

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

HOWARD J. MILLER,

a Justice of the Town Court of
Warsaw, Wyoming County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Carroll L. Wainwright, Jr.

Respondent, Howard J. Miller, a justice of the Town Court of Warsaw, Wyoming County, was served with a Formal Written Complaint dated August 7, 1978, setting forth four charges alleging various financial record keeping improprieties and deficiencies. Respondent filed an answer dated August 18, 1978.

By order dated December 14, 1978, the Commission designated Michael Whiteman, Esq., referee to hear and report with respect to the issues herein. The hearing was held on May 10, 1979, and the report of the referee dated December 19, 1979, was filed with the Commission.

By notice dated March 12, 1980, the administrator of the Commission moved to confirm the report of the referee and to determine that respondent be censured. By affidavit filed on April 7, 1980, respondent opposed the motion and moved for the Commission to issue a letter of dismissal and caution in lieu of a public sanction. The administrator replied by memorandum dated April 14, 1980. Both the administrator and respondent waived oral argument.

The Commission considered the record of this proceeding on April 23, 1980, and makes the following findings of fact.

1. Charge I: On June 1, 1976, respondent drew a check on his town court account in the sum of \$110.00, payable to Alan D. Hale, an accountant, in payment of a personal debt and not for official court business.

2. Charge II: From July 1, 1974, to July 1, 1978, respondent failed to maintain a chronologically itemized cashbook of all receipts and payments.

3. Charge III: Respondent failed to report to the State Comptroller the dispositions of 10 motor vehicle cases from January 1976 through February 1978, and he failed to remit to the State Comptroller the monies collected therefrom within the time required by law.

4. Charge IV: Respondent failed to deposit in his town court account within 72 hours of receipt monies received in his official capacity in 18 cases from June 1976 to March 1978.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 27(1) of the Town Law, Section 1803(8) of the Vehicle and Traffic Law, Section 2021(1) of the Uniform Justice Court Act, Sections 30.7(b) and 30.9 of the Uniform Justice Court Rules, Section 33.1, 33.2(a) and 33.3(b) (1) of the Rules Governing Judicial Conduct, and Canons 1, 2 and 3B(1) of the Code of Judicial Conduct. Charge I, Charge II, subdivisions 1 and 4 through 12 of Charge III and subdivisions 1, 4 through 14 and 19 through 24 of Charge IV are sustained, and respondent's misconduct is established.

Subdivisions 2 and 3 of Charge III and subdivisions 2, 3, 15 through 18 and 25 through 28 of Charge IV are dismissed.

By failing to keep an official cashbook of all receipts and payments, and by failing to report to the State Comptroller the dispositions of 10 motor vehicle cases, and further by failing to make timely deposits and remittances of monies collected in his official capacity, respondent failed to discharge diligently the administrative and financial obligations required of him by the laws and rules cited herein.

The Commission notes in mitigation of the misconduct herein (i) that the use of court funds to pay the personal debt was inadvertent and the deficiency was corrected by respondent upon his discovery of the error and (ii) that the delays in submitting required reports were for relatively short periods of time.

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

All concur, except Mrs. Robb and Judge Rubin, who dissent only as to sanction and vote that the appropriate disposition is a letter of dismissal and caution.

CERTIFICATION

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

Dated: June 4, 1980
New York, New York



Victor A. Kovner, Member
New York State Commission
on Judicial Conduct

APPEARANCES:

Gerald Stern (Lester C. Goodchild and John W. Dorn, Of Counsel)
for the Commission

Michael Griffith for Respondent