

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4, :
of the Judiciary Law in Relation to : DETERMINATION

FRANCIS R. SOBECK, :
a Justice of the Town of Wellsville, :
Allegany County. :

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PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Francis R. Sobeck, a justice of the Town Court of Wellsville, Allegany County, was served with a Formal Written Complaint dated October 24, 1978, setting forth four charges of misconduct alleging that respondent permitted the Wellsville Medical Group to use his name, judicial title and court address to collect delinquent accounts, and that respondent accepted a check and two credits to his account totaling \$599.41 from the Wellsville Medical Group for the use of his judicial position in the collection of these accounts. In his answer, dated December 23, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint but denied that the admitted acts constituted judicial misconduct.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. In the agreed statement, respondent acknowledged (i) approving the content and form of the letters sent by the Wellsville Medical Group to its delinquent debtors, as appended to the Formal Written Complaint, (ii) permitting the use of a rubber stamp of his signature and later signing a blank copy of the letters and (iii) permitting the Wellsville Medical Group to use photocopies of the signed, blank copy. Respondent also acknowledged that he knew that these letters had been sent to at least 340 persons, some of whom he acknowledged received more than one letter.

The Commission approved the agreed statement, as submitted, on January 25, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. From January 1976 to July 1978, respondent permitted the Wellsville Medical Group to use his name, judicial title and court address in three different form letters, escalating in tone so as to appear threatening, which the Group used to

collect delinquent accounts. Respondent permitted the Group to use a rubber stamp facsimile of his signature and to photocopy unaddressed copies of letters, previously signed by him, which he permitted the Group to use for collecting delinquent accounts.

2. Respondent was aware that letters with his signature were sent by the Wellsville Medical Group to more than 340 individuals in the collection of delinquent accounts, and that the Group collected a total of \$5,630.63 between January 1, 1978, and November 30, 1978, through the use of respondent's letters.

3. Although respondent did not request payment from the Wellsville Medical Group for the use of his name, judicial title and court address in the collection of delinquent accounts, respondent accepted the following credits to his account and payment from the Group:

- (a) Between January 24, 1977, and December 30, 1977, respondent received approximately 11 monthly statements of his account with the Wellsville Medical Group, each of which showed a credit to his account of \$202.97 from the statement of January 24, 1977.
- (b) Between June 5, 1978, and August 30, 1978, respondent received approximately two monthly statements of his account with the Wellsville Medical Group, each of which showed a credit to his account of \$196.44 from the statement of June 5, 1978.
- (c) On June 5, 1978, respondent's wife received a check by mail from the Wellsville Medical Group, payable to respondent in the amount of \$200.00. Attached to the check was the tear-off stub bearing the following typewritten notation: "Services of collecting past due accounts." Respondent's wife showed the check stub to respondent and discussed it with him, whereupon the check was deposited in a bank account registered jointly in the name of respondent and his wife. Respondent was aware the check was so deposited.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(4), 33.5(a)(1), 33.5(c)(1) and 33.5(c)(3) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(4), 5C(1) and 5C(3) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

The obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. In allowing his judicial office to be used by a private medical group for debt-collecting purposes for more than two years, and by accepting a payment and credits for his acts, respondent's conduct both was improper and appeared to be improper and thereby undermined public confidence in the integrity and impartiality of the judiciary. At the least, the reasonable inference to be drawn from respondent's letters is that a judge of the court in which a debtor could be sued was playing an active role on behalf of a party to the dispute.

Even if there were no question that the debtors would not be brought before respondent's court, respondent's conduct was improper. Judicial office is a position of honor which must be held only by those who will preserve and protect its independence and integrity; it is not to be lent to a private interest seeking to collect a private debt. The applicable principle is expressed in Section 33.2(c) of the Rules Governing Judicial Conduct: "No judge shall lend the prestige of his office to advance the private interests of others; nor shall any judge convey or permit others

to convey the impression that they are in a special position to influence him...." Respondent's actions violate this standard.

The Commission has given consideration to the matter addressed in respondent's memoranda with respect to whether respondent's misconduct was deliberate or unintentional. Respondent asserts that his lack of wrongful intent should be considered in mitigation of his admitted acts. Whatever motive underlay his acts, respondent's misconduct was such that a severe sanction is appropriate. Respondent has violated basic ethical standards. Neither a deliberate nor an unintentional disregard of so fundamental a responsibility would mitigate the detrimental effect on the judiciary which resulted from respondent's acts.

The Commission has also given consideration to the argument in respondent's memoranda that, by the standards of the community in which he sits, respondent's actions were not so improper as to merit the serious sanction of removal. Respondent asserts that he is "ultimately answerable to the community which this Commission seeks to protect." (Respondent's Memorandum on Sanction at 14.)

The standard to which this Commission must hold respondent is not one to be defined by the community in which he sits. The Rules Governing Judicial Conduct are a statewide standard, promulgated by a statewide chief administrator of the courts with the approval of the Court of Appeals and applied in matters of judicial discipline by a statewide commission on judicial conduct. Those standards were not meant to be interpreted and applied unevenly throughout the state by this Commission or individual

communities. Public faith in our legal system requires that there be one set of standards of judicial conduct, and that those standards be of the highest order.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office. All concur except that Judge Cardamone, Judge Rubin and Mr. Wainwright vote that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 2, 1979

APPEARANCES:

Diebold, Bermingham, Gorman, Brown & Bridge (By Michael J. Brown)
for Respondent

Gerald Stern for the Commission (Lester C. Goodchild,
Christopher B. Ashton, Of Counsel)