

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

HAROLD W. KATZ,

a Judge of the Family Court, Warren
County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and John J. Postel,
Of Counsel) for the Commission

Hancock & Estabrook (By Donald P. McCarthy
and Daniel B. Berman) for Respondent

The respondent, Harold W. Katz, a judge of the Family
Court, Warren County, was served with a Formal Written Complaint
dated April 1, 1983, alleging that he had practiced law while
sitting as a full-time judge, that he had failed to meet his

personal financial obligations, that he solicited and obtained a loan from a lawyer who appeared in his court, that he engaged in improper business activities, and that he gave misleading testimony before a member of the Commission. Respondent filed an answer dated April 21, 1983. Thereafter, respondent was served with a Supplemental Formal Written Complaint dated May 11, 1983, making similar allegations. Respondent answered the Supplemental Formal Written Complaint on May 24, 1983.

By order dated May 5, 1983, the Commission designated Margrethe R. Powers, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 18 and 19, 1983, and the referee filed her report with the Commission on September 20, 1983.

By motion dated November 18, 1983, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a finding that respondent's misconduct was established. Respondent opposed the motion by cross-motion on December 5, 1983. Thereafter, the Commission, in a determination and order dated January 17, 1984, made the findings of fact enumerated in paragraphs 1 through 51 below.

Respondent was served with a second Formal Written Complaint dated October 28, 1983, alleging that he had failed to repay a loan to a former client and that he had failed to cooperate

with a Commission investigation. Respondent did not answer the second Formal Written Complaint.

By motion dated November 23, 1983, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established with respect to the second Formal Written Complaint. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated December 15, 1983, the Commission granted the administrator's motion for summary determination, found respondent's misconduct established and set a schedule for argument as to appropriate sanction.

With respect to sanction, the Commission received memoranda from respondent and the administrator. Respondent waived oral argument. Thereafter, the Commission considered the record of both proceedings and made the following determination.

As to Charge I of the Formal Written Complaint dated April 1, 1983:

1. Respondent was admitted to the bar in 1945.
2. Respondent became a Family Court Judge in 1974. As a full-time judge, he is not permitted to practice law.
3. In 1969, respondent prepared wills for Leon H. and Maude H. Mead.

4. In 1978, after respondent had become a full-time judge, the Meads solicited his legal services to prepare new wills.

5. Although respondent knew that he was not permitted to practice law, he agreed to prepare new wills for the Meads at no cost.

6. Respondent made extensive changes in the wills, including changing beneficiaries and bequests. The changes required the exercise of respondent's legal judgment.

7. Respondent's court clerk typed the wills, and they were signed by the Meads in respondent's court chambers on March 21, 1980. Respondent and his court clerk witnessed the wills.

8. Respondent was named executor to the Meads' estate.

9. Respondent kept the originals of the wills in his possession.

As to Charge II of the Formal Written Complaint dated April 1, 1983:

10. As the result of respondent's representation of the Meads and the estates of Mrs. Mead's sisters, respondent had considerable knowledge of the Meads' assets and financial position.

11. Mr. Mead testified that he and his wife had "extreme confidence" in respondent.

12. In November 1978, respondent approached the Meads and solicited a loan of \$50,000. He did not specify what the money was to be used for and did not inform the Meads of his financial position.

13. The Meads agreed to lend respondent \$32,000. On December 5, 1978, respondent signed a note promising to repay the money in one year at 10 percent interest.

14. Respondent did not repay the loan as promised.

15. Respondent tendered interest payments of \$3,200 and \$4,000 in April 1980, and June 1980, respectively. The \$3,200 check was never cashed. The Meads would not accept the \$4,000 payment because it was \$800 deficient, and respondent issued a new check for \$4,800.

16. In February 1981, respondent made an additional interest payment of \$1,600 but has not repaid any portion of the principal of the loan.

17. The Meads sent six letters to respondent demanding repayment. Respondent did not respond to the letters.

18. The Meads commenced an action against respondent and obtained a judgment on May 17, 1983. The judgment remained unsatisfied on July 18, 1983.

As to Charge III of the Formal Written Complaint dated April 1, 1983:

19. Respondent presided in the Surrogate's Court in Warren County in 1974 and from 1979 to 1982.

20. John Herlihy, an attorney and close friend of respondent, appeared from time to time in Surrogate's Court.

21. Mr. Herlihy represented five estates in Surrogate's Court between July 1974 and March 1980, while respondent was assigned to that court. Mr. Herlihy appeared in a guardianship proceeding in Surrogate's Court in February 1980, while respondent was sitting in that court.

22. Respondent signed six orders in Mr. Herlihy's cases.

23. On or about January 19, 1978, respondent solicited and accepted a loan of \$10,000 from Mr. Herlihy. The loan was repaid on December 19, 1978, with \$800 interest.

24. On April 29, 1981, respondent solicited and accepted a \$2,000 loan from Mr. Herlihy. Respondent repaid that loan on March 26, 1982.

As to Charge IV of the Formal Written Complaint dated April 1, 1983:

25. While sitting as a judge, respondent solicited and accepted loans from persons other than relatives and lending institutions.

26. Respondent failed to file a report with his court clerk reporting the loans that he had received from the Meads, the Combs* and Mr. Herlihy.

27. Respondent was aware, at least by September 8, 1982, when he testified before a member of the Commission, of the requirement of filing such reports with his court clerk.

28. Notwithstanding his awareness of the filing requirements, respondent, as of April 21, 1983, had failed to report loans he had received from persons other than family members or lending institutions.

29. As of July 18, 1983, respondent had failed to file required reports with respect to outstanding loans.

As to Charge V of the Formal Written Complaint dated April 1, 1983:

30. The charge is not sustained and is, therefore, dismissed.

As to Charge VI of the Formal Written Complaint dated April 1, 1983:

31. On December 15, 1967, respondent signed a promissory note for \$11,000 at 4 percent interest payable to Marjorie Baker.

* On May 26, 1982, respondent renegotiated a loan from Glenn and Sandra Combs for \$31,876.45. See the findings as to Charge I of the Supplemental Formal Written Complaint, infra.

32. As of April 1976, respondent had not repaid \$7,183.89 on the note.

33. On April 12, 1976, an action was commenced against respondent to recover the unpaid balance with interest, and on August 12, 1976, an order was entered in Supreme Court, directing that a judgment for \$7,183.89 plus interest be entered against respondent unless the full amount was paid within 45 days. Respondent failed to pay the full amount within the time provided.

34. On November 14, 1978, judgment was entered against respondent for \$1,643.07, representing the balance owed.

As to Charge VII of the Formal Written Complaint dated April 1, 1983:

35. The charge is not sustained and is, therefore, dismissed.

As to Charge I of the Supplemental Formal Written Complaint dated May 11, 1983:

36. Respondent represented the estate of Wade Houghton, who died in 1971.

37. Glenn Combs was executor and sole beneficiary of the estate of his uncle, Wade Houghton.

38. While representing the estate, respondent approached Mr. Combs and asked whether he needed the money that he would receive from the estate.

39. On February 24, 1971, pursuant to respondent's solicitation, Mr. Combs agreed to lend respondent \$16,000 at 6 percent interest, payable on demand.

40. Respondent did not inform Mr. Combs of any outstanding debts and stated only that the money was to be used for property.

41. Respondent failed to repay the loan when payment was demanded in 1979.

42. As of October 10, 1981, respondent owed Mr. Combs \$29,681.45.

43. An attorney representing Mr. Combs sent respondent six letters demanding payment between September 30, 1981, and May 26, 1982. Respondent disregarded the letters and did not repay the loan.

44. On May 26, 1982, Mr. Combs' attorney obtained a new promissory note from respondent for \$31,876.45 and negotiated a repayment schedule. Respondent provided a mortgage as collateral.

45. On August 12, 1982, respondent made a payment of \$1,137.98, representing three monthly installments.

46. No additional payments were made by respondent on the loan, notwithstanding that Mr. Combs' attorney sent letters demanding repayment in September and November 1982.

47. On December 31, 1982, Mr. Combs commenced an action

against respondent. Respondent did not contest the action, and on March 4, 1983, Mr. Combs obtained a judgment for \$34,558.17.

48. As of July 18, 1983, the judgment had not been satisfied.

As to Charge II of the Supplemental Formal Written Complaint dated May 11, 1983:

49. On September 8, 1982, respondent testified before a member of the Commission concerning his personal finances.

50. On May 26, 1982, respondent had signed a promissory note to Mr. Combs for \$31,876.45. On August 12, 1982, 27 days before his testimony before a member of the Commission, respondent had paid Mr. Combs \$1,137.98 on the newly-executed note.

51. Respondent was aware of his remaining debt of \$30,738.47 to Mr. Combs at the time he testified before a member of the Commission. Nevertheless, he testified that he did not know of any outstanding debts he had other than to banks and the Meads.

As to Charge I of the Formal Written Complaint dated October 28, 1983:

52. In 1961, respondent offered his legal services to Laura R. Woodruff.

53. Respondent suggested to Ms. Woodruff that she give him money to place "in mortgages."

54. Ms. Woodruff gave respondent \$100,000. For a number of years, respondent repaid Ms. Woodruff quarterly at 6 percent interest, although occasionally some of respondent's checks were returned for insufficient funds.

55. During this time, respondent also prepared Ms. Woodruff's tax returns.

56. In 1980 or 1981, respondent told Ms. Woodruff that he was raising the interest on the money to 12 percent and began making quarterly payments at that rate.

57. Respondent subsequently fell behind in his payments. When Ms. Woodruff complained, respondent voluntarily gave her three notes. One of the notes, for \$15,000, was repaid by respondent. Two notes, one for \$33,000 due on January 1, 1983, and one for \$53,460 due on January 1, 1985, were not repaid.

58. Ms. Woodruff was never given by respondent any evidence that there were any mortgages, bonds or investments made on her behalf with the money. Respondent has never made a formal or informal accounting of his use of the funds.

59. On February 1, 1983, Ms. Woodruff commenced an action against respondent for repayment of the two notes.

60. Respondent did not contest the action, and on July 7, 1983, a judgment for \$115,038.94 was entered against respondent.

61. As of November 23, 1983, the judgment had not been satisfied.

As to Charge II of the Formal Written Complaint dated October 28, 1983:

62. On August 24, 1983, respondent instructed his court clerk not to allow a Commission investigator to examine his court records to determine whether he had filed a report of debts owed to persons other than relatives or lending institutions.

As to Charge III of the Formal Written Complaint dated October 28, 1983:

63. Respondent failed to cooperate with a Commission investigation in that he:

(a) Failed to respond to letters from the Commission dated July 28, 1983, and August 17, 1983, notwithstanding that his response was requested in the letters; and,

(b) failed without explanation to appear to give testimony before a member of the Commission on October 5, 1983, notwithstanding that he had been granted adjournments on two prior dates.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections

100.1, 100.2(a), 100.3(a)(1), 100.5(c)(1), 100.5(c)(3)(iii), 100.5(d) and 100.6(c) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(1), 5C(1), 5C(4)(c), 5D and 6C of the Code of Judicial Conduct; Disciplinary Rules 4-101(B)(2), 4-101(B)(3) and 5-104(A) and Ethical Considerations 5-6 of the Code of Professional Responsibility; and Article 6, Section 20(b)(4) of the New York State Constitution. Charges I through IV and VI of the Formal Written Complaint dated April 1, 1983, Charges I and II of the Supplemental Formal Written Complaint dated May 11, 1983, and Charges I through III of the Formal Written Complaint dated October 28, 1983, are sustained, and respondent's misconduct is established.

As an attorney, respondent was a fiduciary for those whose money he handled and was required to exercise the highest degree of care and trust. Matter of Boulanger, __NY2d__, No. 683 (Jan. 17, 1984) at pp. 3, 4; McMahon v. Pfister, 39 AD2d 691 (1st Dept. 1972). On three separate occasions, respondent took advantage of that trust and the knowledge he had gained of the financial affairs of the Meads, Mr. Combs and Ms. Woodruff to solicit loans, which he never repaid in full.

Respondent also solicited two loans from an attorney who appeared in his court, in clear violation of the ethical standard set forth in Section 100.5(c)(3)(iii) of the Rules Governing Judicial Conduct. See, Matter of Garvey, unreported (Com. on Jud. Conduct, June 23, 1981).

Respondent concealed his financial improprieties by failing to file with his court clerk required reports of his outstanding debts owed to persons other than relatives or lending institutions, as required by Sections 100.5(c)(3)(iii) and 100.6(c) of the Rules Governing Judicial Conduct. He also instructed his court clerk not to allow a Commission investigator to examine his public court records to determine whether he had filed a report of such debts. Such misconduct is to be condemned. Matter of Boulanger, supra, at p. 3; Matter of Jordan, 47 NY2d (xxx) (Ct. on the Judiciary 1979).

Respondent compounded his misconduct by testifying before a member of the Commission that he knew of no debts other than to the Meads when, in fact, he was indebted to Mr. Combs. See, Matter of Perry, 53 AD2d 882 (2d Dept. 1976). Respondent's refusal to answer letters from the Commission and his failure to appear to testify before a member tended to obstruct the Commission's investigation and further exacerbated his misconduct. Matter of Osterman, 13 NY2d (a), (1) (Ct. on the Judiciary 1963); Matter of Jordan, supra; Matter of Cooley, 53 NY2d 64, 65-66 (1981).

Respondent's argument that his conduct on the bench has not been called into question in this proceeding is irrelevant. His egregious violations of his trust as an attorney and as a judge

and his pattern of deception and obstruction demonstrate his unfitness to serve on the bench.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal.

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from the bench.

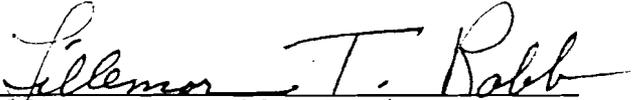
Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Judge Alexander and Mr. Sheehy were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: March 30, 1984


Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct