

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

RUTH MILKS,

Determination

a Justice of the Town and Village
Courts of Perry, Wyoming County.

BEFORE: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett,
Of Counsel) for the Commission

Philip A. McBride for Respondent

The respondent, Ruth Milks, a justice of the Town and Village Courts of Perry, Wyoming County, was served with a Formal Written Complaint dated February 25, 1981, alleging that she used the prestige of her judicial office to collect a private debt on behalf of her employer. Respondent filed an answer on May 2, 1981.

The Commission designated the Honorable John S. Marsh referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 1, 1981, and the referee sub-

mitted his report on August 18, 1981.

By motion dated October 5, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent waived submission of opposing papers and oral argument.

The Commission considered the record of this proceeding on November 23, 1981, and made the following findings of fact:

1. Respondent serves part-time as justice of the Town and Village Courts of Perry. Respondent has served as Village Court Justice continuously since June 1979 and as Town Court Justice since January 1981. From April 1980 to April 1981, respondent was also employed as a debt collector for the Rochester office of American Health Fitness Centers. Her collections territory included the Rochester and Buffalo areas. She had no accounts in Wyoming County and did not preside over suits involving her employer. Respondent resigned her position with American Health on April 1, 1981, on advice of counsel.

2. In March 1980 Christopher DiVincenzo, a resident of Kenmore, New York (Erie County), signed a contract for a fitness program with American Health. Shortly thereafter Mr. DiVincenzo and American Health disagreed on the terms of payment and Mr. DiVincenzo neither used American Health's facilities nor made any payments on the contract.

3. In early June 1980, respondent telephoned Mr. DiVincenzo's home, identified herself as "Judge Milks" and left a message for Mr. DiVincenzo to call her. Mr. DiVincenzo returned the call on June 4, 1980. Respondent again identified herself as "Judge Milks" and stated that she had called him to discuss his non-payment on the American Health

contract. Respondent told Mr. DiVincenzo that his credit would be ruined if he did not make the payments and that he would have two weeks to make payment arrangements before she would submit the case to court. Respondent told Mr. DiVincenzo that American Health matters were not handled in her court. In answer to his inquiry as to his chances in a court case, respondent told Mr. DiVincenzo: "If you went to court you would lose."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.5(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5C(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

A judge is obliged to refrain from financial and business dealings that tend to exploit or reflect adversely upon judicial office (Section 33.5[c][1] of the Rules). A judge is also obliged not to lend the prestige of judicial office to advance a private interest (Section 33.2[c] of the Rules). By identifying herself as a judge while attempting to collect a disputed debt on behalf of her non-judicial employer, respondent violated the applicable rules. As such respondent failed to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Sections 33.1 and 33.2 of the Rules).

The Commission notes in mitigation that respondent resigned her position as a debt collector and that therefore the circumstances herein are not continuing.

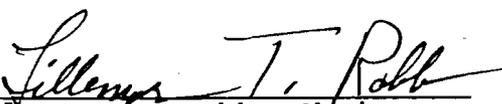
By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur.

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: January 20, 1982


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