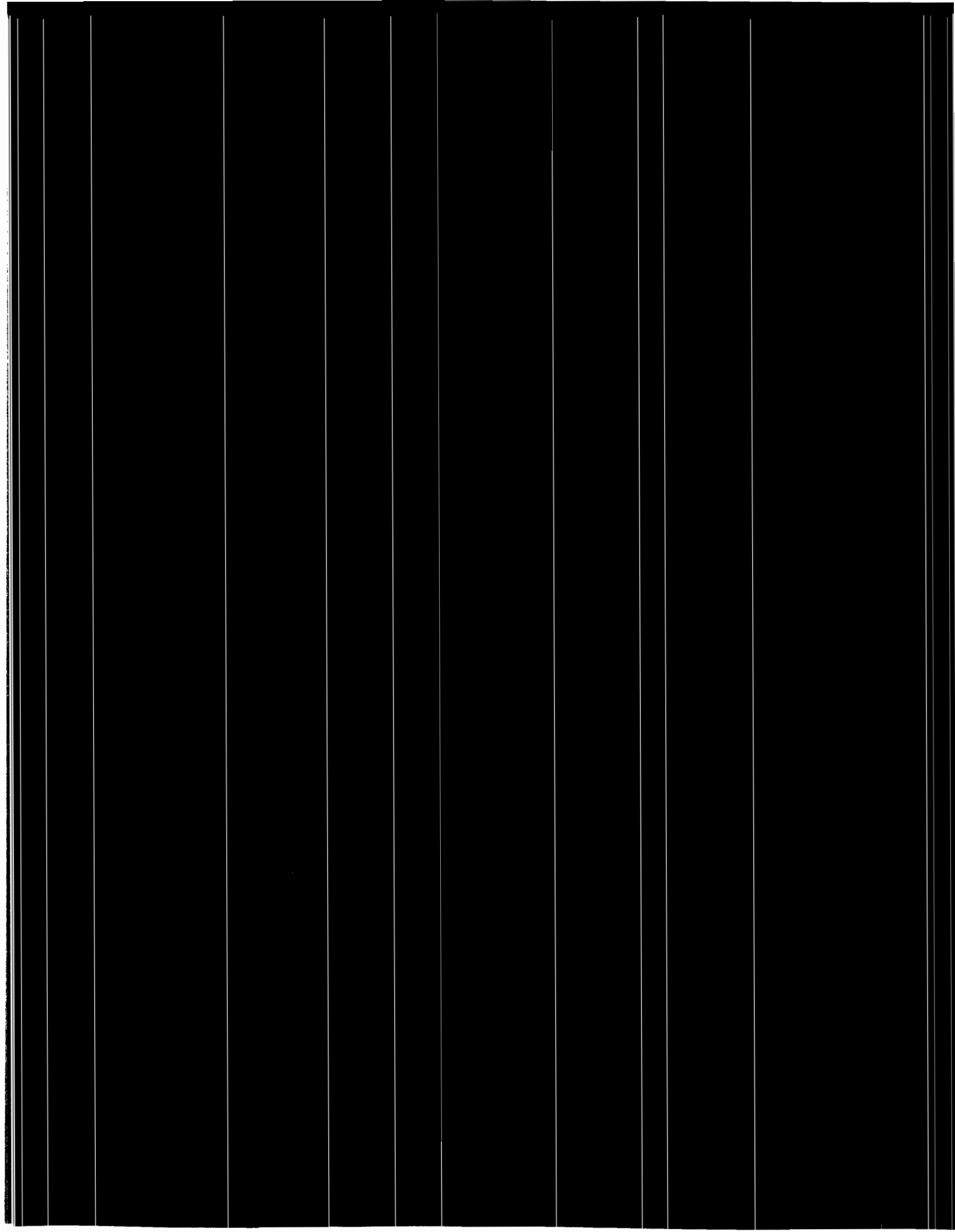
Aaron Mark Zimmerman, Esq., P.C.

AMZ/ap

cc: Honorable Andrew N. Piraino

Honorable James C. Tormey  
Administrative Judge of the  
Fifth Judicial District





# The Legal Team

An Association of Independent Non-Partner Attorneys-At-Law

**Andrew N. Piraino, Esq. And Aaron Mark Zimmerman, Esq., P.C.**  
117 South State Street in Syracuse, New York 13202

ZiPiLaw.com  
315. 475.7777

May 20, 2010

Hon. 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.  
Hon. Jill Konviser  
Nina M. Moore  
Hon. Karen K. Peters  
Hon. Terry Jane Ruderman

New York State Commission on Judicial Conduct  
400 Andrew Street  
Rochester, New York 14604

**Re: Hon. Andrew N. Piraino**  
**Commission File # 2008/R-139**

Dear Commissioners:

My office represents Judge Piraino on the above referenced matter. At the present time, the Judicial Commission under its procedural rules has opened a Formal Investigation, but has not brought Charges.

At the Commission's request, Judge Piraino gave sworn testimony in your Rochester offices on June 11, 2009. Judge Piraino submitted a formal Response to the Commission's Investigation on 7/30/09. Further submissions were made on behalf of Judge Piraino on 9/1/09 and 2/23/10.

The Commission apparently began looking at Judge Piraino based on the complaints of two individuals [both in the same car] who were ticketed for failing to wear a seat belt. The individuals plead guilty and the Judge imposed a fine of \$60. No appeal was filed. Instead the fines were promptly paid-- and complaints were just as promptly made to the Commission, on April 18,2008, that the fines imposed were excessive. The complaints identified that the maximum fine was \$50.

Based solely on those two complaints, the Judicial Commission chose to review Judge Piraino's activities as a town judge. With neither reasonable suspicion, nor factual basis, the Commission chose to review Judge Piraino's judicial actions for the period of January 1, 2006 through May 30, 2008. During this period of time Judge Piraino handled approximately 15,850 matters.

Following the Commission's Investigation, Judge Piraino preformed his own retrospective analysis and found a number of sentencing errors had occurred-- and he self-identified those errors to the Commission. There has been no hint these errors were due to anything other than administrative failings. There has been no suggestion nor inference that Judge Piraino acted based on impure motives. Nonetheless, the on-going formal Investigation remains like a Sword of Damocles over Judge Piraino's head. The Investigation has had a chilling effect on Judge Piraino's judicial activities. He will no longer accept VTL §1101 dispositions to traffic matters. Historically, in Onondaga County, the People and Defense would jointly move that pending traffic related charges be amended to VTL §1101, and that the defendant be allowed to plead guilty to the amended charge.

There is something wrong with a process which allows a judge to be subject to a formal Investigation by this Commission [allowing VTL §110 dispositions] when the Office of Court Administration which is charged with overseeing the manner in which the courts operate do not object to the procedure. The Commission has the power to sanction a judge, including removal from the bench. While the Commission did not "tell" the judge to change the local administrative procedures, the Commission used a more effective technique, it incorporated the issue into an open and on-going investigation.

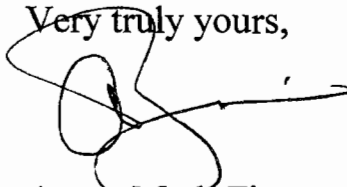
Recently, the *New York State Bar Association Journal*, May, 2010 edition (Vol 82 No. 4) published an article by Judge Bellocosa. This former Judge of the Court of Appeals, and Chief Administrative Judge of the Unified Court System calls into

question the entire investigatory and disciplinary process used by Commission. A copy of Judge Bellacosa's article is **enclosed** for your consideration.

As the documentary record shows, the Commission has not alleged Judge Piraino engaged in any unethical acts, but the investigation is still "open."

It is respectfully submitted that Judge Piraino has affirmatively established no acts of judicial misconduct occurred. Based on this record, it is simply unfair, unjust and inequitable for an investigation to be kept open. The formal Investigation which is now pending should be immediately closed with a finding of No Cause for Action.

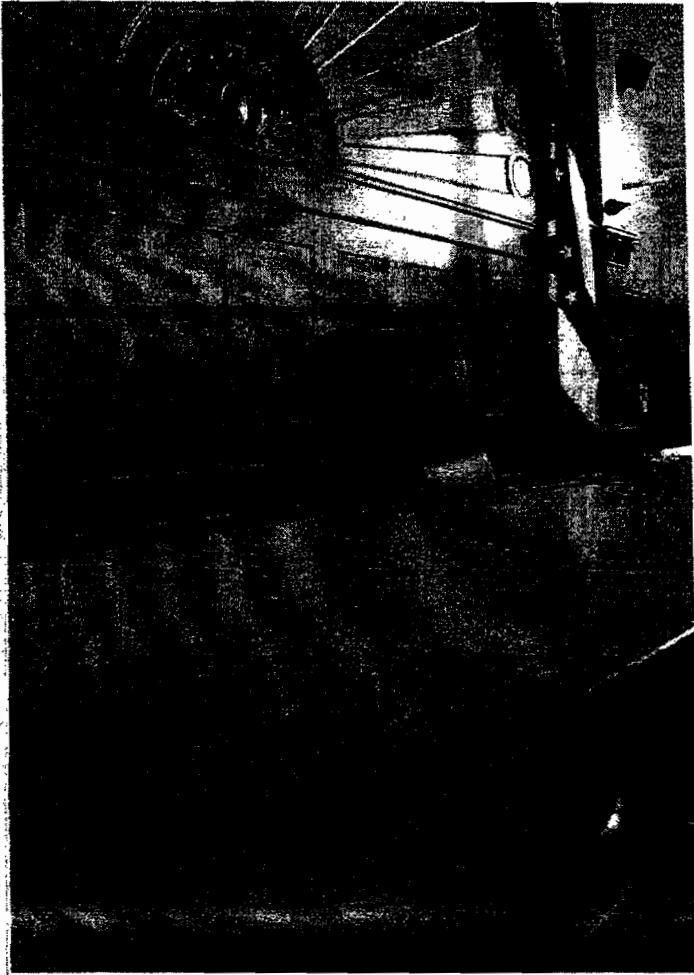
Very truly yours,

A handwritten signature in black ink, appearing to read 'AMZ', with a large, sweeping flourish extending to the right.

Aaron Mark Zimmerman, Esq., P.C.

AMZ/ap  
enc.

cc: Hon. Andrew N. Piraino w/enc.



JOSEPH W. BELLACOSA is a former Judge of the New York State Court of Appeals and Chief Administrative Judge of the New York State Unified Court System, and currently serves as an independent consultant.

*The views expressed in the article are those of Judge Bellacosa and do not reflect the views of the New York State Bar Association.*

## Point of View: Time to Reform Judicial Reform

*(Quis custodiet ipsos custodes?  
Who will watch the watchdogs?)*

By Joseph W. Bellacosa

In my opinion, the marketing marquee “reform” has lost its buzz as a call for change – at least in one corner of the judicial arena. Thirty-three years ago, the Commission on Judicial Conduct was created to reform the investigation and discipline of judicial misconduct. Now, New Yorkers need a transparent accounting of how that body and its staff conduct their public responsibilities, which affect judges throughout the state.

In 1977 as part of a set of reforms – a constitutional package involving appointment of judges to the Court of Appeals and centralized administration and financing of the courts – the cumbersome and creaky Court on the Judiciary was replaced by an independent Commission on Judicial Conduct (COJC).

This extra-judicial entity is invested with the exclusive power to investigate and prosecute matters of judicial misconduct and to impose appropriate disciplinary sanctions. When its decision is final, its adjudicative work becomes public and is subject to an exclusive judicial review process – appeal to the Court of Appeals only in very limited circumstances.

Right from the start, some structural problems arose from the comprehensive sweep of the Commission’s authority over *all* judges in New York State, including judges of courts of record, whether appointed or elected, and the mass of lower local court judges of the towns and

villages (police and traffic court-types with lesser and inferior jurisdiction). All judges are placed in the same COJC fishbowl (or apple barrel), even though some local lower-level judges are not even attorneys.

One unintended consequence of this one-size-fits-all approach is the skewing of the public perception of the magnitude and nature of judicial misconduct. The COJC has capitalized on the relatively more numerous lower court judges’ misdeeds, which has fostered the notion of serious and pervasive judicial misconduct. Its numerous prosecutions (with attendant media publicity on determinations of lower court judicial misconduct) and its annual reports have led the public to believe there are a lot more bad apple judges and more problems of misconduct than is empirically true. The distorted picture has generated a regrettable misimpression of the Judicial Branch and its function that adversely and unfairly affects the reputations generally and individually of judges of courts of record – the higher courts. This, in my opinion, also contributes to a diminishment of respect for the overall integrity of the judicial process.

By and by, after the tension of the start-up years – the late ’70s and early ’80s – with the rather broad-reaching town and village justices’ ticket-fixing scandal petering out, matters started to get reasonably sorted out and settled down. The COJC seemed to be functioning as

originally contemplated, though here and there episodic dust-ups continued to occur among the judges, their membership organizations and the Commission operation. But these problems seemed less systemic and more ad hoc – involving policies or rules of conduct applied to individual cases. Generally, institutional tension between the independent COJC and judges is inevitable and cannot be avoided entirely.

Because of recent developments, however, this is a good time for a fresh examination of the COJC. The whole environment has been roiled and tensions escalated, as I see it, because judges and the judicial branch of government have been demoralized by a host of non-conduct-related, extra-Commission events. High on the list is the failure of the other two branches of government to provide adequate compensation to judicial officers.<sup>1</sup> It has been 11 years since the judiciary last received an increase in pay, which implies a disdain and disregard for an entire branch of government, which is not lost on the public and media, who feed that attitude.

Against that background, the COJC has further undermined respect for the weakened branch. I have come to the view that the Commission has gone astray because hardly any structural or operational checks and balances are in place – that is, no one is watching the watchdogs.

My perspective is informed by my multidimensional angles of experience as well as by my personal opinion and judgment. (It is at least a “3D” look-see, the revived *Avatar*-like movie and TV rage of our day and culture.)

I was Clerk and Counsel to the Court of Appeals from 1975 to 1983. I observed and aided the then-Chief Judge (Charles D. Breitel, the principal force behind the court reforms of that era) in the technical drafting, construction and implementation of the 1977 constitutional regimes. To be sure, my role was subordinate, on the back lot so to speak, working along with many other far more significant officials.

Later, I moved to the front lines and onto the main stage, during the ‘80s and ‘90s, as Chief Administrative Judge (promulgator of the Rules of Judicial Conduct) and Associate Judge of the Court of Appeals (the institution with exclusive judicial review of COJC determinations via appeals taken at the instance of aggrieved and sanctioned judges). In those two posts I was directly and intensely engaged in reviewing some of the COJC’s work and activities.

The third phase of my look-see, during the Decade of the Aughts to present, has involved watching essentially from the sidelines as a citizen and lawyer (with one notable exception<sup>2</sup>). The subject of judicial discipline and the operation of COJC have remained areas of high interest and concern for me because the theoretical structure and the practical applications are both important and fascinating.<sup>3</sup>

To illuminate, I now advert to two recent developments, related but quite distinct. The first was New York City Corporation Counsel Michael Cardozo’s proposal in December 2009,<sup>4</sup> and the second, one week later, was the Court of Appeals decision in *In re Gilpatric*.<sup>5</sup> They startled me out of my retirement reveries and have led me to believe that the 1977 reform, however well intentioned and reasonably well executed, has “jumped the shark.” The COJC’s billowing power is headed in the wrong direction and needs to be subjected to structural checks and balances with a piercing spotlight of transparency. Simply stated, reform itself needs reform.

The classical Latin aphorism I invoked to subtitle this article was uttered and applied historically long before even our country’s founders adopted it as one of the new republic’s foundation pillars of good governance.<sup>6</sup> Experience has proved that the separation of powers principle, the diversified allocation and distribution of cross-checking balance levers, is the firmest bedrock anyone could imagine for the proper administration of human institutions of governance.

So how did the judicial disciplinary process escape that equalizing supervision? However it happened and however long it has persisted, it is a crucial missing link that deprives the COJC process of the legitimacy that comes from independent accountability and transparency.

The Commission on Judicial Conduct is structurally and practically devoid of meaningful checks and balances because the ultimate Court of Appeals appellate review (the only judicial oversight, which, though plenary, pertains only to exceptionally appealed cases) is limited to those few adverse determinations against judges in end-stage situations. Healthy sunlight is not let in through that narrow lens of the Court of Appeals cases.

Actually, the more important question is, What are the Commission and its (occasionally excessively) zealous staff up to in the earlier stages? Consider that investigations and unsuccessful prosecutions get no meaningful external supervision or review.<sup>7</sup> No one has appeal rights as to those early critical stages where enormous damage and irreparable harms may be inflicted on unseen judges and the judicial process.

Yet, the Commission boldly boasts, in its annual reports and in most of its appeal briefs, that the Court of Appeals overwhelmingly (statistically correct as to the relatively few that get to the Court) accepts and approves of its formal *Determinations* (when and if they get that far along in the process). This is perhaps false or at least misleading advertising, suggesting that there is broader Court of Appeals approbation of the COJC’s activities than is actually the fact. Thus, the question is, Is any independent entity reviewing and overseeing the COJC’s *investigations* and *prosecutions*? In my loose translation of the venerable Latin maxim posed at the outset (Who is

## POINT OF VIEW

guarding these guardians?), and with all due respect to the individual Commission members, I would earnestly submit that no one is conducting an institutional and independent level of scrutiny at those critical early stages of Commission and staff activity.

As I noted earlier, two recent developments jump-started my heightened concern. One was Corporation Counsel Michael Cardozo's misguided suggestion (number six in his list of 10 proposals), uttered on the occasion of his acceptance of the Cyrus Vance Award from the Fund for Modern Courts. I was a member of the audience and was somewhat stunned by the proposition that the Office of Court Administration, through the good and powerful offices of the Chief Administrative Judge (a post I proudly occupied 25 years ago), should file complaints with the COJC against judges for "failure to file" reports relative to the 60-day pending cases tabulations. That proposal, along with the rest of his bold proffer, was published and publicized in the *New York Law Journal*; a firestorm of critical responses ensued.<sup>8</sup>

Such a notion suggests to me that the word "reform" has become oxymoronic. The tattletale role would transmogrify the roles of OCA and the CAJ from *helper* to judges (as originally intended) to routine whistleblower against the interests of judges. Nothing I can think of would be more counterproductive than seriously considering such an imprudent suggestion. It should be rejected summarily and emphatically because the OCA should not become a routine collaborator with the COJC in accusing judges.<sup>9</sup>

The jurisdictional tentacles of the Commission over these last four decades have been expanding as it is.<sup>10</sup>



The COJC's encroachments on the principle of judicial independence have begun to tip the balance of the always-desirable accountability it was intended to provide concerning the relatively rare instances of judicial misconduct, especially by judges of courts of record and superior jurisdiction. The question should be asked, however, at what sacrifice and at whose expense? The COJC's probes, initial investigations and incomplete or failed prosecutions are sealed off against any checks and balances of accountability as to what and how it exercises its powers and judgments.

Mr. Cardozo's suggestion number six should be scrutinized through yet another prism – the OCA or CAJ as the proposed source of the complaint to the COJC. No amount of disclaimed non-judgmentalism and expressed neutrality will be able to discount or deflect the impact – the official "ooomphh" – that such a routine referral will carry with it. Any handoff by the CAJ is inescapably freighted against the allegedly time-mismanaging judge. The subtext of such referrals will always include: "I, the CAJ, cannot manage or handle this 'allegedly' incorrigible judge with all the power I have as CAJ, but I discern enough basis and concern to refer it to you, COJC, to take it over and grind it – and the judge – through your investigatory and disciplinary process." No more need be said about the tilted playing field of such referrals.

Within a week of Mr. Cardozo's proposal, my revered<sup>11</sup> Court of Appeals added a new complication.<sup>12</sup> As noted earlier, *In re Gilpatric* modified and cut back on the *In re Greenfield*<sup>13</sup> bright-line demarcation between administrative activities and sanctionable misconduct. The COJC can now investigate and prosecute administrative activities under the category of delays in decision rendering. To be sure, the Court of Appeals added that "not every case involving caseload delays will rise to the level of misconduct." That caveat, however, will provide no comfort to judges subjected to even the preliminary investigatory scrutiny of the Commission. Nor will it deter imprudent investigations generated by unfounded complaints rooted in strategic or retaliatory agendas of litigants, lawyers or public officials.<sup>14</sup> This precedential authorization hangs a sword of Damocles precariously, unfairly and unnecessarily over countless judges. This is overkill for the subject area of conduct in question. It is disproportionate and is being placed in unchecked hands, irrespective of the attempt to qualify the sweep of the rule in the description of the holding. One only has to read the headline and lead in the NYLJ story on the report of *In re Gilpatric* to appreciate the impact of the ruling.<sup>15</sup>

Further, it is no answer that the Court of Appeals might eventually review (and pass on) the rare appeal by a judge against whom a full proceeding has ended in an adverse determination. That stage is too late and too little for most judges subjected to the irreparable injury and debilitating investigation and blotch on their careers

## POINT OF VIEW

and service records. No check-and-balance entity or procedural stepladder exists with the capacity to uncover error or lack of prudence in how the Commission and its staff exercise this wide swath of new probing power. That alone is reason for pause, re-examination and course correction of the COJC's runaway authority.

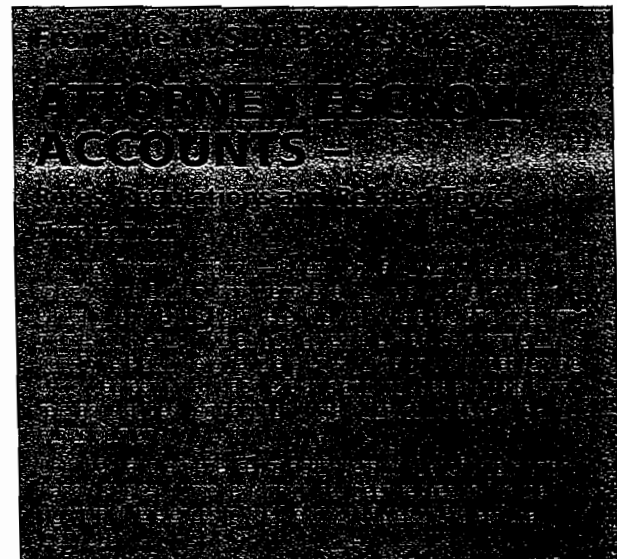
Enough time has passed since the enactment of this initially constructive disciplinary reform in 1977 that a plenary re-examination of the structure and its operation makes sense. The annual reports of the Commission do not transparently expose what is really going on behind the scenes at the staff and even early preliminary Commission supervisory level (necessary and appropriate confidentiality rules contributing to some of that, to be sure). Skepticism about the "spin" of such self-generated and inherently non-independent reports is entirely appropriate. Nor do those reports and the self-laudatory Commission press releases on adjudicated cases, nor the paucity of Court of Appeals's across-the-board rulings, provide a full-face, peripheral or back-story exposition of the impact (and damage in my view) to the fair application – and on the indispensable principle – of judicial independence. Fairness to individual judges (investigated, charged or adjudicated) and faithfulness to judicial process independence require something better than what is now erupting.

I could not agree more that accountability, transparency and appellate checks and balances are needed as to the conduct of judges and their public duties. Correspondingly however, on the goose-gander axiom, those civic governance virtues should be demanded of the watchdog as well.

Cicero always closed as he began, and so shall I: "*Quis custodiet ipsos custodes?*" ■

1. *Lippman v. Paterson*, \_\_ N.Y.3d \_\_ (Feb. 18, 2010).
2. While a nostalgic tilt stemming from the privilege of my joyful service in the Judicial Branch for over 30 years is obvious, an overt disclaimer is still worth declaring in connection with this piece. I undertook a professional representation in a COJC matter on behalf of an accused judge in 2008–2009 as *pro bono* counsel with another retired judge, the Honorable John Martin, S.D.N.Y. The Honorable Michael Ambrecht, though ultimately exonerated by the Commission after a full and expanded proceeding, was *de facto* removed from his judicial office by the Governor's refusal to re-appoint Judge Ambrecht. See *Censure Advised for Judge Whose Personal Lawyer Appeared in Court*, N.Y.L.J., Nov. 10, 2008, p. 1, col. 3; *Letters to the Editor*, N.Y.L.J., Nov. 20, 2008, p. 2, col. 4; see also *Judge's Ouster Raises Independence Issue*, N.Y.L.J., June 8, 2009, p. 6, col. 1.
3. On October 17, 2009, Court of Appeals Sr. Associate Judge Carmen Beauchamp Ciparick, as Visiting Jurist in Residence at St. John's School of Law, gave the Joseph W. Bellacosa Lecture on "Judicial Independence and the Commission on Judicial Conduct" (to be published).
4. *10 Suggestions for Court Reform*, N.Y.L.J., Dec. 7, 2009, p. 6, col. 4.
5. 13 N.Y.3d 586, 2009 WL4794212 (2009).
6. *Myers v. United States*, 272 U.S. 52 (1926). In his dissent, Justice Brandeis noted, "The doctrine of separation of powers was adopted . . . not to avoid friction, but . . . to save the people from autocracy." *Id.* at 293. See Melvin I. Urofsky, Louis D. Brandeis, *A Life* (especially ch. 23, p. 571 *et seq.*).
7. The redacted and generalized COJC annual reports are not transparent checks or balances of independent value as to pre-determination activity or cases.
8. See, e.g., *Cardozo's Comments Insulting, First Department Justices Say*, N.Y.L.J., Dec. 17, 2009, p. 1, col. 4; *Cardozo's Court Reform Suggestions Are Misguided, Misplaced and Insulting*, N.Y.L.J., Dec. 17, 2009, p. 2, col. 1.

9. There are extraordinary individual instances where a referral for founded wrongdoing is necessary. See e.g., *In re Gelfand*, 70 N.Y.2d 211, 518 N.Y.S.2d 950 (1987), where I, as Chief Administrative Judge, referred a serious matter to the Chair of the COJC that resulted in removal of a judge from office.
10. See *In re Gilpatric*, 13 N.Y.3d 586, the December 2009 ruling from the Court of Appeals, retreating from the ruling in *In re Greenfield*, 76 N.Y.2d 293, 551 N.Y.S.2d 1177 (1990) (bright-line demarcation between administrative delay and misconduct). I am not alone in this particular concern, as even Commission members (usually in rueful but admonitory dissent) have expressed some legitimate concerns from time to time (i.e., Commissioner Richard Emery). See *Panel Rebukes City Judge Over 2006 Campaign Improprieties*, N.Y.L.J., Dec. 4, 2009, p. 1, col. 3.
11. My lifelong reverence for the Court of Appeals springs from 25 years of service in various roles at the greatest Court on this planet. Lest anyone conclude that I nostalgically yearn for my old role, let me reassure readers that from day one of my retirement as a judge in 2000 to now 10 years down the road, I am quite a contented unaffiliated free spirit. So I include this rare expression and commentary as a singularly focused serious concern, and not as an erstwhile dissent.
12. See *Judicial Tardiness Can Trigger Discipline, Ruling Concludes*, Dec. 16, 2009, N.Y.L.J., p. 1, col. 4.
13. 76 N.Y.2d 293. Another disclaimer: I voted for that *per curiam* opinion.
14. See Joseph W. Bellacosa, *The Retaliatory Removal of a Judge*, *The Jurist*, Fall-Winter 2009–2010, p. 3; see also *supra* note 1.
15. See *Judicial Tardiness Can Trigger Discipline*, *supra* note 12.



### EDITOR

**Peter V. Coffey, Esq.**  
Englert, Coffey, McHugh & Fantauzzi, LLP  
Schenectady, NY

### ASSISTANT EDITOR

**Anne Reynolds Copps, Esq.**  
Attorney at Law, Albany, NY

### PRODUCT INFO AND PRICES

2010 / 330 pp., softbound / PN: 40269

**NYSBA Members \$45 | Non-members \$55**

\*\* Free shipping and handling within the continental U.S. The cost for shipping and handling outside the continental U.S. will be added to your order. Prices do not include applicable sales tax.

Call **1.800.582.2452**  
[www.nysba.org/pubs](http://www.nysba.org/pubs)

Mention Code: PUB0742





The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and any other financial activity.

Secondly, the document highlights the need for regular reconciliation. By comparing the company's internal records with bank statements and other external sources, discrepancies can be identified and corrected promptly. This process helps in detecting errors, fraud, and ensures that the books are balanced.

Thirdly, the document stresses the importance of proper classification of expenses. Each expense should be categorized correctly according to the accounting system. This allows for a more detailed analysis of the company's cost structure and helps in identifying areas where costs can be reduced.

Finally, the document concludes by stating that consistent and accurate record-keeping is essential for the long-term success of any business. It provides a clear picture of the company's financial health and is a key factor in making informed decisions.

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

**ANDREW NORMAN PIRAINO,**

a Justice of the Salina Town Court,  
Onondaga County.

---

**NOTICE OF FORMAL  
WRITTEN COMPLAINT**

NOTICE is hereby given to respondent, Andrew Norman Piraino, a Justice of the Salina Town Court, Onondaga County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon respondent the annexed Formal Written Complaint; and that, in accordance with said statute, respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: May 20, 2010  
New York, New York

**ROBERT H. TEMBECKJIAN**  
Administrator and Counsel  
State Commission on Judicial Conduct  
61 Broadway  
Suite 1200  
New York, New York 10006  
(646) 386-4800

To: Aaron Mark Zimmerman, Esq.  
The Piraino/Zimmerman Legal Team, P.C.  
117 South State Street  
Syracuse, New York 13202

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

**ANDREW NORMAN PIRAINO,**

a Justice of the Salina Town Court,  
Onondaga County.

---

**FORMAL  
WRITTEN COMPLAINT**

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct ("Commission"), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.
2. The Commission has directed that a Formal Written Complaint be drawn and served upon Andrew Norman Piraino ("respondent"), a Judge of the Salina Town Court, Onondaga County.
3. The factual allegations set forth in Charges I through IV state acts of judicial misconduct by respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules").
4. Respondent was admitted to the practice of law in New York in 1983. He has been a Justice of the Salina Town Court, Onondaga County, since 1994. His current term expires on December 31, 2013.

## CHARGE I

5. From in or about January 2006 through in or about May 2008, in approximately 462 traffic cases adjudicated in his court, respondent imposed fines and surcharges totaling approximately \$11,131 in excess of the maximum amount authorized by the Vehicle and Traffic Law ("VTL").

### Specifications to Charge I

6. From in or about January 2006 through in or about May 2008, as set forth in the attached Schedule A, in approximately 369 traffic cases, respondent imposed fines totaling approximately \$8,745 in excess of the maximum amount authorized by law.

7. From in or about January 2006 through in or about May 2008, as set forth in the attached Schedule B, in approximately 93 traffic cases, respondent imposed surcharges totaling approximately \$2,386 in excess of the maximum amount authorized by law.

8. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and

diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules.

### **CHARGE II**

9. From in or about January 2006 through in or about May 2008, respondent failed to properly supervise the Salina Town Court clerks with the result that in approximately 329 traffic cases adjudicated in his court, respondent imposed fines and surcharges totaling approximately \$2,320 in excess of the maximum amount authorized by the VTL.

#### **Specifications to Charge II**

10. From in or about January 2006 through in or about May 2008, as set forth in the attached Schedule C, respondent failed to properly supervise his court clerks with the result that in approximately 307 traffic cases, respondent imposed fines totaling approximately \$1,710 in excess of the maximum amount authorized by law.

11. From in or about January 2006 through in or about May 2008, as set forth in the attached Schedule D, respondent failed to properly supervise his court clerks with the result that in approximately 22 traffic cases, respondent imposed surcharges totaling approximately \$610 in excess of the maximum amount authorized by law.

12. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of

Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to diligently discharge his administrative responsibilities and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules, and failed to require court staff to observe the standards of fidelity and diligence that apply to the judge, in violation of Section 100.3(C)(2) of the Rules.

### CHARGE III

13. From in or about January 2006 through in or about May 2008, in approximately 117 traffic cases adjudicated in his court, respondent imposed fines and surcharges totaling approximately \$5,479 below the minimum amount required by the VTL.

#### Specifications to Charge III

14. From in or about January 2006 through in or about May 2008, as set forth in the attached Schedule E, in approximately 79 traffic cases, respondent imposed fines totaling approximately \$3,804 below the minimum amount required by law.

15. From in or about January 2006 through in or about May 2008, as set forth in the attached Schedule F, in approximately 38 traffic cases, respondent imposed surcharges totaling approximately \$1,675 below the minimum amount required by law.

16. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules.

#### **CHARGE IV**

17. From in or about January 2006 through in or about May 2008, respondent failed to properly supervise the Salina Town Court clerks with the result that in approximately 33 traffic cases adjudicated in his court, respondent imposed fines and surcharges totaling approximately \$925 below the minimum amount required by the VTL.

#### **Specifications to Charge IV**

18. From in or about January 2006 through in or about May 2008, as set forth in the attached Schedule G, respondent failed to properly supervise his court clerks with the result that in approximately 13 traffic cases, respondent imposed fines totaling approximately \$275 below the minimum amount required by law.

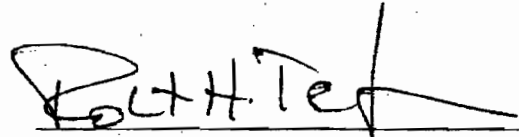
19. From in or about January 2006 through in or about May 2008, as set forth in the attached Schedule H, respondent failed to properly supervise his court clerks with the result that in approximately 20 traffic cases, respondent imposed surcharges totaling approximately \$650 below the minimum amount required by law.

20. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to diligently discharge his administrative responsibilities and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules, and failed to require court staff to observe the standards of fidelity and diligence that apply to the judge, in violation of Section 100.3(C)(2) of the Rules.

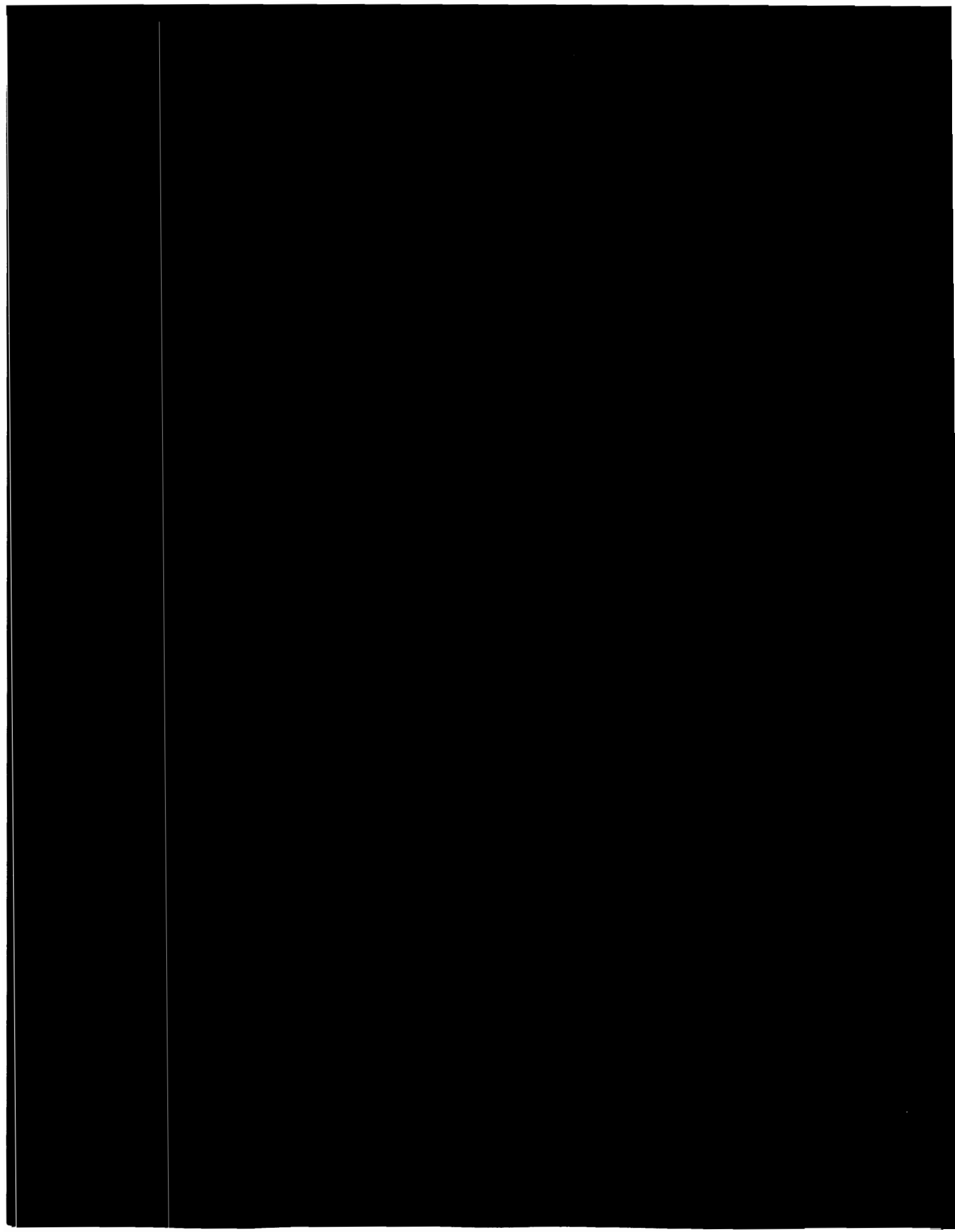


**WHEREFORE**, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: May 20, 2010  
New York, New York



**ROBERT H. TEMBECKJIAN**  
Administrator and Counsel  
State Commission on Judicial Conduct  
61 Broadway  
Suite 1200  
New York, New York 10006  
(646) 386-4800



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

VERIFIED ANSWER

**HON. ANDREW N. PIRAINO**

a Justice of the Salina Town Court,  
Onondaga County

**ANDREW N. PIRAINO**, as and for his Verified Answer to the Formal  
Written Complaint dated May 20, 2010 states as follows:

1. Admits the allegations contained in paragraph: 4.
2. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs: 1, 2, 5, 6, 7, 9, 10, 11, 13, 14, 15, 17, 18 and 19.
3. Denies the allegation contained in paragraphs: 3, 8, 12, 16, and 20.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. Based on the factual allegations, the complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. Based on the factual allegations, the Commission lacks subject matter jurisdiction, as the factual allegations constitute mere administrative failures. Such deficiencies, if any are found to exist, are the sole responsibility of the

New York State Office of Court Administration.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. The Commission lacks subject matter jurisdiction, as the factual allegations that one or more illegal sentences were imposed, if found to be true, is the sole responsibility of the Appellate Courts of the State of New York.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. The commission has failed to allege any facts which constitute a violation of Judiciary Law §44. Judge Piraino has not committed misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, which is prejudicial to the administration of justice.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

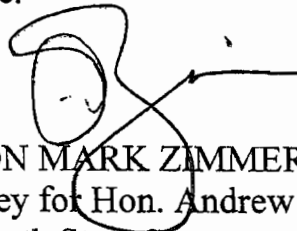
8. Based on the principal of *Stare Decisis*, and the decisions in Matter of Gilpatric 12 NY3d 586 [2009], Matter of Bauer 3 NY3d 158 [2004] (Judge Read's Dissent, at page 173 " . . . the Commission's charges [based on excessive fines] relating to matters other than right to counsel and bail [are] of relatively little moment.") and Matter of Greenfield 76 NY2d 293 [1990] the alleged conduct of Judge Piraino is not actionable by the Commission.

The Formal Written Complaint is jurisdictionally defective. There is no

allegation Judge Piraino engaged in a pattern of persistent or deliberate neglect. There is no allegation Judge Piraino had prior knowledge or awareness that he or the Court's clerks had committed or been responsible for any administrative or other deficiency. There is no allegation Judge Piraino took actions in bad faith or by deliberate neglect. There is no allegation that Judge Piraino has defied administrative directives, or has attempted to subvert the system. And there is no allegation Judge Piraino failed to perform his judicial duties despite repeated administrative efforts to assist the judge and his continuing conduct demonstrates an unwillingness or inability to discharge his judicial duties.

Wherefore, HON. ANDREW N. PIRAINO, moves this Commission to dismiss the Formal Written Complaint; and for such other and further relief as the Commission deems just, proper and equitable.

Dated: June 24, 2010



AARON MARK ZIMMERMAN, ESQ.  
Attorney for Hon. Andrew N. Piraino  
117 South State Street  
Syracuse, NY 13202  
(315) 475-7777

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

**HON. ANDREW N. PIRAINO**

a Justice of the Salina Town Court,  
Onondaga County

VERIFICATION

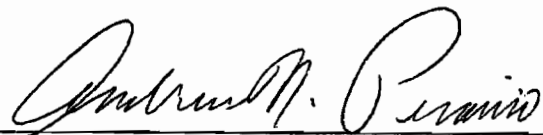
STATE OF NEW YORK )

: ss.:

COUNTY OF ONONDAGA )

**HON. ANDREW N. PIRAINO**, being duly sworn deposes and says:

1. I am a Justice of the Salina Town Court in the County of Onondaga and the Respondent herein.
2. I have read the foregoing VERIFIED ANSWER with AFFIRMATIVE DEFENSES and the factual allegations contained therein are truthful and true, except those made upon information and belief, and as to those matter I do believe them to be true.



Hon. Andrew N. Piraino

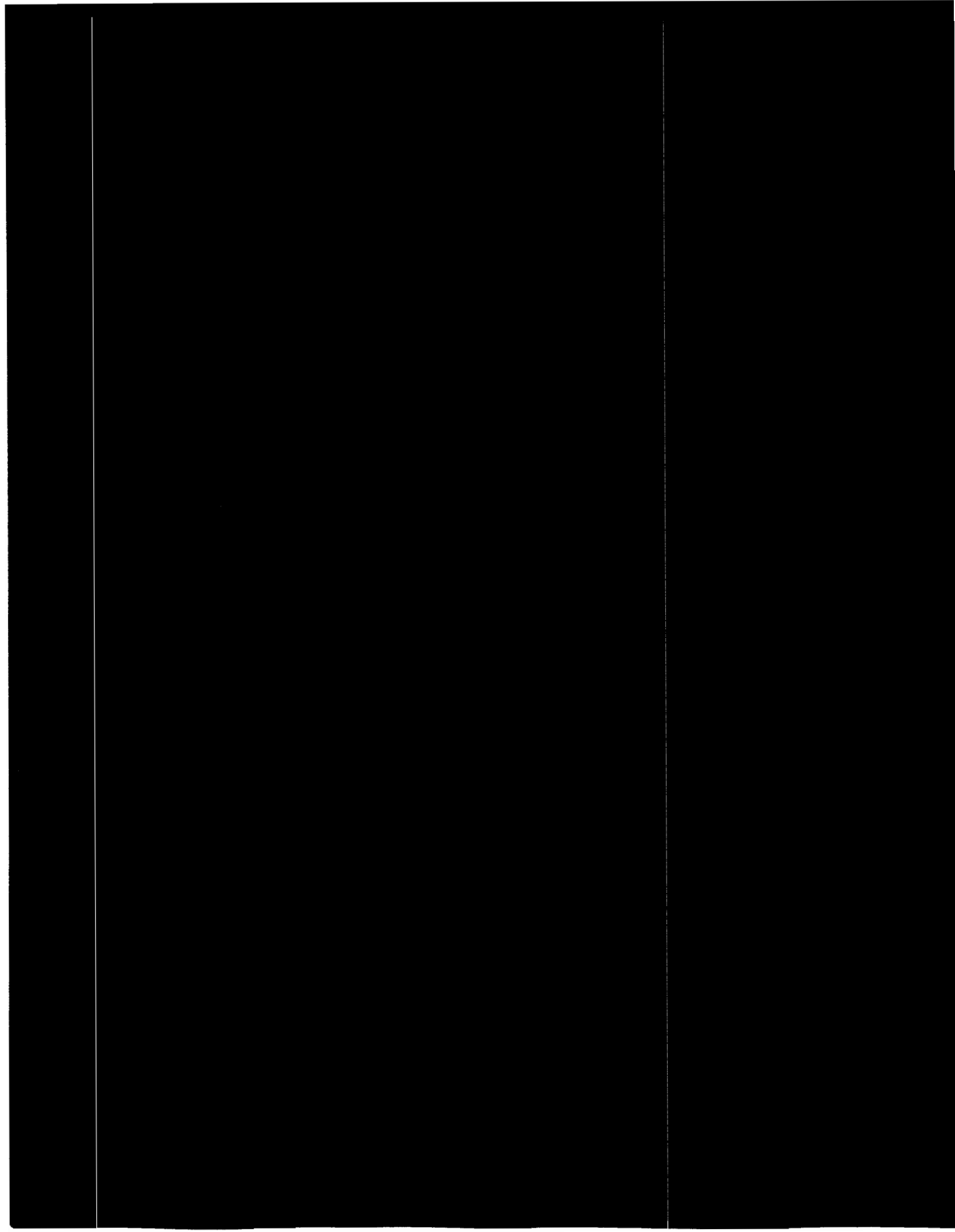
Sworn to before me this

24, day of June, 2010.



Notary Public

Aaron M. Zimmerman  
N.Y. Notary Public  
Onondaga Co. 4697848  
Expires March 30 2011



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

NOTICE OF MOTION

**HON. ANDREW N. PIRAINO**

a Justice of the Salina Town Court,  
Onondaga County


---

To: Jean M. Savanyu  
Clerk of the Commission  
61 Broadway  
New York, NY 10006

Copy: Robert H. Tembeckjian  
Administrator of the Commission  
NYS Commission on Judicial Conduct  
400 Andrew Street  
Rochester, NY 14604

**PLEASE TAKE NOTICE**, that upon a] the Affidavit of Hon. Andrew N. Piraino, duly sworn to the 24<sup>th</sup> day of June, 2010, b] the Affidavit of Attorney Aaron Zimmerman sworn to the 24<sup>th</sup> day of June, 2010; c] the Formal Written Complaint dated May 20, 2010 and d] all the exhibits and other pleadings and proceedings heretofore had herein, a motion will be made pursuant to 22 NYCRR §7000.6(f)(ii) at a term of this Commission to be held in and for the State Commission on Judicial Conduct, located in the Rochester Office, 400 Andrews Street, Suit 700, Rochester, New York on the 20<sup>th</sup> day of August, 2010, or such other date as may be selected by the Commission, for an Order of Dismissal, and for such other and further relief as to this Commission is just, proper and equitable.

Dated: June 24, 2010



AARON MARK ZIMMERMAN, ESQ.  
Attorney for Hon. Andrew N. Piraino  
117 South State Street  
Syracuse, NY 13202  
(315) 475-7777



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

**HON. ANDREW N. PIRAINO**

a Justice of the Salina Town Court,  
Onondaga County

---

AFFIDAVIT OF  
HON. ANDREW N. PIRAINO

Hon. Andrew N. Piraino, being duly sworn, deposes and says:

**Introduction**

1. I am a Justice of the Salina Town Court in County of Onondaga. This affidavit is made in support of a Motion seeking an Order of Dismissal of the Commission's Formal Written Complaint dated May 20, 2010.

2. The Formal Written Complaint alleges I made sentencing errors and failed to properly supervise the Court's clerks. It is respectfully submitted that any sentencing error or failure to supervise for which I am found responsible was due to administrative mistake, unintentional oversight, simple negligence, or other mental lapse. I do verily state that I never intentionally issued an erroneous sentence, nor did I ever intentionally fail to supervise the Court's clerks.

## **Background**

3. My date of birth is December 12, 1954. I am currently 55 years of age. I was born and raised in the Town of Salina. I graduated from the Syracuse area high school, Christian Brothers Academy. I attended and was awarded my Bachelor of Arts degree from St. Bonaventure University in 1977. Thereafter, I attended and was awarded my Juris Doctor degree from the Albany Law School at Union University in 1981. I was admitted to the New York Bar in June, 1983.

4. During law school, I was a part-time legal assistant to State Senator Martin S. Auer. Upon graduating from law school and prior to being admitted to the Bar, I continued to be employed by Senator Auer. After being admitted to the Bar, I was appointed as a part-time Assistant Counsel to the New York State Senate Committee on Insurance. In addition, I acted as an Assistant Counsel to Senator Auer and was responsible for monitoring Legislative Bills and proposed legislation. I was affiliated with the New York Senate from about 1980 to about 1985.

5. I also held the part-time Assistant Counsel to the Assembly Minority Leader Clarence D. Rapplyea. In this capacity I was responsible for monitoring Legislative Bills and proposed legislation. I was affiliated with the New York Assembly from about 1985 to about 1990.

6. Commencing, approximately 1983, in addition to my part-time employment with the New York Legislature, I opened an office for the private practice of law. I have maintained a solo practice with an office at 117 South State Street, Syracuse, New York for more than 28 years. My private practice has concentrated on representing, prosecuting and defending workers compensation claims. Over the years, I have represented injured workers, employers, and insurance carriers. Additionally, I have maintained a general practice of law.

7. I am a member, and have previously held the position as a Director, of the Workers Compensation Bar of Central New York. I am a member of the Injured Workers Bar Association. I am a member of the New York Bar Association, where over the years I have been a member of the Executive Committee of the Workers Compensation Division of the Torts, Insurance, Compensation Section.

8. In my capacity as an attorney, I have never been charged with any grievance nor have I ever been the subject of any inquiry or complaint by the Office of Grievance Committees. I have an unblemished record as an attorney.

9. I was elected Judge of the Town of Salina in the November, 1993 general election and took the Bench commencing January 1, 1994. I have continuously held the part-time position as Judge in the Town of Salina from 1994 to date -- a period of some 16 years

10. During my tenure as judge, I have been an active member in the Onondaga County Magistrates' Association. I served as President of the Association from 2000-2001.

**No Prior Complaints, Warnings or Cautions**

11. From the time I became a judge on January 1, 1994, right up to receiving the Letter of Inquiry from the Commission, dated 5/14/09, I never received any contact nor question regarding the quality or quantity of work performed as Salina Town Judge. That is, I never received a complaint, nor have I received anything which would suggest the work I performed was deficient on either an administrative or substantive basis. In fact, based on oral communications with

representatives of the Office of Court Administration and other members of the Onondaga County Magistrates' Association I was advised my judicial work was considered excellent and exemplary.

### **Commission's Letter Inquiry**

12. On May 14, 2009, the Commission issued a Letter of Inquiry. A copy of that letter is attached as Exhibit 928. *\* Attached to this Special Proceeding as Exhibit A.* The Letter of Inquiry makes it apparent the Commission was concerned about two issues. 1) Fines/Surcharges being imposed on traffic related matters, and 2) allowing traffic related matters to be resolved to pleas to VTL§ 1101.

13. It is noted the Commission issued its Letter of Inquiry on May 14, 2009 without having reviewed any of the original court records. Further, without requesting a written explanation from me, the Commission directed I personally appear in Rochester on June 11, 2009 to give sworn testimony before a Referee.

### **Judge Piraino Voluntarily produces copies of all of the Court's records**

14. Between May 15, 2009 [the date of the Letter of Inquiry] and June 11, 2009 [the date I was directed to appear and testify], the Court's clerks and I pulled each file listed on the Schedules attached to the Commission's Letter of Inquiry. I then personally performed a retrospective audit of each and every case referenced on the Schedules attached to the Letter of Inquiry. Without being requested, a true copy of the official Court records on each case listed in the schedules was prepared and submitted to the Commission on June 11, 2009.

15. Similar to the Letter of Inquiry, the Formal Written Complaint fails to provide copies of the court's records. As such, I am attaching as Exhibits 1 to 927\* copies of the court's complete official record for each matter listed in Schedules A through H of the Complaint.

\* filed with Commission, available, but not attached hereto.

### **Judge Piraino has been fully cooperative**

16. In every respect I have fully cooperated with the Commission and have gone above and beyond the Commission's requests. My activities as a judge have been fully disclosed. It has been my day-to-day goal to make all of my judicial activity fully transparent to anyone who chooses to look and/or review my actions. To the extent the records show an error in sentencing occurred, the court's records clearly show what I did and when I did it.

### **Judge Piraino oversees a high volume case load**

17. Each year for the past 15 years, I have participated in handling about 7,500 cases. This includes both a criminal and civil calendar. For the time period covered by the Commission's Letter Inquiry-- January 1, 2006 to May 31, 2008-- I estimate I handled in excess of 20,000 matters. Based on the large volume of cases I routinely handle, I do affirmatively state I have no independent memory or recollection of any of the cases listed on the Schedules attached to the Commission's Letter Inquiry or the Complaint.

### **Sentencing errors due to administrative mistake, unintentional oversight, simple negligence, or other mental lapse**

18. In the event the Commission determines that in any particular case I set a fine too high, or too low, or that I failed to impose a mandatory surcharge -- my error(s) were due to

administrative mistake, unintentional oversight, simple negligence, or other mental lapse. I do verily state that I never intentionally issued an erroneous sentence nor did I ever intentionally deviate from the statutory or regulatory mandates.

**Commission has improperly interfered with judicial discretion**

19. As a result of the Commission's Letter of Inquiry of May 14, 2009, and the threat of sanctions and discipline, I am no longer willing to accept VTL §1101 dispositions.

20. The Commission's Letter of Inquiry clearly highlighted concerns and called into question the propriety of my accepting dispositions based on the defendant pleading to the amended charge of VTL §1101.

21. Recognizing the Commission's power to bring charges against a sitting judge for what it perceives to be improper conduct, and based solely on the Commission's Letter of Inquiry, I immediately modified my activities as a judge. I immediately issued a Local Rule, dated May 28, 2009, and published same with the Administrative Judge of the Fifth Judicial District, the District Attorney, the Onondaga County Bar Association and the Onondaga County Magistrates' Association advising that I would no longer accept dispositions via a plea to VTL §1101. **Attached as Exhibit 929** are copies of the Local Rule and letter of explanation to the Administrative Judge, both dated May 28, 2009.

22. While the Commission did not directly "tell" me to change the court's long-standing procedures-- the Commission did something more powerful-- it opened an investigation and sent a Letter of Inquiry. Recognizing the Commission's power, subject to appeal to the Court of Appeals,

to remove me from the bench, I modified my actions accordingly.

23. The VTL §1101 issue has not, as yet, been made part of a Formal Written Complaint. However, the Commission has yet to issue a ruling on my actions in accepting VTL §1101 dispositions does not constitute a violation of Judiciary Law §44. As such, I do verily state the Commission's investigatory activity has created an actual chilling of my judicial independence. I now fear that carrying out my judicial duties in good faith may unfairly make me subject to unfounded disciplinary action.

**Office of Court Administration has not found fault with Judge Piraino's actions**

24. Upon receipt of the Letter of Inquiry dated May 14, 2009, I immediately forwarded same to Supreme Court Justice, Hon. James C. Tormey, in his capacity as Administrative Judge of the Fifth Judicial District. Justice Tormey's Principal Law Clerk is Hon. David Gideon. In addition to his position with OCA, Judge Gideon also sits as Town Judge of Dewitt. Please note, in this affidavit, I refer to the entire judicial administrative oversight function of the Salina Town Court as "Office of Court Administration or OCA."

25. During several conversations with Judge Gideon, I reviewed the various court procedures which I have used. I have also reviewed with him the Commission's Letter Inquiry and the Formal Written Complaint. No one affiliated with OCA has expressed any concern with either the a) VTL § 1101 disposition procedure, b) the absolute or relative number of sentencing errors [quantity] which were imposed; or c) my oversight and supervision of the justice court's clerks.

26. Having made the Office of Court Administration aware of the allegations contained

in the Commission's Letter of Inquiry and Formal Written Complaint, OCA has not seen fit to contact me; nor, has OCA issued any cautions. I have asked OCA if I should institute procedural or administrative changes; but, no advice or changes have been recommended.

27. Upon information and belief, OCA considers the relative and absolute number of erroneous sentences issued by me to fall within the parameters of good and acceptable judicial practice. Nonetheless, I strive to not make any errors of fact or law.

**None of the sentencing errors were appealed, nor were the sentencing errors called to the attention of Judge Piraino**

28. It is highlighted that none of the files which form the basis for the Formal Written Complaint were ever appealed. Neither the people nor any of the defendants have in any fashion challenged the sentences which were imposed -- whether or not those sentences were technically correct. Moreover, prior to the Letter Inquiry of May 14, 2009, I did not have knowledge nor any awareness that I had ever issued an erroneous surcharge or incorrect fine. Any error for which I am found responsible is due to administrative mistake, unintentional oversight, simple negligence, or other mental lapse. I do verily state that I never intentionally issued an erroneous sentence nor did I ever intentionally deviate from the statutory or regulatory mandates.

**Judge Piraino's Testimony**

29. As required by the Letter Inquiry from the Commission dated May 14, 2009, I cancelled all professional and judicial activities and went to Rochester on June 11, 2009 where I was sworn and testified regarding the issues of concern to the Commission [a] VTL §1101 dispositions and b] erroneous sentences].



**Judge Piraino's Response of July 30, 2009**

30. In response to the Letter of Inquiry, and at my direction, my attorney prepared and submitted a response. **Attached as Exhibit 930** *\* Attached to this Special Proceeding as Exhibit D* is a copy of that response dated July 30, 2009, together with the attachments. I adopt and ratify the statements and arguments contained therein.

31. It is requested that the Commission take "judicial notice" as to the geographical size of the Town of Salina, the population of the Town of Salina as well as the number of civil and criminal matters which I routinely process. In summary, the Town has a population of approximately 50,000 and I handle approximately 7,500 matters per year. While it is my goal to have no sentencing errors, I am not infallible. Errors will and do occur. It is respectfully submitted that any error for which I am found responsible is due to administrative mistake, unintentional oversight, simple negligence, or other mental lapse. I do verily state that I never intentionally issued an erroneous sentence nor did I ever intentionally deviate from the statutory or regulatory mandates.

**Errors by Court Clerks**

32. As has previously been identified, upon receipt of the Letter of Inquiry, I immediately undertook a comprehensive retrospective analysis of all cases listed by the Commission. As a result of my retrospective audit, and previously unbeknownst to me, I found that the Court's Clerks had committed improper and unapproved acts. I discovered one or more of the court's clerks had, on occasion set fines without my knowledge, or had changed fines which I had previously set.

33. Consistent with my policy of providing complete transparency, in the response submitted on my behalf dated July 30, 2009; in my testimony given on June 11, 2009 and with the copies of the Court's records submitted on June 11, 2009, I detailed my findings concerning the

errors committed by the court's clerks.

33. As part of my retrospective analysis, I directed my attorney to secure the testimony of my previous Chief Clerk. Attached as Exhibit 931<sup>\*</sup> is the sworn testimony of Eleanor Mazzye taken on May 20, 2009.

\* Attached to this Special Proceeding  
as Exhibit B.

34. Ms. Mazzye was a court clerk for more than 20 years. She first worked for my predecessor Hon. Helen Burnham [Mazzye Deposition at page 5]. Judge Burnham was a respected jurist and served as President of the state-wide New York Magistrate's Association in 1984 [[http://www.nysma.net/Past\\_Presidents.html](http://www.nysma.net/Past_Presidents.html)]. Upon Judge Burnham's retirement, I hired Ms. Mazzye [Mazzye Deposition at page 6]. Ms. Mazzye's testimony makes clear that I incorporated Judge Burnham's practices and procedures into my day-to-day practice [Mazzye Deposition at page 7].

Ms. Mazzye articulates that from 2001 until her retirement in 2008, the volume of the court's work "easily" doubled or tripled. And that even though the work-load increased there was not enough staff to handle the work [Mazzye Deposition at page 13].

The Chief Clerks's testimony describes on a step-by-step basis the manner in which matters that would come before me were physically handled [Mazzye Deposition at page 15-31].

Ms. Mazzye confirmed that she and all of the assistant clerks reported to me and that I personally oversaw everyone's work on a daily basis [Mazzye Deposition at page 32].

35. As my Response dated July 30, 2009 describes, my retrospective audit found-- unbeknownst to me-- that one or more of the clerks had, on occasion, either assessed a fine without my knowledge or approval, or had altered a fine I had imposed. I had no prior knowledge or awareness of my clerk's improprieties. As the testimony of Ms. Mazzye shows I adopted Judge Burnham's practices and procedures and had performed reasonable oversight. The clerks errors were extra-judicial, unauthorized and hidden from me.

**Modification of the Court's Procedures**

36. In response to the Commission's inquiry, and as highlighted in my response of July 30, 2009, I have imposed new procedures and administrative tactics in an attempt to avoid any further errors or illegal sentences. **Attached as Exhibit 932** is a copy of the form that is now used on every case. This form assists me and the clerks in avoiding mistakes through mental lapses.

37. As a result of the Commission's Letter of Inquiry, I personally met with each clerk and reiterated the practices and procedures to be used in handling cases. Specifically, I reiterated that no one is to set a fine or to change fines which I have set.

**Judge Piraino always acted in good faith**

38. I take my oath of Town Judge seriously. I do verily state I have never intentionally violated Judiciary Law §44.

39. I have never engaged in any act of unethical judicial misconduct. I have not shown any improper demeanor towards any individual who has come before me. I have never engaged in any conflicts of interest.

I have never been intoxicated while performing my professional or judicial duties.

I have never shown bias.

I have never shown prejudice.

I have never shown favoritism.

I have never engaged in corruption.

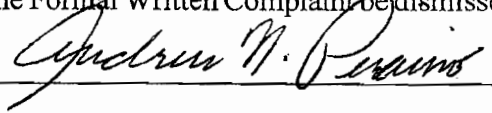
I have never engaged in prohibited business or political activity.

I have never engaged in financial or record mismanagement.

I have never taken acts for my private benefit or to benefit others.

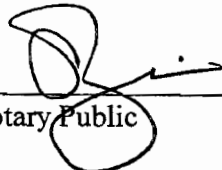
I have never engaged in any misconduct on or off the bench.

WHEREFORE, it is respectfully submitted that the Formal Written Complaint be dismissed.



Hon. Andrew N. Piraino

Sworn to before me the 24 day of June, 2010

  
\_\_\_\_\_  
Notary Public

**Aaron M. Zimmerman**  
N.Y. Notary Public  
Onondaga Co. 4697848  
Expires March 30 2011

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

**HON. ANDREW N. PIRAINO**

a Justice of the Salina Town Court,  
Onondaga County

---

AFFIDAVIT OF  
ATTORNEY ZIMMERMAN

**AARON ZIMMERMAN**, being duly sworn, deposes and says:

**Introduction**

1. I am an attorney at law with offices at 117 South State Street, Syracuse New York. I represent Judge Andrew Piraino. This affidavit is submitted in support of a motion which seeks an order dismissing the Commission's Formal Written Complaint dated May 20, 2010. This motion is made pursuant to 22 NYCRR 7000.6(f)(ii).

**Commission's Jurisdiction and Inherent Conflict**

2. The Commission's jurisdiction is not plenary nor all encompassing. Rather, the Commission's mandate, as limited by our State's Constitution [Art. 6, §22] and Statutes [Judiciary Law §40, *et seq*] is to investigate and impose sanctions for a judge's unethical conduct.

3. The Commission's structural composition is unique under traditional jurisdictional concepts of fairness. By statute the Commission is not only the inquisitor, investigator, and

prosecutor; it also acts as judge, jury and executioner. The Commission's Staff, acting in the name of the Commission, is by design adverse to the interests of the judge. Nonetheless, the Commission members are obligated to maintain neutrality and independence.

4. The Commission itself recognizes the inherent conflict between the Staff and the judge who has been charged with misconduct. Therefore, rule 22 NYCRR 7000.6 (f)(3) mandates the Administrator and any Staff who participated in the investigation or prosecution of the complaint are required to step-aside as the Commission considers this motion to dismiss.

5. The acts of the Commission, as well as the actions of its Staff, must be above reproach. Unfortunately, it is verily believed the Commission and/or its Staff have authorized this Formal Written Complaint based on an improvident desire to expand the Commission's role into the legal realm historically handled by the State's Appellate Courts and the Office of Court Administration.

Judge Piraino has been unfairly sucked into the vortex of the debate over the Commission's jurisdictional boundaries. It is unjust and inequitable to use Judge Piraino as a "test case." [Opinion 10-38 [dated June 10, 2010] from the Advisory Committee on Judicial Ethics c/o Office of Court Administration; Ethics Panels Cross Swords on Questioning of Trial Judge, *NY Law Journal*, Friday, June 18, 2010, at page 1 column 3; Judge Marlow E-Mail to Judicial and Quasi-Judicial Colleagues, dated June 22, 2010 [Attached as **Exhibit 933**], Point of View: Time to Reform Judicial Reform, Judge Bellacosa, *NY Bar Journal*, May 2010; and Point of View: Judicial Reform and the Test of Time, Administrator Tembeckjian, *NY Bar Journal*, June 2010]. Until the

Legislature clarifies the jurisdictional issue, this Commission should refrain from filing Formal Written Charges based on a judge's administrative deficiencies -- unless there are "aggravating factors."

6. The Commission's own publications acknowledge it has limited powers and duties:

**The Commission's Powers, Duties, Operations and History**

The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law . . . When appropriate, it refers complaints to other agencies.

By offering a forum for citizens with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, the Commission seeks to insure compliance with established standards of ethical judicial behavior . . .

[<http://www.scjc.state.ny.us/General%20Information/Gen%20Info%20Pages/mandate&history.htm>, accessed 6/17/10]

7. The Commission has stated the types of complaints that may be investigated include:

. . . improper demeanor, conflicts of interest, violations of defendants' or litigants' rights, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off the bench.

[<http://www.scjc.state.ny.us/General%20Information/Gen%20Info%20Pages/mandate&history.htm>, accessed 6/17/10]

. . . most of the subject matter areas Commission investigations cover -- conflicts of interest, intemperate demeanor, asserting the prestige of judicial office for private benefit, inappropriate political activity . . . [and as to town and village justices] depositing court funds . . . judicial duties take priority [over private practice of law] . . . shocking disregard of fundamental rights [including] failure to advise

defendant's of right to counsel . . . summarily holding a defendant guilty without a plea, trial or other due process.

[<http://www.scjc.state.ny.us/Policy%20Statements/t&v%20statement.senate.2007%2001%2029.pdf>, accessed 6/17/10]

### **The Commission is not an Appellate Court**

8. Once the facts show the matter being investigated involves the propriety of one or more sentences imposed by a judge, the Commission must end its inquiry. Only an appellate court is constitutionally and statutorily empowered to modify, reverse or overturn a sentence once imposed by a judge. To charge a judge with misconduct based on a sentence imposed is completely improper and inappropriate, unless the Judge has acted in bad faith or has failed to heed prior warnings. This Commission may not do indirectly, that which it is not allowed to do directly-- and appellate review of a judge's sentence is outside the subject matter jurisdiction of the Commission.

### **The Commission is not the Office of Court Administration**

9. Additionally, once the facts show the matter being investigated involves the manner in which the court system is administered, the commission must also end its inquiry. Unless the Commission can affirmatively show the judge has demonstrated a persistent lack of action in response to administrative recommendations and warnings, no unethical conduct has occurred [Matter of Gilpatric 13 NY3d 586 (2009)]. Judge Piraino's mistakes were mere administrative failures and this problem is to be resolved by administrative correction from the Office of Court Administration [Matter of Gilpatric].

10. In summary, unless the Commission has a factual basis showing the judge has acted in a) bad faith, or b) has demonstrated an unwillingness or c) inability to handle his/her judicial duties,



the commission's inquiry must end. Even when the Commission finds that there have been numerous administrative errors committed, without more-- the commission is required to end its inquiry.

**Matter of Gilpatric 12 NY3d 586 [2009]**

11. In the recent case of Matter of Gilpatric 13 NY3d 586 [2009] the Court of Appeals overturned the Commission's Summary Determination that Judge Gilpatric engaged in judicial misconduct. The Commission essentially sought a *per se* rule that an extensive delay in issuing decisions constitutes judicial misconduct. The court rejected this position and remanded the case for a hearing. The court clarified Matter of Greenfield 76 NY2d 293 [1990], and agreed an administrative failure may rise to the level of misconduct. The court nonetheless ratified, reaffirmed and reiterated the Greenfield imposed jurisdictional limitations:

it is important to draw a line between the role of the Commission and court administrators in order to avoid confusion and provide adequate notice to members of the judiciary as to when and under what circumstances delays in disposing of pending matters ceases to be a purely administrative concern and becomes a matter warranting punitive sanctions.

12. In the Gilpatric case, the Commission's Staff's Memorandum in Support of Motion for Summary Determination, dated October 6, 2008, admitted that "**Greenfield requires delay plus aggravating circumstances.**" [emphasis added] The Commission's Staff argued the aggravating factors were: a) Judge Gilpatric's prior Letter of Dismissal and Caution; and b) the repeated inquiries from his administrative judge. [See Gilpatric, Record on Appeal, at page 91].

13. The Gilpatric decision did not change the basic premise that before a judge's administrative failures constitute judicial misconduct there must be "aggravating factors." The

Complaint brought against Judge Piraino is completely devoid of any allegations which show administrative failure **plus aggravating circumstances** of the type described by the court in Gilpatric [persistent lack of action in response to administrative recommendations and warnings.]

**Complaint fails to allege the Judge acted in bad faith” or that there are “aggravating factors”**

14. The Formal Written Complaint fails to allege Judge Piraino acted with malicious intent or otherwise acted in bad faith.

15. Further, the Formal Written Complaint fails to allege any “aggravating factors,” such as Judge Piraino showing an unwillingness or inability to handle his judicial duties [as required by Gilpatric and Greenfield].

16. The undisputed facts show Judge Piraino did not act in “bad faith;” nor, that Judge Piraino is guilty of administrative failures **plus** “aggravating factors.” Nonetheless, the Staff recommended, and the Commission authorized, the subject Formal Written Complaint. The only reasonable inference to be drawn under these circumstances is that the Commission and/or its Staff seeks to use Judge Piraino as a “test case” in an attempt to expand its jurisdiction into those areas constitutionally, statutorily and historically handled by the State’s Appellate Courts and Office of Court Administration.

17. This case highlights the Commission’s moral obligation to exercise self-restraint and never attack a judge who has acted in good faith, even if he/she has committed errors or shown administrative failures. More must be shown to justify a complaint of judicial misconduct. Under Gilpatric, the facts must show the judge has shown a **persistent** lack of action in response to

administrative recommendations and warnings.

**Judge Piraino has an unblemished record and no prior knowledge of judicial deficiencies**

18. The record is undisputed that Judge Piraino has handled literally thousands and thousands of cases. From 1994, right up to the Letter of Inquiry from the Commission dated May 14, 2009 [a 15 year period], Judge Piraino has never received any inquiry, concern or complaint regarding his actions as a judge. Until the Letter of Inquiry from the Commission, no individual who appeared before him, nor any State commission or agency [this Commission, the New York State Comptroller's Office, or the Office of Court Administration] has ever expressed any concern about his judicial conduct. Further, no appellate court had ever issued any decision challenging or commenting on the sentences he imposed.

19. From January 1, 2008 until about May 1, 2008, the Town of Salina was "short" one judge. The other seat was unfilled due to on-going litigation over who won the general election held in November, 2007. At the request of the Office of Court Administration, Judge Piraino did double-duty for several months. He not only handled his normal voluminous calender, but he also handled the full calendar of the other Town Judge slot. Judge Piraino did not receive any additional remuneration or otherwise personally benefit for performing this extra work. It is patently obvious, Judge Piraino over-extended himself by performing the job of two judges. Judge Piraino did this extra work strictly as a courtesy to the OCA, the Town of Salina, and the public-at-large. And for his efforts, he is now the subject of the Commission's Complaint. [It was during March, 2008 that Judge Piraino erroneously set the seat belt fines on Defendant Boise and Defendant Scott. These individuals filed a grievance which triggered this matter.]

**Judge demurs -- The Complaint fails to state a cause of action**

20. For purposes of this motion to dismiss, Judge Piraino demurs as to the Complaint's factual allegations. That is, accepting as true all of the allegations made in the Commission's Formal Written Complaint, Judge Piraino has not violated Judiciary Law §44. Since he has not committed judicial misconduct, the Complaint must be dismissed.

21. Put simply, the Formal Written Complaint fails to state a cause of action. The mere fact that one error was made when sentencing an individual who came before him-- or that many sentencing errors were made-- without "aggravating factors" does not constitute a violation of Judiciary Law § 44.

22. In Gilpatric, the court specifically ruled the number of errors committed does not form the basis for charges of unethical conduct. The court said: "**Statistics alone are insufficient to support a finding of misconduct; disciplinary action must be based in a record of demonstrating a judge's persistent lack of action in response to administrative recommendations and warnings.**"

23. Before there is actionable conduct, the Commission must factually show evidence which transforms mere errors into a volitional form of misconduct-- the Commission must show Judge Piraino is unwilling or is unable to discharge his judicial duties. The Commission's Formal Written Complaint does not even attempt to show volitional misconduct on the part of Judge Piraino. There is not even an allegation Judge Piraino demonstrated an unwillingness or inability to handle his judicial duties; or that he has shown a persistent lack of action in response to administrative recommendations or warnings. Thus, the complaint fails to state a cause of action.

**The Commission must encourage an independent judiciary**

24. An independent judiciary is the bedrock of every free society. Mistaken acts taken in good faith by a judge should never form the basis for a disciplinary complaint.

25. It is inevitable that judges, being human, will make mistakes and commit errors. Correction of those errors is the job of the appellate courts and/or the Office of Court Administration. So long as mistakes and errors are made in good faith, the judge must be immune from disciplinary action.

26. To make a judge fear disciplinary action for his/her good faith actions causes the judiciary to lose its independence. Fear of discipline will make the judges nothing more than subservient ciphers of the Commission. In this case the Commission has filed a Formal Written Complaint without any factual basis that the judge acted in bad faith, that he has demonstrated an unwillingness or inability to handle his judicial duties, or that he has shown a persistent lack of action in response to administrative recommendations or warnings.

27. Judge Piraino's case shows what happens when the Commission improvidently interferes with the workings of the court. As the record shows, the Commission's Letter of Inquiry delved into not only his sentencing errors, but also the propriety of Judge Piraino accepting dispositions to traffic related matters by accepting pleas to VTL §1101.

28. The VTL §1101 disposition procedure has been routinely used in Onondaga County for decades. It is a standard disposition in traffic related matters and is done only with the consent of both the People and the defendant. It has proven to be an effective procedure for amicably resolving

traffic related matters. Now, as a direct result of the Commission's inquiry and Judge Piraino's fear of the unbridled power of the Commission -- he immediately changed his Court's procedures. He will no longer accept pleas to VTL §1101.

29. To date, the Commission has yet to issue any communication confirming the VTL §1101 disposition procedure does not violate Judiciary Law §44. Without such assurances Judge Piraino is right to fear the Commission. If a Formal Written Complaint can be instituted for sentencing errors and other administrative mistakes, then there is nothing to prevent the Commission from unfairly attacking him for allowing VTL §1101 dispositions. To avoid problems, he has bent his knee to the will of the Commission.

**Judge Piraino takes his oath of office seriously and has shown a willingness and ability to handle his judicial duties**

30. Judge Piraino takes his oath of office seriously. Upon receipt of the Letter of Inquiry he immediately performed a comprehensive retrospective audit of the cases listed by the Commission. His audit included physically pulling the Court's records for each and every case, and then reviewing the files. If anything, Judge Piraino's immediate response confirms he has both a willingness and the ability to handle his judicial duties.

31. Through Judge Piraino's retrospective audit he discovered the questionable actions taken by the Court's clerks. Judge Piraino self-reported these administrative problems in his Response to the Commission's Letter of Inquiry. Judge Piraino affirmatively testified before the Commission, on June 11, 2009 that he did not have any prior knowledge or awareness that a problem existed with the actions taken by the Court's clerks. As per principles set forth in Matter of Gilpatric and in Matter of Greenfield, Judge Piraino's supervision of his clerks, or the erroneous actions of his clerks does not

constitute judicial misconduct.

Judge Piraino used “due diligence” in supervising the Court’s clerks, but it was obviously not enough. The testimony of his Chief Clerk, Ms. Mazzye [attached to Judge Piarino’s affidavit] details the procedures he employed in supervising the Court’s clerks. Simply because the clerks found a way to defeat the practices and procedures that had been successfully used for many, many years, does not make Judge Piraino unethical nor does it show an inherent failure to supervise.

32. Before Judge Piraino’s supervision of the Court’s clerks could be considered “judicial misconduct” under Matter of Gilpatric and Matter of Greenfield principles there must be a showing Judge Piraino has demonstrated an unwillingness or inability to handle his judicial duties; or that he has shown a persistent lack of action in response to administrative recommendations or warnings. The Formal Written Charges are devoid of these allegations. Therefore, the Complaint fails to state a cause of action.

**Matter of Bauer 3 NY3d 158 [2004]**

33. Legal research of the cases which reached the Court of Appeals shows only one case where erroneous sentences was ever mentioned. In Matter of Bauer 3 NY3d 158 [2004], Judge Read in a dissent stated: . . . the Commission’s charges [regarding excessive fines] relating to matters other than the right to counsel and bail [are] of relatively little moment. (at page 173)

34. The incident which triggered the Commission’s interest in Judge Piraino, shows there was a \$10 error. The maximum statutory fine was \$50, yet the record shows a fine of \$60 was imposed. The error was indeed of “relatively little moment.” Two individuals voluntarily pled guilty

to the traffic violation of failure to wear a seat belt. The court accepted the guilty pleas on or about March 10, 2008. These persons were in the same car; one was the driver and the other the front seat passenger. After pleading guilty, and the erroneous fine was imposed, each defendant promptly paid the fine. Only after the matter had been resolved was a complaint filed with the Commission.

An error was apparently made by Judge Piraino. It is regrettable; but neither this error-- nor the numerous errors like it -- constitute judicial misconduct. The errors did not involve any fundamental rights, such as bail or due process; nor did the erroneous fine adversely affect anyone's driving privileges.

**The Commission's Staff has failed to seek justice**

35. Upon information and belief, the Commission's own Staff has lost its way in their quest to find unethical judges. The Staff did not seek justice. In March, 2008 the Defendants Boise and Scott filed their complaint with the Commission. It is unknown if Staff advised the aggrieved individuals to contact the court about the mistaken fine, or if they were told of their right to appeal, or their right to apply for a writ of *coram vobis* [CPL §440.20], or of their right to seek counsel to protect their interests. What is known is that the Staff did not in a timely manner contact Judge Piraino to advise he had committed a sentencing error. Further, the Staff did not attempt to give advice, recommendations or warnings to Judge Piraino. The Commission did not make first contact with Judge Piraino -- until more than a year later, on May 14, 2009.

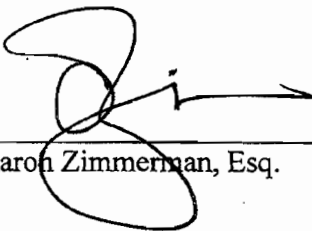
36. It is submitted the Commission and its Staff should have immediately notified Judge Piraino of the error. And, to the extent necessary, the Staff should have provided Judge Piraino with appropriate advice, recommendations and/or warnings. The Commission in its zeal to attack a judge



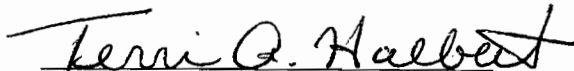
overlooked and then lost an opportunity to perform an act of justice -- at the very least, the individual defendants were prejudiced. More importantly, the public-at-large was not well served and an opportunity to perform justice was lost.

WHEREFORE, on behalf of Judge Piraino, we hereby move for an order dismissing the Formal Written Complaint, together with such other and further relief as to the Commission is just.

Dated: June 24, 2010

  
\_\_\_\_\_  
Aaron Zimmerman, Esq.

Sworn to before the 24 day of June, 2010

  
\_\_\_\_\_  
Notary Public

TERRI A. HALBERT  
Notary Public State of New York  
Qualified in Onon. Co. No. 4760092  
My Commission Exp. Mar. 30, 2012



**HON. ANDREW N. PIRAINO**  
SALINA TOWN JUSTICE  
201 SCHOOL ROAD  
LIVERPOOL, NEW YORK 13088

---

Thursday, May 28, 2009

Hon. William Fitzpatrick  
Onondaga County District Attorney  
Criminal Court Building  
505 South State Street  
Syracuse, NY 13202

Hon. Thomas Miller, President  
Onondaga County Magistrate's Association  
c/o Town of Manlius Village Court  
One Elmbrook Drive West  
Manlius, NY 13104

Neil Gingold, President  
Onondaga County Bar Association  
1000 State Tower Building  
109 South Warren Street  
Syracuse, NY 13202

**Re: Local Rule--Effective Immediately  
Court Will No Longer VTL §1101 Dispositions**

Dear District Attorney Fitzpatrick, Judge Miller and Mr. Gingold:

Effective immediately, my Part of the Justice Court of the Town of Salina will no longer accept any disposition based upon a plea to VTL§ 1101.

Please be advised that this change of policy is premised on communication from the Office of Court Administration/Commission on Judicial Conduct that VTL§ 1101 does not constitute a "chargeable offense" under New York State Law.

I realize that, for many years, it has been the standard of practice for the District Attorney's Office and Defense Bar to amicably dispose of various charges through the use of a VTL § 1101 plea.

Without pre-judging any cases and without giving any advice or recommendations

to either the People or the Defense Bar, it is noted that other communities and counties throughout Upstate New York resolve charges originally based upon Vehicle & Traffic Law infractions by dispositions to VTL§ 1200(d) as well as various subsections of VTL§ 375.

Please keep the court's Local Rule in mind as new matters come before you.

Very truly yours,



Andrew N. Piraino, Esq.  
Salina Town Justice

ANP/ap

*JP*  
cc: Honorable James C. Tormey  
Fifth Judicial District  
Office of Court Administration  
401 Montgomery Street  
Syracuse, NY 13202

*AD*  
Alison Fineberg, Senior Assistant District Attorney  
Justice Courts  
Criminal Court Building  
505 South State Street  
Syracuse, NY 13202

**HON. ANDREW N. PIRAINO**  
SALINA TOWN JUSTICE  
201 SCHOOL ROAD  
LIVERPOOL, NEW YORK 13088

---

Thursday, May 28, 2009

Honorable James C. Tormey III  
Fifth Judicial District  
Office of Court Administration  
401 Montgomery Street  
Syracuse, NY 13202

**Re: Revision of Local Justice Court Policy  
Disposition by VTL §1101 No Longer Acceptable**

Dear Judge Tormey:

As Fifth District Administrative Judge, I want to inform you of a Local Rule which has recently been made effective. By this Local Rule the Salina Town Court-Judge Piraino's Part will no longer entertain motions to amend any charge to VTL §1101; nor will the court accept guilty pleas to VTL §1101.

The Office of Court Administration/Commission on Judicial Conduct has expressed concerns that VTL §1101 is not a "chargeable" offense. Therefore they believe it is improper to accept a plea to this section or to assess fines/surcharges based on VTL §1101. While I disagree with this view, until a court of competent jurisdiction rules VTL §1101 is a chargeable infraction the Local Rule will be enforced.

I have been a practicing attorney for more than 25 years and have been one of two presiding justices in the Town Court of Salina since 1994. Antidotally, I am aware that generations of defense counsel and District Attorneys have resolved various offenses related to use and operation of motor vehicles by our local courts [city, town and village] approving motions to amend to VTL §1101, then accepting guilty pleas and assessing fines.

All fines have been transmitted to the New York State Comptroller's Office and reported to the Department of Motor Vehicles. This practice has been acceptable to both of these State agencies during the years I have been on the Bench.

The propriety of VTL §1101 has previously been considered by NYS Attorney General, the Department of Motor Vehicles and the Office of the State Comptroller. In the Comptroller's Opinion No. 79-196 [July 29, 1973], it was determined that "a violation of [VTL] section 1101 should be treated as valid." At 1975 Opin Attorney General 102, it was

determined an indigent defendant charged with of VTL §1101 was not entitled to a public defender because VTL §1101 was merely a "traffic infraction" not a crime.

**Enclosed** is a copy of the letter I am sending to the District Attorney's Office, Onondaga County Magistrate's Association and Onondaga County Bar Association confirming the substance of this policy change.

If you have any advice, counsel or recommendations relative to this matter, do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Andrew N. Piraino".

Andrew N. Piraino  
Salina Town Justice

ANP/ap  
enc.

**Exhibit #932**

Case#: 09050238

Example #2



DEFENDANT: Jackie L. Doe

DR#: N45P

Arrest Date: 04/01/2008

Fingerprints ok

Bail: 0.00

Surety:

Date Bail Release:

Charge	Plea/Seal	Fine	SC	DMV Fee	CD/Prob/Jail	DNA Fee
PL 160.15 03	→ 145.00 → Dism Seal 160.50	—	—	—	—	—
PL 140.15	→ 155.25	0-1000	165	—	1yr CD	50
PL 240.20	DISM Seal 160.50					
VTL1180 0D	↓					
VTL0511 01A						
VTL0306 B						

\$1000 Supplemental Sex Off Victim Fee  \$50 Sex Off Registration Fee

Total Fine/SC/Fees \$ \_\_\_\_\_

Need DNA Swab Mandatory / Plea Bargain (YO Not Eligible)  Vera House

Family offense Y / N If yes, effective 1/14/10 PL 240.26 seal 160.55  
(Victim is of the same family or household)

Fam /  Non Fam - Full / Partial OP for Adult / Minor Victim: Donald Zoe

Restitution Amount: \$ 98.50  Completed Victim: Donald Zoe

Comm Service Length: \_\_\_\_\_  Completed Place: \_\_\_\_\_

Evaluation  Treatment: \_\_\_\_\_

DDP  VIP  20D Stay Y N \_\_\_\_\_  License Susp / Rev: \_\_\_\_\_

Interlock Sentence Period: \_\_\_\_\_ CD / Probation

DA Needs Proof:  No Liability Ins. Letter  Alive At 25  DDC  Valid License

\* \_\_\_\_\_

Disposition by ADA Mike Roe Negotiated / Pending / Expires: \_\_\_\_\_

DATE: 6/21/10 Clerk: JT



**Exhibit #933**

---

From: MaryRita Dobiel-Broadcast  
To: Dobiel, Maryrita  
Date: Tuesday - June 22, 2010 2:29 PM  
Subject: Opinion 10-38

Dear Judicial and Quasi-Judicial Colleagues,

On Friday afternoon, June 18, the New York Law Journal reported the disagreement between the Commission on Judicial Conduct and our Advisory Committee on Judicial Ethics over the contents of our Opinion 10-38. That same day, Mr. Tembeckjian, Administrator of the Commission, e-mailed me and asked me to circulate the Commission on Judicial Conduct's response to Opinion 10-38 to the same "broadcast groups" to which we sent Opinion 10-38, because some of you do not receive the New York Law Journal. Based on Mr. Tembeckjian's request, and in the interest of fairness and openness, the Advisory Committee decided to circulate his written response today.

As Chair of the Committee, I would only add that the Committee fully and completely adheres to Opinion 10-38 even after reading the Commission's attached statement. Our opinion remains unchanged even assuming arguendo all of the factual assertions in the Commission's attached letter.

Finally, we wish to address Mr. Tembeckjian's statement that during a telephone conference between the Committee Vice-Chairs (Judges Betty Weinberg Ellerin and Jerome C. Gorski ), our Chief Counsel Maryrita Dobiel, Mr. Tembeckjian and myself, held at Mr. Tembeckjian's request after Opinion 10-38 was issued, "we all agreed that, generally, but with appropriate exceptions, the Commission does exercise restraint as to communicating with judges about complaints concerning pending trials." That quoted statement in his response letter misunderstands our position. We could neither agree nor disagree with that factual assertion about a practice of the Commission, because we have no way of knowing how and when the Commission decides to intervene in various aspects of the judicial process since all Commission investigations are confidential.

We've also attached the NY Law Journal June 18 article by Dan Wise and Opinion 10-38 for your convenience.

Best regards to each of you.

Sincerely yours,

George D. Marlow  
Chair, Advisory Committee on Judicial Ethics;  
Associate Justice, Appellate Division,  
First Department (ret.)

## Ethics Panels Cross Swords On Questioning Of Trial Judge

BY DANIEL WISE

A JUDICIAL ETHICS advisory panel sharply criticized this week the New York State Commission on Judicial Conduct for asking a judge to respond to a complaint made by a party in an "ongoing" custody trial before the judge.

The commencement of an investigation mid-trial poses a danger that a litigant will "manipulate" the conduct commission to "disrupt and essentially undermine the judicial process, threaten the judge's independence and defeat the purpose of the commission," the Committee on Judicial Ethics wrote in response to a request for guidance from an unidentified judge. The advisory committee described such a result as "deplorable."

Yesterday, the administrator of the judicial conduct commission fired back, calling the criticism "gratuitous" and "unwarranted, particularly where, as here, it was offered without the benefit of the facts and circumstances that prompted the commission's inquiry of the judge in the first place."

Administrator Robert H. Tembeckjian's five-page letter was backed by all 10 members of the commission.

Former Appellate Division, First Department, Justice George D. Marlow, the head of the 26-member judicial ethics advisory committee said in an interview that Ethics Opinion 10-38 was the first in the committee's 23-year history "to disagree with the commission." Mr. Marlow said he could not comment on whether the commission's opinion was unanimous, but said its rules require that at least 14 members endorse an opinion.

Mr. Marlow, now counsel at Gellert & Klein in Poughkeepsie, declined to discuss specifics of the opinion.

"We disagree with [Mr. Tembeckjian's] interpretation. That's what the opinion says, and it speaks for itself. Beyond that, it would be inappropriate to comment," he said.

The question posed by the judge - whether in light of the commission's inquiry it was required that he recuse himself from the case - was not controversial. The ethics

committee cited a line of its opinions going back to 1994 for the proposition that a judge need not step aside when a complaint is filed in an ongoing trial as long as he or she can remain impartial.

Nonetheless, the advisory panel wrote it "feels compelled to comment on the timing and nature of the commission's written communications with the judge."

The possibility that a litigant may be filing a complaint with the conduct commission to try to influence future rulings or force the judge off a case raises an "important concern" that cannot be "ignored," the judicial ethics committee wrote.

The opinion also took issue with the questions on matters such as the circumstances under which the judge denied adjournments, whether the judge dismissed and then reinstated the custody petition, and whether the judge refused to accommodate the attorneys' vacation and evening schedules.

Such questions, the ethics panel said, raises a "serious concern" that the commission was intruding into an area that should be subject of appellate review, not a disciplinary body.

#### Judge's Inquiry

Opinion 10-38 was prompted by an inquiry from an unidentified judge who asked whether it was necessary to step down from a "hotly contested" bench trial of a custody issue because the conduct commission had forwarded a copy of an eight-page complaint filed by one of the parties and also asked the judge to respond to a series of questions. The advisory committee's opinions never disclose the name of the inquiring judge.

Addressing the timing of the commission's inquiry, the advisory panel wrote that, as a general matter, the commission should not question a judge about a complaint concerning a pending matter until the matter is concluded. In this case, the panel added, the commission should "especially" stay its hand because the inquiring judge was conducting a bench trial.

The ethics panel concluded that it "strongly endorses" a rule that would require the commission to hold the questioning of a judge "absent highly exceptional or emergent instances" where intervention is necessary to prevent "irreparable harm."

Mr. Tembeckjian said in an interview that the commission adheres to such a rule. In his letter, he wrote, "as a general practice, the Commission refrains from communicating with a judge regarding a pending case, precisely to protect the judiciary's independence and to avoid being used by a complainant to force a

recusal." There are exceptions, the letter added, and "obviously" the commission cannot defer a complaint indefinitely.

Mr. Tembeckjian wrote that "regrettably" the ethics opinion described the timing of its inquiry as being "in the midst of trial." In fact, he wrote, seven months passed after the last trial session was held before the commission contacted the judge.

#### More Facts Disclosed

Mr. Tembeckjian also disclosed additional facts to demonstrate that the commission had acted with restraint.

The commission first received a complaint about the judge's conduct in March 2009.

In June 2009, the judge dismissed the case when one of the parties and his lawyer were 13 minutes late in returning from a luncheon recess. The judge subsequently restored the case, but no hearings have been conducted since June 2009.

Meanwhile, according to Mr. Tembeckjian, the commission continued to interview witnesses and review transcripts. Only after narrowing the scope of its inquiry, based upon information turned up during the investigation, he wrote, did it forward the complaint and accompanying questions to the judge on Jan. 29, 2010.

"Under those circumstances," Mr. Tembeckjian wrote, "the commission properly chose to inquire of the judge, rather than wait indefinitely."

He acknowledged in the interview that the commission's procedures concerning complaints about pending matters are not in writing and are decided upon "a case by case basis."

Mr. Tembeckjian also defended the questions posed to the judge as necessary to determine whether the conduct code had been violated, not whether the judge's rulings were correct.

Mr. Tembeckjian wrote that it was likely that the ethics committee was not aware of all the facts that drove the commission's decision to question the judge. He noted that the committee had the power to ask the judge for information in addition to what had been submitted. He noted that based upon a teleconference Wednesday with Mr. Marlow, and the committee's two vice chairs, former First Department Justice Betty Weinberg Ellerin and Fourth Department Justice Jerome C. Gorski, he "gathered" there had been no follow-up with the inquiring judge.

Mr. Marlow said the judicial ethics panel is empowered to ask for additional

information from an inquiring judge, but he is restrained by law from commenting upon whether it did so.

Mr. Tembeckjian also said that the ethics panel had not contacted the commission prior to issuing its opinion.

Mr. Marlow said the ethics panel did not contact the conduct commission because "it would likely be seen as hypocritical for the committee to contact the commission in the middle of one of their investigations when we have criticized them for inappropriately intervening in an ongoing jury trial."

ADVISORY COMMITTEE ON JUDICIAL ETHICS  
c/o OFFICE OF COURT ADMINISTRATION  
4 EMPIRE STATE PLAZA, SUITE 2001  
ALBANY, NEW YORK 12223-1450

GEORGE D. MARLOW  
CHAIR

BETTY WEINBERG ELLERIN  
JEROME C. GORSKI  
VICE CHAIRS

COMMITTEE  
RICHARD T. AULISI  
ARNOLD F. CIACCIO  
VITO DESTEFANO  
DAVID ELLIOT  
DEBRA L. GIVENS  
YVONNE GONZALEZ  
MICHAEL R. JUVILER  
BARBARA R. KAPNICK  
BENTLEY KASSAL  
E. MICHAEL KAVANAGH  
JAMES J. LACK  
YVONNE LEWIS  
DANIEL J. LOUGHLIN  
RICHARD B. LOWE III  
JUDITH MCMAHON  
THOMAS E. MERCURE  
DENISE F. MOLLA  
ROBERT C. MULVEY  
E. JEANNETTE OGDEN  
JOHN M. OWENS  
STANLEY PARNASS  
DAVID J. ROMAN  
THOMAS J. SHEERAN

CHIEF COUNSEL  
MARYRITA DOBIEL

SPECIAL COUNSEL  
EDWARD P. BORRELLI  
RAYMOND S. HACK

STAFF COUNSEL  
JEREMY R. FEINBERG  
ADINA C. GILBERT  
JULIANA MAUGERI  
JONATHAN ZIMET

518-474-7469  
866-795-8343 Toll Free

SAMUEL J. SILVERMAN  
CHAIR  
1987 - 1996

THOMAS P. FLAHERTY  
CO-CHAIR  
1996 - 2007

HONORARY MEMBERS  
LOUIS C. BENZA  
LAWRENCE J. BRACKEN  
HAROLD J. HUGHES

ETHICS FACULTY  
ROBERT G. BOGLE  
SHIRLEY TROUTMAN

JUDICIAL CAMPAIGN  
ETHICS CENTER

STAFF COUNSEL  
LAURA L. SMITH  
ERIN DEVANEY

1-888-600-5332

Opinion 10-38

June 10, 2010

Digest:

A judge who receives correspondence from the New York State Commission on Judicial Conduct during an on-going trial concerning a complaint filed by a party to the trial, including the complainant/party's letter to the Commission, need not disqualify him/herself from the on-going trial unless the judge believes he/she can no longer be impartial.

Rules:

22 NYCRR 100.1; 100.2; 100.2(A); 100.3(B)(6); 100.3(E); Opinion 98-69 (Vol. XVII); 97-102 (Vol. XVI); 96-114 (Vol. XV); 94-94 (Vol. XII); *People v. Moreno*, 70 NY2d 403 (1987).

Opinion:

A judge who is "in the midst of trial" involving "a hotly contested custody issue" received a letter from the New York State Commission on Judicial Conduct (Commission) notifying the judge that he/she is the subject of an investigation because a party to the trial filed a complaint against the judge. The Commission's letter includes the following questions, which we quote with the inquiring judge's permission:

1. Did you preside over the case of [            ]? If so, please answer the following additional questions.
2. Please provide a brief chronology of substantial events in the case, including when the matter first came before you and what dispositions you rendered.

3. At some point in the case, did you dismiss [ ]'s petition for visitation and/or custody of [ the party's children]? If so, please state the reason for your action, including whether the tardiness of [ ] and [his/her] attorney, . . . , was your basis for such dismissal.
4. If [ ]'s petition was dismissed, please indicate whether the petition was restored to the calendar. If so, please describe who and what prompted the restoration.
5. While presiding over [ ], did you repeatedly refuse to accommodate the attorneys' schedules? For example, did you refuse to adjourn the case to accommodate an attorney's vacation schedule and/or adjourn a hearing at 7 P.M. so that the attorney could attend [his/her] child's extracurricular activity?
6. Please indicate whether you consider your conduct to be consistent with Sections 100.3(B)(3) and (6) of the Rules Governing Judicial Conduct, which require a judge to be patient, dignified and courteous to litigants and lawyers with whom the judge deals in an official capacity, and to accord every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

Please include any relevant information or material that you may wish the Commission to consider in connection with this matter."

In addition, the Commission enclosed a copy of the complainant's letter.

The judge asks whether the judge must disqualify him/herself, having seen the complainant's letter to the Commission that describes the writer's numerous complaints about the judge.

A judge must avoid impropriety and the appearance of impropriety in all the judge's activities (*see* 22 NYCRR 100.2) and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (*see* 22 NYCRR 100.2[A]). Therefore, a judge must disqualify



him/herself in any proceeding in which the judge's impartiality might reasonably be questioned (*see* 22 NYCRR 100.3[E]).

The Committee previously has advised that a judge need not disqualify him/herself solely because the District Attorney, or (as in the instant inquiry) a party to a proceeding pending in the judge's court, files a complaint against the judge with the Commission, as long as the judge believes that he/she can be impartial, and the Commission has not formally charged the judge with misconduct (*see* Opinions 98-69 [Vol. XV]; 97-102 [Vol. XVI]; 94-94 [Vol. XII]). Similarly, the judge in the present inquiry need not disqualify him/herself if the judge believes that he/she can be impartial and the Commission has not formally charged him/her with misconduct (*see* *People v Moreno*, 70 NY2d 403 [1987]).

While the foregoing is sufficient to answer the inquiring judge's question, the Committee feels compelled to comment on the timing and nature of the Commission's written communication to the judge. The Committee cannot ignore an important concern, namely, that a complainant/litigant may be acting in retaliation for adverse rulings a judge has made, perhaps to influence the judge's future rulings or to secure the judge's removal from the case. Should any complainant so motivated accomplish either of these goals, he/she would disrupt and essentially undermine the judicial process, threaten the judge's independence, and defeat the purpose of the Commission.

The provisions of law that created the Commission and this Committee dictate that both entities work to prevent any such deplorable result. While the Committee previously has advised that a judge need not disqualify him/herself solely because a party who is dissatisfied with the progress of his/her judicial proceeding files a complaint with the Commission (*see* Opinion 96-114 [Vol. XV]), the Commission also must ensure that a complainant does not use the Commission's procedures to retaliate against a judge or otherwise manipulate the judicial process. Therefore, with respect to complaints about how a judge is handling an ongoing matter, it is the Committee's view that the Commission should ordinarily wait until the matter is concluded before confronting the judge with or about a complaint, or otherwise involving the judge in a Commission investigation -- especially where, as here, the ongoing matter is a non-jury trial. The Committee strongly endorses such an approach, regardless of the merits of any particular complaint, while at the same time acknowledging that in some highly exceptional or emergent instances, intervention may be necessary to prevent irreparable harm. Otherwise, litigants could easily disrupt ongoing judicial proceedings and threaten a

judge's independence.

Moreover, the Rules Governing Judicial Conduct (Rules) explicitly provide that an independent and honorable judiciary is indispensable to justice in our society (see 22 NYCRR 100.1). In furtherance of this principle, the Rules prohibit a judge from initiating, permitting, or considering *ex parte* communications, or other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding (see 22 NYCRR 100.3[B][6] [emphasis added]). Yet, according to the inquiring judge, "in the midst of trial" involving "a hotly contested custody issue," the Commission sent correspondence to the judge, including a copy of an 8 page letter of complaint that one of the parents involved in the trial filed with the Commission, and furthermore asked the judge to respond to the questions quoted above. The Committee is concerned that doing so has enhanced the risk that the complainant's and his/her adversary's due process rights will be compromised when the judge responds to the Commission, *ex parte*, about decisions he/she made during the ongoing, non-jury custody trial.

At the very least, the fact that the Commission communicated with the judge during such a trial leaves the judge in the unenviable position of choosing one of the following alternatives: (1) assuming he/she can remain impartial, going forward with the trial; (2) disqualifying him/herself from the trial; or (3) declaring a mistrial. In the latter two instances, all the parties to this proceeding would be inconvenienced by the resulting delay, and they would incur significant added expenses as the consequence of assigning a new judge and conducting a new trial.

These alternatives could have been avoided if the Commission had simply waited until after the judge completed the trial and rendered a decision before it involved the judge in the investigation. Moreover, all of the concerns mentioned in the Commission's letter, especially those articulated in question 6, are matters of record, fully reviewable after the trial is concluded and the judge renders a decision.

Finally, the Committee also cannot ignore its equally serious concern about the contents of questions 3, 4 and 5, which appear to involve substantive or procedural legal matters that, except in the most extraordinary of circumstances, should be addressed by an appellate tribunal as opposed to a disciplinary body.

1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

1885

1886

1887

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

**ANDREW NORMAN PIRAINO,**

a Justice of the Salina Town Court,  
Onondaga County

---

**AFFIRMATION IN  
OPPOSITION TO  
RESPONDENT'S MOTION  
TO DISMISS**

DAVID M. DUGUAY, an attorney duly admitted to practice in the courts  
of the State of New York, affirms under penalties of perjury:

1. I am a Senior Attorney for the New York State Commission on Judicial  
Conduct ("Commission"), and I am fully familiar with all of the facts and circumstances  
set forth herein.

2. I make this affirmation in opposition to the motion of the Honorable  
Andrew N. Piraino, a Justice of the Salina Town Court, Onondaga County ("respondent")  
to dismiss the Formal Written Complaint ("Complaint") in the above-captioned matter.

**Procedural History**

3. On or about June 18, 2008, the Commission authorized investigation  
of a complaint alleging that respondent imposed fines in traffic cases that failed to  
comply with the requirements of New York State law.

4. On or about June 11, 2009, respondent provided testimony concerning  
the Commission's investigation.

5. Respondent was served with a Formal Written Complaint dated May 20, 2010, containing four charges. Charges I and II of the Complaint allege that over a 29-month period, respondent directly and through his failure to properly supervise his court clerks, imposed fines and surcharges in 791 traffic cases that exceeded the maximum amounts set by New York State law by a total of \$13,451. Charges III and IV of the Complaint further allege that in an additional 150 cases, respondent directly and through his failure to properly supervise his court clerks, imposed fines and surcharges that were below the minimum amounts required by New York State law by a total of \$6,404. A copy of the Complaint is annexed as Exhibit 1.

6. Respondent served a verified Answer (“Answer”) dated June 24, 2010, in which he denied knowledge or information sufficient to form a belief as to the truth of the majority of factual allegations contained in the Complaint. Respondent also raised the following affirmative defenses: (i) the Complaint fails to state a cause of action; (ii) the Commission lacks subject matter jurisdiction and any administrative failures are the sole responsibility of the Office of Court Administration; (iii) the Commission lacks subject matter jurisdiction and any illegal sentences imposed are the sole responsibility of the appellate courts; (iv) the Commission failed to allege any facts which constitute a violation of Judiciary Law § 44; and (v) case law establishes that respondent’s alleged conduct is not actionable by the Commission.

**Motion To Dismiss**

7. Respondent now moves to dismiss the Complaint asserting that the

Commission has no jurisdiction in this matter and that the Complaint fails to state a cause of action.

8. As set forth in the accompanying Memorandum, the Commission has jurisdiction over this matter, and the motion to dismiss should be denied. Constitutional and statutory provisions, prevailing case law and recent Commission decisions all make clear that the Commission has jurisdiction to make a finding of misconduct and impose sanctions upon respondent for the conduct alleged in the Formal Written Complaint. Respondent's repeated failure to comply with New York State law violates the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (22 NYCRR § 100 *et seq.*).

9. As set forth in the accompanying Memorandum, this Commission has repeatedly publicly disciplined judges for serious adjudicative and administrative failures, including conduct similar to that alleged in the Formal Written Complaint. Respondent has failed to respect and comply with the law, to be faithful to the law and to maintain professional competence in it, to maintain professional competence in judicial administration, and to exercise supervisory vigilance over his court staff. *See* Sections 100.2(A), 100.3(B)(1), 100.3(C)(1) and 100.3(C)(2) of the Rules.

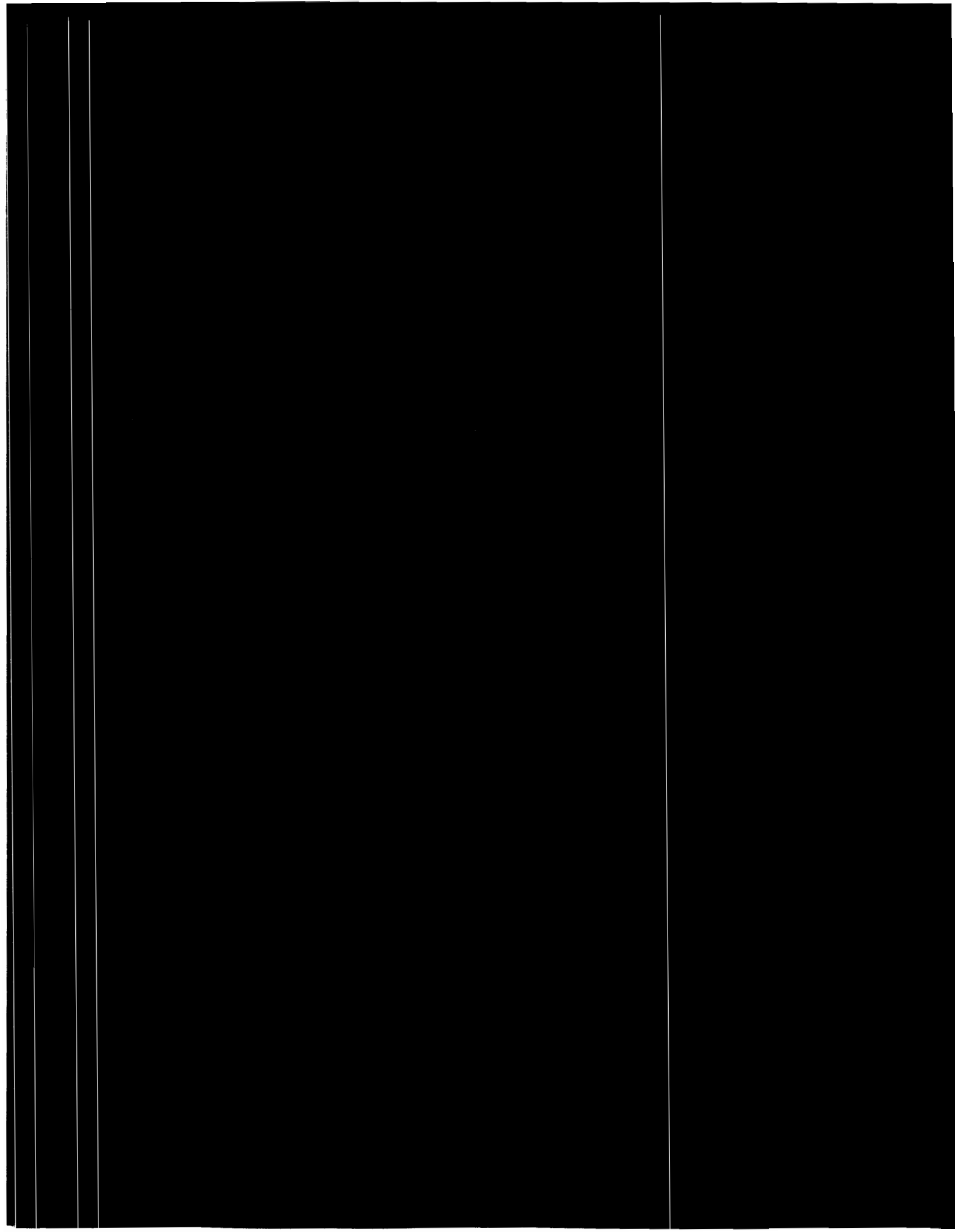
10. As a result, respondent's motion to dismiss should be denied. The Commission should designate a referee to hear and report proposed findings of fact and conclusions of law in this matter.

WHEREFORE it is respectfully submitted that the Commission should deny respondent's motion to dismiss.

Dated: August 19, 2010  
Rochester, New York



DAVID M. DUGUAY  
Senior Attorney  
State Commission on Judicial Conduct  
400 Andrews Street, Suite 700  
Rochester, New York 14604  
(585) 784-4141





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

**HON. ANDREW N. PIRAINO**

a Justice of the Salina Town Court,  
Onondaga County

---

**REPLY AFFIRMATION**  
**IN SUPPORT OF**  
**MOTION TO DISMISS**

AARON ZIMMERMAN, ESQ., an attorney at law, says under penalties of perjury as follows:

1. Please accept this Reply affirmation in further support of Judge Piraino's motion to dismiss.
2. Initially, and significantly, it is noted that the Staff does not in any fashion challenge the factual evidence submitted by Judge Piraino. Since there are no factual challenges, now is the proper time for the Commission to give substantive consideration to Piraino's motion to dismiss
3. Judge Piraino has sworn-- and the Staff does not dispute -- any errors of fact or law were due simply to "administrative mistake, unintentional oversight, simple negligence or other mental lapse." Further, there has been no challenge to the sworn deposition of Ms. Mazzye, who was the Court's Chief Clerk during all time

periods under review. Judge Piraino has entered into the record a full and complete copy of every court document showing the actions taken by him and the Court's clerks on the cases under review. All documentary evidence is now before the Commission.

4. While Judge Piraino freely acknowledges he made mistakes, including on multiple occasions making sentencing errors; and that the Court's clerks also made mistakes-- the record before the Commission does not show even one "aggravating factor." And the Commission's Staff has not submitted any evidence which supports a finding that any aggravating factors exist in Judge Piraino's case.

5. It needs to be repeated that the Commission itself states:

Absent any underlying misconduct, such as demonstrated prejudice, conflict of interest, or flagrant disregard of fundamental rights, the Commission does not investigate complaints concerning disputed judicial rulings or decisions. [2010 Annual Report, at page 2, <http://www.scjc.state.ny.us/Publications/nyscjc.2010annualreport.pdf>]

6. The record confirms, that until the Commission's Staff contacted Judge Piraino, he was not even aware that he had been responsible for any mistakes. And until Judge Piraino performed a retrospective audit, was he unaware that the Court's

clerks had made mistakes.

7. The Commission has not alleged Judge Piraino's mistakes were the result of:

... improper demeanor, conflicts of interest, violations of defendants' or litigants' rights, intoxication, bias, prejudice, favoritism, gross neglect, corruption, or certain prohibited political activity . . .  
[<http://www.scjc.state.ny.us/General%20Information/Gen%20Info%20Pages/mandate&history.htm>, accessed 6/17/10]

... conflicts of interest, intemperate demeanor, asserting the prestige of judicial office for private benefit, inappropriate political activity . . . [and as to town and village justices] depositing court funds . . . judicial duties take priority [over private practice of law] . . . shocking disregard of fundamental rights [including] failure to advise defendant's of right to counsel . . . summarily holding a defendant guilty without a plea, trial or other due process.  
[<http://www.scjc.state.ny.us/Policy%20Statements/t&v%20statement.senate.2007%2001%2029.pdf>, accessed 6/17/10]

8. While Judge Piraino certainly made mistakes--not every mistake constitutes "misconduct." It is this legal premise which forms the basis for the challenge to the Commission's "jurisdiction."

In the case of an alleged judicial misconduct, the concept of "Jurisdiction" requires a multi-factorial analysis. The Commission has acknowledged it is not empowered to engage in appellate review of a judge's acts. Nor, is the Commission empowered to oversee the administration of the courts. This Commission is only

concerned with “misconduct.” Thus, if a judge’s actions do not constitute misconduct, the Commission does not have jurisdiction over those acts.

9. Where then is the line to be drawn between innocent benign mistakes and acts of intentional misconduct? The Court of Appeals has already stated “misconduct” can not be inferred, implied or assumed simply due to “serious administrative failings.” The Court of Appeals has said misconduct requires an objective showing of “persistent or deliberate neglect of his duties” or that the judge “subverted the system by falsifying records, concealing or persistently refusing to file necessary forms or reports;” or, that “despite repeated administrative efforts” the judge demonstrates an “unwillingness or inability” to discharge his official duties. (Matter of Greenfield 76 NY2d293 [1990]; Matter of Gilpatrick 13 NY3d 586 [2009]).

10. The Staff’s submissions suggest that the quantity of mistakes, in and of itself, is all they need to show to justify these misconduct charges. They are wrong. The Court of Appeals has expressly said so. It bears repeating the language used by the court in Gilpatrick:

Statistics alone are insufficient to support a finding of misconduct; disciplinary action must be based on a record demonstrating a judge’s persistent lack of action in

response to administrative recommendations or warnings.

11. Since Judge Piraino was unaware he had made any mistakes, the charges must be dismissed-- because there is a complete failure of proof of “persistent lack of action in response to administrative recommendations or warnings.”

12. No challenge is being made to the Commission’s “jurisdiction” to investigate any sitting judge within the State of New York. However, to the extent mere innocent mistakes were committed the Commission is without jurisdiction to proceed.

13. It is submitted the “mind set” of the Staff as reflected in their memorandum of law is morally offensive. That is, the Staff argues the Commission is in existence merely to prosecute and punish judges. The Staff scoffs at Judge Piraino’s position that the Commission should help educate judges.

14. This Commission holds a unique and special position in our society-- unlike any other governmental prosecutorial agency. This Commission has the authority to investigate, prosecute and punish -- subject only to ultimate oversight by the Court of Appeals. It is indeed a vast power.

15. While the Staff may choose to treat themselves as mere agents of the Grim Reaper, this Commission has historically understood its ethical burdens include more than merely securing “convictions.” The Commission has the broader burden of seeking and performing justice.

16. By statutory design the Commission holds powers even more encompassing and far reaching than that granted to the State’s district attorneys. Analogous to the district attorneys’s code of conduct and ethics, the Commission must not let its zeal for a “conviction” overcome the true goal-- which is to seek justice.

17. Attention is called to the following prosecutorial ethical considerations:

American Bar Association Model Rules of Professional Conduct

3.8 - Special Responsibilities of Prosecutor, comment (1):

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate . . .

American Bar Association Standards for Criminal Justice

3-1.2(c): The Function of the Prosecutor.

The duty of the prosecutor is to seek justice, not merely to convict.

National District Attorney’s Association Prosecution Standards

1.1: Primary Responsibility.

The primary responsibility of prosecution is to see that justice is

accomplished.

Cite to all standards [www.ethicsforprosecutors.com/quotes.html](http://www.ethicsforprosecutors.com/quotes.html).

18. The Commission's Staff has completely failed to respond to one of the primary arguments contained in Judge Piraino's motion to dismiss. The Commission's own representations to the Court of Appeals admits that before a judge is chargeable with misconduct, the Commission must show unacceptable judicial actions "**plus aggravating circumstances.**" [Commission's Staff Memorandum in Support of Summary Judgment dated 10/6/08, from Matter of Greenfield 76 NY2d 293 (1990), Record on Appeal at page 91].

The Staff's failure to identify any aggravating factors makes the pending charges fundamentally flawed. Without aggravating circumstances, the motion to dismiss must be granted.

19. While there are times where even one malicious error is enough to sanction a judge, the nature of the error must be extreme [Matter of Bower, 3 NY3d 158 (2004)]. There is no allegation Judge Piraino's innocent mistakes violated any defendant's fundamental rights.

20 The Staff seeks to justify this prosecution by showing how Judge Banks

was admonished by the Commission for imposing excessive fines .

[Matter of Banks, Judicial Commission Determination, filed 7/16/09, <http://www.scjc.state.ny.us/Determinations/B/banks.pdf>].

A careful reading of the Commission's determination shows the sanction was imposed against Judge Banks based on the judge's "motivation" for imposing excessive fines -- not simply because excessive fines were imposed.

The Commission strongly inferred and implied that Judge Banks was imposing excessive fines in an attempt to benefit the financial coffers of his town. The Dissenting Opinion of Commission Member Coffey, who recommended a censure, leaves no doubt that the rationale for imposing a sanction was because Judge Bank's actions of imposing excessive fines was "punitive."

21. Judge Piraino's good-faith motivations have not been challenged. And the fact that Judge Piraino mistakenly undercharged many defendants, supports the conclusion that his actions were not intentional, but due to "administrative mistake, unintentional oversight, simple negligence or other mental lapse."

22. It is respectfully submitted that in seeking justice the Commission should



look not only to sanction judges for improper conduct, but also to educate judges. To this end, the Commission maintains a website and annually publishes a report. Within the web site and annual reports, the Commission routinely makes recommendations to the sitting judiciary

[2010 Annual Report, Observations and Recommendations, at page 17, <http://www.scjc.state.ny.us/Publications/nyscjc.2010annualreport.pdf>].

However, the Commission should do more and also publish what judicial conduct has been investigated and found to be acceptable.

23. This structural flaw is highlighted by the Staff's arrogant retort that they have not brought charges against Judge Piraino for his prior acceptance of VTL §1101 dispositions. To simply state that he has not -- as yet -- been charged does not put the Staff on the moral high ground.

24. Again, making an analogy to criminal prosecutions, whenever a case is presented to a grand jury, if it is determined that no criminal charges will be brought, the grand jury issues a "no bill." Research shows the Commission has never disclosed when investigated actions on the part of a judge do not violate the Commission's standards. If improper actions are reported, judicial acts not justifying

a complaint should be reported.

While the Staff has not-- as yet -- sought to bring charges against Judge Piraino for allowing VTL §1101 dispositions, nothing prevents charges from being brought at a later date. Thus, Judge Piraino continues to justifiably refuse to accept VTL §1101 dispositions. [See Attached Staff Attorney Duguay letter of 9/14/09 and Schedule B-1]

25. When Judge Piraino's testimony is reviewed a repeated line of questions by the Staff on the VTL §1101 issue sticks out like a sore thumb. The Staff asked multiple times, in words or substance, if the Staff or the Commission ever told Judge Piraino to stop accepting VTL §1101 dispositions [Piraino Testimony 6/11/09; Pg 74/Line 18, Pg 76/line 15, Pg 77/Line 23, Pg 78/Line 5, Pg 78/Line 11, Pg 78/Line18, Pg 78/Line 23, Pg 80/Line 6-21]. Judge Piraino repeatedly stated the Commission's investigation was the reason he stopped accepting VTL §1101 dispositions, even though he believed resolving pending charges in this manner was completely legal and proper.

26. It is fantasy to believe the actions of this Commission do not affect the day-to-day determinations of the judiciary; or, the manner in which the courts are

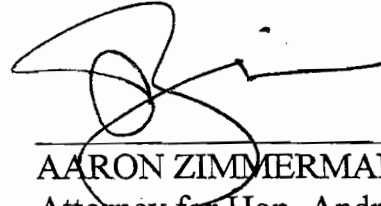
administered by the judiciary. There is no question the investigation of Judge Piraino altered his actions on VTL §1101 dispositions. Based on the facts in this record, to say the Staff or the Commission's actions did not interfere with the manner in which the courts are administered-- is simply inaccurate.

27. Until the judiciary objectively knows when their actions violate the Rules of Judicial Misconduct, it is unjust to turn administrative failures into purported misconduct. And it must be remembered that in Judge Piraino's situation, none of his sentencing mistakes were ever appealed; nor, did any aggrieved party ever contact him about his unintended errors.

28. In summary, the Staff does not challenge Judge Piraino's factual representations of innocent mistake, and the record is completely devoid of evidence showing any "aggravating factors."

WHEREFORE, it is respectfully submitted that the actions of Judge Piraino do not constitute judicial misconduct. The subject charges must be dismissed with a finding of no cause for action. Further, to the extent Judge Piraino made mistakes involving errors of fact or law, those mistakes should be identified and the matter referred to the office of Court Administration for administrative action.

Dated: August 26, 2010



---

AARON ZIMMERMAN, ESQ.  
Attorney for Hon. Andrew N. Piraino  
117 South State Street  
Syracuse, NY 13202  
(315) 475-7777

TO: Robert H. Tembeckjian, Esq.  
David M. Duguay, Esq.  
Edward Lindner, Esq.  
Commission on Judicial Conduct  
400 Andrew Street  
Rochester, NY 14604  
Via Fax: 585-232-7834

Jean M. Savanyu, Clerk  
Commission on Judicial Conduct  
61 Broadway  
New York, NY 10006

**Staff Attorney Duguay's letter of 9/14/09 and Schedule B-1**



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

HON. THOMAS A. KLONICK, CHAIR  
STEPHEN R. COFFEY, VICE CHAIR  
JOSEPH W. BELLUCK  
RICHARD D. EMERY  
PAUL B. HARDING  
ELIZABETH B. HUBBARD  
MARVIN E. JACOB  
HON. JILL KONVISER  
NINA M. MOORE  
HON. KAREN K. PETERS  
HON. TERRY JANE RUDERMAN  
MEMBERS  
JEAN M. SAVANYU, CLERK

400 ANDREWS STREET  
ROCHESTER, NEW YORK 14604

585-784-4141 · 585-232-7834  
TELEPHONE FACSIMILE  
www.scjc.state.ny.us

**CONFIDENTIAL**

September 14, 2009

ROBERT H. TEMBECKJIAN  
ADMINISTRATOR & COUNSEL

JOHN J. POSTEL  
DEPUTY ADMINISTRATOR

M. KATHLEEN MARTIN  
DAVID M. DUGUAY  
SENIOR ATTORNEYS

STEPHANIE A. FIX  
STAFF ATTORNEY



Aaron Mark Zimmerman, Esq.  
The Piraino/Zimmerman Legal Team, P.C.  
117 South State Street  
Syracuse, New York 13202

Re: Honorable Andrew N. Piraino  
File No. 2008/R-139

Dear Mr. Zimmerman:

This letter is to advise you that in connection with the Commission's ongoing investigation, Commission staff will be contacting the Salina Town Court in the near future to review the records relating to 67 of the cases listed on Schedule B. The specific cases are highlighted on the annexed Schedule B-1.

Please feel free to contact me with any questions, comments or concerns regarding this matter at my new telephone number, (585) 784-4141.

Very truly yours,

David M. Duguay  
Senior Attorney

Enclosure

Honorable Andrew N. Piraino  
Salina Town Court  
Onondaga County



Schedule B-1

VTL 1101 Cases

January 2006 – May 2008

<b>Defendant</b>	<b>Original Charge</b>	<b>Reduction/ Disposition</b>	<b>Date Adjudicated</b>	<b>Fine Imposed</b>
Stephanie Varano	VTL 1180 F	VTL 1101	01/03/06	\$100.00
W. L. Vanderpool	VTL 1180 F	VTL 1101	02/07/06	\$100.00
Michael R. Reilly	VTL 1180 F	VTL 1101	02/08/06	\$50.00
Paul D. Weiner	VTL 1180 F	VTL 1101	05/25/06	\$60.00
Amanda G. Slisz	VTL 1180 F	VTL 1101	06/09/06	\$100.00
Sam A. Mangano	VTL 1180 F	VTL 1101	06/12/06	\$100.00
Beth A. Wilson	VTL 1180 F	VTL 1101	06/12/06	\$100.00
Patrick J. Nesi	VTL 1180 F	VTL 1101	06/27/06	\$100.00
Steven Neshevich	VTL 1180 F	VTL 1101	08/15/06	\$100.00
Niles P. Minnoe	VTL 1180 F	VTL 1101	12/14/06	\$100.00

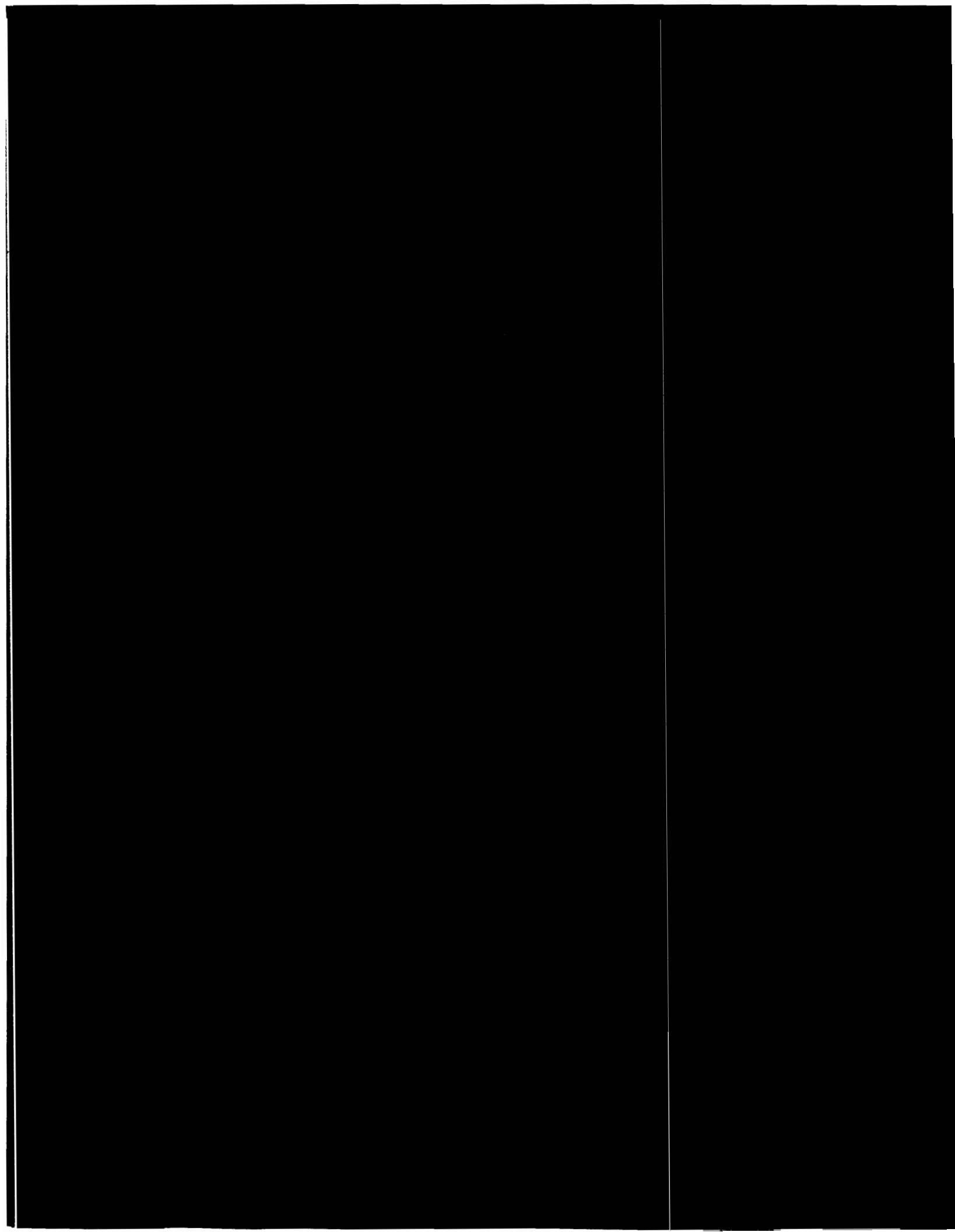
Terry J. Whitney	VTL 1180 F	VTL 1101	12/20/06	\$100.00
Ryan M. Reynolds	VTL 1180 F	VTL 1101	01/12/07	\$100.00
Viccent J. Marcoccia	VTL 1180 F	VTL 1101	09/26/07	\$100.00
Richard M. Kasouf	VTL 1180 F	VTL 1101	01/09/08	\$100.00
Kelley A. Hoffman	VTL 1180 F	VTL 1101	02/15/08	\$150.00
James V. Compoli	VTL 1180 F	VTL 1101	03/25/08	\$80.00
Benny G. Larocca	VTL 1192	VTL 1101	06/25/07	\$75.00
Kevin F. Rounsville	VTL 511 1A	VTL 1101	01/18/06	\$85.00
Keith A. Spencer	VTL 511 1A	VTL 1101	01/25/06	\$75.00
Latoya V. Phillips	VTL 511 1A	VTL 1101	02/07/06	\$50.00
Corrine A. Lynn	VTL 511 1A	VTL 1101	02/15/06	\$80.00
Harry K. Visneau III	VTL 511 1A	VTL 1101	02/16/06	\$85.00
Heather M. Rourke	VTL 511 1A	VTL 1101/ CD	02/28/06	\$0.00
Heather M. Rourke	VTL 511 1A	VTL 1101/ CD	02/28/06	\$0.00
James P. Merrick	VTL 511 1A	VTL 1101	03/03/06	\$80.00
Leigh A. Sorrendino	VTL 511 1A	VTL 1101	03/28/06	\$75.00
Michael L. Nicolette	VTL 511 1A	VTL 1101	04/03/06	\$80.00
Bo S. Stawicki	VTL 511 1A	VTL 1101	04/12/06	\$80.00



Ramone A. Sherman	VTL 511 1A	VTL 1101	06/28/06	\$50.00
Mark D. Touse	VTL 511 1A	VTL 1101	08/21/06	\$75.00
Nicole Odom	VTL 511 1A	VTL 1101	08/23/06	\$40.00
George N. Purdy	VTL 511 1A	VTL 1101	08/30/06	\$100.00
Francis S. Saya	VTL 511 1A	VTL 1101	09/07/06	\$90.00
Andrew M. Watkins	VTL 511 1A	VTL 1101	09/20/06	\$75.00
Todd M. Morris	VTL 511 1A	VTL 1101	11/29/06	\$35.00
Ryan M. Reynolds	VTL 511 1A	VTL 1101	01/12/07	\$100.00
Daniel J. Paparo	VTL 511 1A	VTL 1101	01/24/07	\$100.00
James G. McKay	VTL 511 1A	VTL 1101	01/26/07	\$100.00
David R. Nelson	VTL 511 1A	VTL 1101	02/07/07	\$75.00
David M. Radell	VTL 511 1A	VTL 1101	02/08/07	\$75.00
Sam A. Oliver	VTL 511 1A	VTL 1101	03/12/07	\$100.00
Phillip C. Peterson	VTL 511 1A	VTL 1101	03/21/07	\$0.00
Wai S. Leung	VTL 511 1A	VTL 1101	03/28/07	\$80.00
Uticia T. Young	VTL 511 1A	VTL 1101	04/04/07	\$60.00
David A. Rogers	VTL 511 1A	VTL 1101	05/15/07	\$60.00
Robert J. Visser	VTL 511 1A	VTL 1101	05/25/07	\$80.00

R V Williams II	VTL 511 1A	VTL 1101	05/29/07	\$80.00
Rhonda M. Meneilly	VTL 511 1A	VTL 1101	07/11/07	\$50.00
Michele A. Parchment	VTL 511 1A	VTL 1101	08/03/07	\$80.00
Willie Whitlock	VTL 511 1A	VTL 1101	08/31/07	\$100.00
Nikki S. Winslow	VTL 511 1A	VTL 1101	09/06/07	\$75.00
Thomas J. Matkowski	VTL 511 1A	VTL 1101	10/09/07	\$60.00
Abdul Latif	VTL 511 1A	VTL 1101	12/12/07	\$50.00
Salim Saba	VTL 511 1A	VTL 1101	12/31/07	\$100.00
Nicholas A. Vuocolo	VTL 511 1A	VTL 1101	01/11/08	\$80.00
Huey P. Morgan	VTL 511 1A	VTL 1101	01/11/08	\$50.00
Samantha Rozzano	VTL 511 1A	VTL 1101	01/29/08	\$95.00
Evanstine M. Stanley	VTL 511 1A	VTL 1101	02/01/08	\$80.00
Faton Mustafa	VTL 511 1A	VTL 1101/ CD	02/13/08	\$60.00
Jamie M. Peck	VTL 511 1A	VTL 1101	03/03/08	\$80.00
Lisa A. Speech	VTL 511 1A	VTL 1101	03/10/08	\$70.00
Vincenzo G. Musolino	VTL 511 1A	VTL 1101	03/18/08	\$100.00
Christopher M. Leotta	VTL 511 1A	VTL 1101	05/06/08	\$75.00
Jason B. Leubner	VTL 511 1A	VTL 1101	05/28/08	\$80.00

Steven J. Myers	VTL 511 2A	VTL 1101	02/22/06	\$50.00
Erika M. Nash	VTL 511 2A1	VTL 1101	01/25/06	\$80.00
Peter R. Smith	VTL 511 2A4	VTL 1101	03/06/07	\$60.00





NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

JEAN M. SAVANYU  
CLERK

HON. THOMAS A. KLONICK, CHAIR  
STEPHEN R. COFFEY, VICE CHAIR  
HON. ROLANDO T. ACOSTA  
JOSEPH W. BELLUCK  
JOEL COHEN  
RICHARD D. EMERY  
PAUL B. HARDING  
ELIZABETH B. HUBBARD  
NINA M. MOORE  
HON. KAREN K. PETERS  
HON. TERRY JANE RUDERMAN  
MEMBERS

61 BROADWAY  
NEW YORK, NEW YORK 10006

646-386-4800 646-458-0037  
TELEPHONE FACSIMILE  
www.scjc.state.ny.us



CONFIDENTIAL

October 4, 2010

Aaron Mark Zimmerman, Esq.  
117 South State Street  
Syracuse, New York 13202

and

Robert H. Tembeckjian, Esq.  
Commission on Judicial Conduct  
61 Broadway  
New York, New York 10006

Re: Matter of Andrew N. Piraino

Counsellors:

Enclosed is the Commission's Decision and Order with respect to the motion to dismiss in the above matter.

Very truly yours,

Jean M. Savanyu

cc: David M. Duguay, Esq.

BY CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

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

ANDREW N. PIRAINO,

a Justice of the Salina Town Court,  
Onondaga County.

DECISION  
AND  
ORDER

-----  
THE COMMISSION:

Honorable Thomas A. Klonick, Chair  
Stephen R. Coffey, Esq., Vice Chair  
Honorable Rolando T. Acosta  
Joseph W. Belluck, Esq.  
Joel Cohen, Esq.  
Richard D. Emery, Esq.  
Paul B. Harding, Esq.  
Elizabeth B. Hubbard  
Nina M. Moore  
Honorable Karen K. Peters  
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the  
Commission

Andrew Mark Zimmerman for the Respondent

The matter having come before the Commission on September 29, 2010;

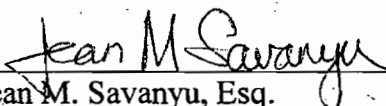
and the Commission having before it the Formal Written Complaint dated May 20, 2010, and the Verified Answer dated June 24, 2010; and respondent, by notice of motion and supporting papers dated June 24, 2010, having moved to dismiss the Formal Written Complaint and having filed additional correspondence dated July 22, 2010; and the administrator of the Commission having opposed the motion to dismiss by affirmation and memorandum dated August 19, 2010; and respondent's counsel having replied by affirmation dated August 26, 2010; and due deliberation having been had thereupon; now therefore, it is

DETERMINED that respondent's motion be denied in all respects; and it is, therefore

ORDERED that the Formal Written Complaint is referred to a referee, to be designated, for a hearing.

Mr. Belluck and Mr. Harding were not present.

Dated: October 4, 2010

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