

**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

LUTHER V. DYE,

Determination

a Justice of the Supreme Court,
11th Judicial District, Queens County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Fabian G. Palomino for Respondent

The respondent, Luther V. Dye, a justice of the Supreme Court, 11th Judicial District, was served with a Formal Written Complaint dated June 26, 1997, alleging four charges of misconduct. Respondent filed an answer dated October 2, 1997, and an amended answer of the same date.

On December 8, 1997, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On December 11, 1997, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. The charge is not sustained and is, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

2. The charge is not sustained and is, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

3. Respondent has been a justice of the Supreme Court during the time herein noted.

4. Between January 1, 1994, and June 18, 1996, Karen Moore was respondent's secretary, and he had control over her continued employment.

5. During this period, respondent made numerous comments to Ms. Moore about the physical appearance and attributes of other women in the courthouse. He boasted of his sexual prowess and sexual experience with other women.

6. Respondent also stated to Ms. Moore:

- a) that he enjoyed talking to her because she was physically attractive;
- b) that she had attractive legs;
- c) that her clothes inspired his sexual feelings;
- d) that he had a strong interest in sex and that he wanted to have sex with her;

and,

e) that others in the courthouse had asked him whether he was having sex with Ms. Moore and that he had replied that he did not "mix with the hired help."

7. Respondent knew or should have known that the remarks created a hostile or uncomfortable work environment for Ms. Moore.

As to Charge IV of the Formal Written Complaint:

8. 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)[renumbered eff. Jan. 1, 1996], and Canons 1, 2 and 3A(3) of the Code of Judicial Conduct. Charge III of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established. Charges I, II and IV are dismissed.

Respondent's offensive and undignified remarks to a subordinate in the court were highly improper.

As we said in 1985:

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. [Such] [c]omments... are no longer considered complimentary or amusing, especially in a professional setting.

Matter of Doolittle,
1986 Ann Report of
NY Commn on Jud
Conduct, at 87, 88

Remarks of a personal and sexual nature to a subordinate are especially egregious, even if the woman does not protest and even if the judge makes no explicit threats concerning job security. (See, Matter of Lo Russo, 1994 Ann Report of NY Commn on Jud Conduct, at 73, 77).

“A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function.” (Matter of Kuehnle, 49 NY2d 465, at 469).

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

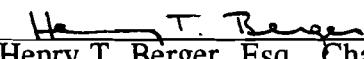
Mr. Berger, Ms. Brown, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton and Judge Thompson concur.

Mr. Pope and Judge Salisbury 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: February 6, 1998


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