

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

JOHN M. SKINNER,

**AGREED
STATEMENT OF FACTS**

A Justice of the Columbia Town Court,
Herkimer County.

Subject to the approval of the Commission on Judicial Conduct

(“Commission”):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable John M. Skinner (“Respondent”), who is representing himself in this matter, that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent has been a Justice of the Columbia Town Court, Herkimer County, since 2009. His current term expires on December 31, 2020. Respondent is not an attorney.
2. Respondent was served with a Formal Written Complaint dated February 14, 2018. He filed an Answer dated April 10, 2018.

As to Charge I

3. From May 2015 to November 2016, while presiding over *Erek Treen-Goff v Heidi Schimmelpfennig*, a small claims proceeding, Respondent failed to be

faithful to the law and maintain professional competence in it, and failed to dispose of the matter promptly, efficiently and fairly, in that:

- A. Respondent unduly delayed holding a hearing and failed to decide the defendant's request for a jury trial until after he rendered judgment;
- B. Respondent failed to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court pursuant to Section 1704 of the Uniform Justice Court Act; and
- C. Respondent failed to mechanically record any appearances in the matter, in violation of Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08.

As to the Specifications to Charge I

4. On April 14, 2015, Erek Treen-Goff filed a notice of small claim in the Columbia Town Court against Heidi Schimmelfennig. Mr. Treen-Goff sought \$3,000 plus \$15 court costs for damage caused to his vehicle, which he claimed was sustained when he swerved into a utility pole to avoid hitting Ms. Schimmelfennig's dog that had run into the road.

5. On April 14, 2015, Janet Elliott, the Town of Columbia court clerk, processed Mr. Treen-Goff's petition and set a hearing date for 6:00 PM on May 19, 2015.

6. On May 12, 2015, Ms. Schimmelfennig filed an "affidavit of facts" in the Columbia Town Court, demanded a jury trial and paid a jury fee in the amount of \$10 and a \$50 deposit. The affidavit was not notarized.

7. On May 19, 2015, Respondent sent Ms. Schimmelfennig a letter requesting a notarized written demand for a jury trial and an affidavit of facts, among other items.

8. On June 1, 2015, Ms. Schimmelfennig re-filed a jury trial demand and “affidavit of facts.” Neither the jury trial demand nor the affidavit was notarized.

9. From May 12, 2015, to August 20, 2016, Respondent adjourned the hearing date at least three times, notwithstanding that neither Mr. Treen-Goff nor Ms. Schimmelfennig ever requested an adjournment.

10. Respondent failed to hold a hearing in the case until September 27, 2016. Present in the courtroom on that date were the plaintiff, the defendant, the plaintiff’s grandfather, Fred Treen, and the defendant’s friend, Bob Meyer, who was an observer and did not intend to offer any testimony.

11. During the proceeding on September 27, 2016, the parties testified about the accident, and the plaintiff or his grandfather provided a police report and documentary evidence concerning repairs to Mr. Treen-Goff’s vehicle.

12. At the conclusion of the proceeding on September 27, 2016, Respondent adjourned the matter to provide the plaintiff with time to obtain records from the New York State Electric and Gas Corporation (NYSEG) specifying when the accident occurred and when the utility pole was replaced.

13. On October 11, 2016, the parties again appeared before Respondent. Also present in the courtroom were the plaintiff’s grandfather, Mr. Treen, and the defendant’s son, Evan Schimmelfennig.

14. During the appearance, Mr. Treen provided Respondent with weather reports from the date of the accident, handwritten statements from neighbors who had allegedly witnessed the defendant's dogs in the road, and a document from the utility company regarding repairs to the utility pole.

15. On October 11, 2016, Respondent issued a judgment in favor of Mr. Treen-Goff, awarding him \$1,000 plus \$15 court costs.

16. On October 18, 2016, Respondent sent Ms. Schimmelfennig a copy of the judgment. In a cover letter accompanying the judgment, Respondent wrote that Ms. Schimmelfennig's motion for a jury trial was denied and he returned her \$50 deposit and \$10 filing fee.

17. On October 31, 2016, Ms. Schimmelfennig sent a Notice of Appeal to Mr. Treen-Goff and the Columbia Town Court by certified mail, signature required. The caption in the Notice of Appeal stated that the judgment was being appealed to the "Appellate Division of the Supreme Court of the State of New York, Second Judicial Department," although the Columbia Town Court is located in the Third Judicial Department, and the proper forum for appeal of a town court decision is County Court.

18. On November 9, 2016, Ms. Schimmelfennig sent the Columbia Town Court a money order in the amount of \$101.50 and a \$5 cash filing fee. On November 29, 2016, Respondent returned Ms. Schimmelfennig's money order. He failed to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court, and he did not otherwise take any action on Ms. Schimmelfennig's appeal.

19. During the pendency of *Treen-Goff v Schimmelpfennig*, Respondent failed to mechanically record any appearances in the case.

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 dispose of all judicial matters promptly, efficiently and fairly, in violation of Section 100.3(B)(7) of the Rules, and 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.

As to Charge II

21. From January 2009, when he assumed judicial office, through mid-May 2017, Respondent failed to mechanically record proceedings in the Columbia Town Court as required by Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08.

As to the Specifications to Charge II

22. Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08 provide that every town and village justice must mechanically record all proceedings in the court. The recording requirement became effective on June 16, 2008.

23. From January 1, 2009, through May 23, 2017, Respondent failed to mechanically record any appearances in the Columbia Town Court. Respondent did not begin recording proceedings until after he was asked by the Commission during its investigation of the matters herein to provide audio recordings of appearances in *Treen-Goff v Schimmelpfennig*.

24. 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 be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and 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.

Additional Factors

25. Respondent acknowledges that he improperly delayed in holding a hearing in *Treen-Goff v Schimmelpfennig*. Prior to presiding over the matter, Respondent had never received a small claims jury trial demand and did not know how to process the petition. Respondent avers that, in the future, he will immediately contact the Judicial Resource Center for assistance if he encounters a judicial issue that he cannot independently resolve.

26. Respondent also acknowledges that he did not mechanically record proceedings in his court prior to May 23, 2017. Respondent asserts that he did not know how to operate the laptop recorder, and until the Commission's inquiry he did not seek assistance in learning how to operate the recorder. Respondent also asserts that, notwithstanding the clear mandate of Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08 that all proceedings be mechanically recorded, he believed his hand-written notes of proceedings were sufficient, even though he had not researched the matter and could point to no authority supporting his interpretation. After the Commission attempted to obtain audio recordings of proceedings in *Treen-Goff v Schimmelpfennig*, Respondent received training from a local computer technician, which he acknowledges he could have done years before. Since May 2017, Respondent has complied with the mechanical recording requirement and pledges to continue to comply henceforth.

27. Respondent further acknowledges that it was improper to fail to take action on the defendant's appeal. Respondent states that he was awaiting the results of

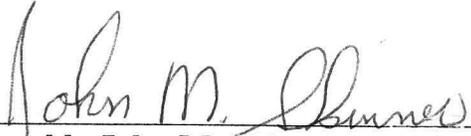
the Commission's investigation before acting on the appeal, but he now appreciates that it was inappropriate and unfair to the litigants to defer his judicial responsibilities in their case for so long, pending resolution of a disciplinary complaint against him. Respondent further states that he had never previously handled an appeal, but he assures the Commission that, in the future, he will consult with the Judicial Resource Center in a timely manner concerning his judicial obligations with regard to appeal procedures or any other matters that, as here, may confound him.

IT IS FURTHER STIPULATED AND AGREED that Respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated: MAY 15, 2018



Honorable John M. Skinner
Respondent TOWN JUSTICE
TOWN OF COLUMBIA
HERKIMER COUNTY

Dated: JUNE 6, 2018



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(Cathleen S. Cenci and Eteena J. Tadjogueu, Of
Counsel)