

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

JAMES H. SHAW, JR.,

a Justice of the Supreme Court, Kings County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel W. Joy
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman
Honorable Eugene W. Salisbury

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the
Commission

Godosky & Gentile, P.C. (By Richard Godosky) for Respondent

The respondent, James H. Shaw, Jr., a justice of the Supreme Court, 2d
Judicial District, was served with a Formal Written Complaint dated February 24, 1999,

alleging that he had engaged in offensive, undignified and harassing conduct toward two women in the court system. Respondent filed an answer dated April 16, 1999.

By Order dated March 30, 1999, the Commission designated the Honorable Richard D. Simons as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 6, 7 and 8, 1999, and the referee filed his report with the Commission on September 8, 1999.

Both parties submitted papers with respect to the referee's report. On October 28, 1999, 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.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Supreme Court since 1977. He was a judge of the New York City Civil Court from 1968 to 1976.

2. Respondent hired Jacqueline D. Bland as his personal secretary in August 1985. She was 19 years old at the time. Ms. Bland worked for respondent until late 1997. Respondent had the power to hire and fire her.

3. Between October 1985 and November 1997, respondent engaged in offensive, undignified and harassing conduct toward Ms. Bland in that he:

a) repeatedly made explicit comments to her about the manner in which her clothes fit various parts of her body;

b) repeatedly hugged Ms. Bland, rubbed her back and touched her hand without her invitation or consent;

c) repeatedly asked Ms. Bland whether she enjoyed having sex;

d) repeatedly told Ms. Bland that her lips were “wide,” “sexy,” and “voluptuous”;

e) in or about November 1985, in chambers, pulled Ms. Bland into his lap and kissed her on the mouth without her invitation or consent; Ms. Bland jumped up and left the room;

f) repeatedly told Ms. Bland that she had “big tits” and repeatedly made comments about her nipples;

g) on May 24, 1996, told Ms. Bland that, because she had lost weight, “If you didn’t have large tits, then you would disappear”;

h) while looking at her wedding pictures and referring to her breasts, remarked that her husband “would never go hungry”;

i) on one occasion told Ms. Bland that, “from the neck down,” she looked “voluptuous”; and,

j) in November 1997, told Ms. Bland that a woman’s sole purpose is to make a man feel good in the bedroom.

4. Early in her tenure in respondent's office, Ms. Bland told him that she was young enough to be his granddaughter and asked how he would like it if someone touched his daughter or made her uncomfortable. She endured his remarks and touching for twelve years because she was concerned that no one would take her word over that of a judge. In November 1997, Ms. Bland told respondent that she was tired of his comments and his touching and remarked that he didn't make such comments to his law clerk. On November 24, 1997, she complained to the equal opportunity office of the Office of Court Administration and was transferred to another position shortly thereafter.

5. Paragraphs 4M, 4N and 4O of the Formal Written Complaint are not sustained and are therefore dismissed.

As to Charge II of the Formal Written Complaint:

6. The charge is not sustained and is therefore dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2 and 100.3(B)(3) and its predecessor, Section 100.3(a)(3)*. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and

*Renumbered effective January 1, 1996.

respondent's misconduct is established. Paragraphs 4M, 4N and 4O of Charge I and Charge II are dismissed.

On or off the bench, a judge is held to high standards of conduct. (Matter of Aldrich, 58 NY2d 279, 283). Wherever he or she goes, a judge remains cloaked figuratively in the robes of judicial office. (Matter of Kuehnel, 49 NY2d 465, 469).

Respondent's uninvited touching of a woman in a professional setting and his continual remarks of a personal and sexual nature were inappropriate and demeaning. (See, Matter of LoRusso, 1994 Ann Report of NY Commn on Jud Conduct, at 73; Matter of Doolittle, 1986 Ann Report of NY Commn on Jud Conduct, at 87). Such sexually harassing behavior is especially egregious. (See, Matter of Dye, 1999 Ann Report of NY Commn on Jud Conduct, at 93). It warrants severe sanction.

However, the purpose of the sanction of removal is not punishment but to protect the public by removing unfit incumbents from the bench. (See, Matter of Reeves, 63 NY2d 105, 111; Matter of Vonder Heide, 72 NY2d 658, 660). In this case, the Commission has taken into consideration that respondent is 76 years old and must leave office at the end of the year. (See, Judiciary Law § 115[2]; Matter of Agresta, 1985 Ann Report of NY Commn on Jud Conduct, at 109, 111, accepted, 64 NY2d 327; Matter of Bloom, 1996 Ann Report of NY Commn on Jud Conduct, at 65, 68).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur as to sanction.

Mr. Berger dissents only as to Paragraph 4M of Charge I and votes to sustain the allegation.

Ms. Brown dissents only as to Paragraphs 4M and 4O of Charge I and votes to sustain those allegations.

Mr. Coffey dissents only as to Paragraphs 4E, 4F and 4G of Charge I and votes to dismiss those allegations.

Mr. Pope dissents only as to Paragraphs 4I and 4J of Charge I and votes to dismiss those allegations.

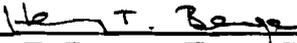
Judge Salisbury dissents only as to Paragraphs 4A and 4E of Charge I and votes to dismiss those allegations.

Ms. Hernandez, Judge Luciano and Judge Marshall 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: November 8, 1999



Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct