

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

Determination

WARREN M. DOOLITTLE,

a Judge of the District Court, Nassau
County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
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 (Alan W. Friedberg, Of Counsel) for the
Commission

Irving A. Cohn for Respondent

The respondent, Warren M. Doolittle, a judge of the
District Court, Nassau County, was served with a Formal Written
Complaint dated October 5, 1984, alleging that he made numerous
improper comments to female attorneys. Respondent did not
answer the Formal Written Complaint.

On December 12, 1984, 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 in Section 44, subdivision 4, of the Judiciary Law, stipulating that the agreed statement be executed in lieu of respondent's answer and further stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on December 13, 1984. The administrator and respondent's counsel filed memoranda as to appropriate sanction. On January 18, 1985, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Between January 1, 1980, and June 1, 1984, in the course of his official duties but not within the hearing of the general public, respondent made numerous improper comments to female attorneys, referring to their appearance and physical attributes.

2. In some instances, respondent suggested that female attorneys could get whatever they were asking of the court because of their physical appearance. These comments were not intended to convey that respondent would actually consider any physical attributes of the attorneys as a factor in any

judicial decisions, nor did the attorneys believe that the statements were so intended.

3. Most of the attorneys to whom respondent's remarks referred have indicated that they were not offended. Some have indicated that they were offended.

4. Respondent has acknowledged that the remarks were highly inappropriate and offensive to women in general.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a) (3) of the Rules Governing Judicial Conduct; Canons 1, 2 and 3A(3) of the Code of Judicial Conduct; and Sections 700.5(a) and 700.5(e) of the Special Rules Concerning Court Decorum of the Appellate Division, Second Department. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

The cajoling of women about their appearance or their temperament has come to signify differential treatment on the basis of sex. A sensitized and enlightened society has come to realize that such treatment is irrational and unjust and has abandoned the teasing once tolerated and now considered demeaning and offensive. Comments such as those of respondent are no longer considered complimentary or amusing, especially in a professional setting.

Furthermore, respondent's statements that female attorneys could get everything they wanted were especially improper. Although they were not meant to be and were not taken literally, they conveyed the impression that respondent in some way treated female attorneys differently than male attorneys. A judge is obligated to be independent and impartial and must avoid appearances to the contrary.

Such comments by a judge, especially in the course of his official duties, lack the courtesy, dignity and respect he is expected to maintain at all times. It is important, however, to consider respondent's remarks in their proper context. They were not made before the public. They were uttered in informal meetings to women respondent had known and worked with for some time. They were not meant to offend or demean. There is no indication that respondent otherwise treated female attorneys in a different fashion than males.

The Commission notes that the many testimonials submitted on respondent's behalf indicate that he has a fine reputation as an able and efficient judge who is otherwise dignified and professional. Moreover, respondent has acknowledged misconduct and is now aware that such remarks are inappropriate and offensive to women in general.

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

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


Judge Shea dissents as to sanction only and votes that respondent be censured.

Mr. Bromberg 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: June 13, 1985



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

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DISSENTING OPINION
BY JUDGE SHEA

I believe the majority underrates the seriousness of respondent's misconduct. Respondent's statements to women attorneys were not only discourteous, undignified, irrational, unjust and demeaning as pointed out by the majority. In addition, respondent's offensive remarks bring the judiciary into disrepute. Worse still, conduct such as respondent's has a deleterious effect on the administration of justice. Respondent's sexist and vulgar comments give the message that women attorneys need not be treated professionally, and the ability of those attorneys to serve their clients is thus compromised. A pattern of such behavior on the part of a judge is intolerable and, in my view, ordinarily should result in removal. Because there are mitigating factors, as noted by the majority, I vote for censure.

Dated: June 13, 1985


Honorable Felice K. Shea
Member
New York State Commission
on Judicial Conduct

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CONCURRING OPINION
BY MRS. DELBELLO

I concur with the dissenter in the characterization of
the misconduct. The kind of remarks made by respondent have no
place in our society in any setting and especially in a courtroom.

Dated: June 13, 1985


Dolores DelBello, Member
New York State Commission on
Judicial Conduct