

STATE OF KANSAS

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE )  
 )

Docket #477

**FILED**  
MAY 12 1994

COMMISSION ON  
JUDICIAL QUALIFICATIONS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On August 11, 1993, a Notice of Formal Proceedings was filed with the Commission on Judicial Qualifications, pursuant to Rule 611(b) of the Rules of the Supreme Court of the State of Kansas Relating to Judicial Conduct, alleging three counts of violations of those rules against the Honorable Robert L. Morrison, retired judge of the district court of Sedgwick County, Kansas

On January 13-14, 1994, a hearing was held by the Commission on Judicial Qualifications in Topeka, Kansas, at which hearing the Examiner for the Commission and Respondent called witnesses and presented evidence. Members of the Commission present for this hearing were: Hon. J. Patrick Brazil, Chairman; Mikel L. Stout, Vice-Chairman; Charles S. Arthur; Ray Call; Hon. Kathryn Carter; Dr. Nancy Bramley Hiebert; Hon. James W. Paddock; and David J. Waxse. Hon. James J. Noone recused in this matter. Evidence in support of the Notice of Formal Proceedings was presented by Edward G. Collister, Jr., Examiner. Respondent appeared personally and also presented evidence.

After hearing and considering the testimony of witnesses and evidence presented by the parties, the Commission on Judicial Qualifications makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Pam Seavey, Margie Martens, and Diana Collins were, at all times relevant to the dates in this proceeding, employees of the court system in Wichita, Sedgwick County, Kansas. The Honorable Robert L. Morrison was, at all times relevant to the dates in this proceeding, a district judge of the 18th Judicial District, Wichita, Sedgwick County, Kansas.

COUNT I

2. At an office party in November, 1989, administrative personnel of the 18th Judicial District, Wichita, Sedgwick County, Kansas, were celebrating an employment anniversary and confetti was being thrown by the participants. Respondent entered the room where the party was, gathered an amount of confetti, grabbed the shirt of Pam Seavey, pulled it away from her body and attempted to throw confetti down her shirt. Three witnesses, one of whom was Pam Seavey, testified specifically that Respondent engaged in the conduct set forth previously. Respondent's witnesses on this point testified differently; however, it appears that they may not have fully comprehended what occurred during the incident.

3. On an occasion in August, 1991, Ms. Seavey was in Respondent's office. She was standing between the computer and the desk looking at the computer screen. Respondent scooted his chair over and patted the side of it and said, "Sit down." Ms. Seavey avoided the situation and did not sit down on the chair occupied by Respondent. Respondent doesn't recall the incident but agrees both that there wasn't room in the chair for both of them and that on

occasion others had sat on the overhang of his chair when they had to consult at his computer for extended periods of time.

4. On July 17, 1992, Respondent was seated at his desk in his office. Also present in the room were two attorneys, Sally Salquero and Mark Severt, and a legal intern with the District Attorney's office, Lisa Weiser, now Lisa Otipoby. The two attorneys and Respondent were listening to a cassette recording of a conversation between Respondent and a prosecutor in the state of Colorado. The information on the recording concerned a client of Mr. Severt's, who was the object of a juvenile proceeding filed by the District Attorney's office, represented by Ms. Salquero. Pam Seavey, who was at the time the administrative assistant to the juvenile judges, entered through the open doorway of Respondent's office either to place some mail in his incoming mail basket on the credenza behind his desk, or to pick up something from the same location. As she was facing away from him, Respondent swatted her on the buttocks with papers in his hand. Ms. Seavey was extremely upset, glared at Respondent at the time, which look was observed by Respondent and Ms. Weiser, and left the room. She was shortly thereafter observed by Janet Holder, a computer programmer in the Juvenile Department, to be in tears, extremely upset and disturbed at the conduct towards her by Respondent just indicated. Ms. Seavey was humiliated and felt degraded by the conduct. She was later seen by Jackie Henley, a CSO in the CINC Department, who observed her again in tears, this time on the patio. She phoned her supervisor, Judge Burgess, that evening, at home, and

determined that he was out of town. Judge Burgess testified that he returned Ms. Seavey's call later that same evening from Kansas City and indicated that, when she returned to the office after a week vacation, he would proceed with a complaint process.

The incident where Ms. Seavey complained that she was swatted with the papers in Respondent's hand was verified very clearly and directly by Lisa Weiser, who obviously was in a position to see what occurred. Ms. Weiser characterized Respondent's actions as being similar to the swatting of a fly. There is clear and convincing evidence that an intentional act occurred; that Pamela Seavey was swatted on the buttocks by Respondent who had papers in his hand he wished her to note; and that she was humiliated and degraded by the action in front of attorneys and Ms. Weiser.

5. On a variety of occasions while Ms. Seavey was an employee of the 18th Judicial District, Respondent would put his arm around Ms. Seavey's arm or around her shoulders when they were in close proximity to one another and walking down the hallway. Ms. Seavey did not desire to be touched in this fashion.

6. There is no credible evidence that establishes Ms. Seavey had motivation to contrive or distort incidents that she testified occurred to her. To the contrary, both Presiding Judge Burgess and Judge Lahey testified that on the basis of their experience in the workplace with Pam Seavey that they regarded Ms. Seavey as an honest person whose veracity was well established.

COUNT II

7. On a variety of occasions while Margie Martens was an employee of the 18th Judicial District, Respondent would put his arm around Ms. Martens' arm or around her shoulders when they were in close proximity to one another and walking down the hallway. Ms. Martens did not desire to be touched in this fashion. Ms. Martens was afraid to say anything to Respondent about her feelings because of his position as presiding judge and presumably as one who controlled her employment.

8. There is no credible evidence that establishes Ms. Martens had motivation to contrive or distort incidents that she testified occurred to her. Further credence to Ms. Martens' testimony is supplied by the testimony of Judges Burgess and Lahey for whom she worked. They both testified in their opinion Ms. Martens was honest and truthful.

COUNT III

9. On occasion in 1989, Respondent would put his arm around Diana Collins' shoulder, or slip his arm through hers, and brush against her breast. One day as Respondent put his arm around her, she told him not to touch her like that, it made her feel uncomfortable, and he just kind of laughed.

10. In an incident that occurred the last part of April, 1989, Respondent came up behind Ms. Collins as she was sitting, put his hands on her waist, and leaned over her shoulder and put his face next to hers. The effect of these incidents left her feeling embarrassed, humiliated, degraded, and fearful of the conduct of

Respondent towards her. The impact of Respondent's conduct was so great that Ms. Collins complained to her supervisor, sought legal counsel and counselling help, and ultimately transferred to another job location in order to avoid coming in contact with Respondent.

#### CONCLUSIONS OF LAW

1. The standard of proof required to support the conclusions of the Commission on Judicial Qualifications shall be upon findings that are proven by clear and convincing evidence. In re Rome, 218 Kan. 198, Syl. ¶9, 542 P.2d 676 (1975).

2. Canon 2 of the Code of Judicial Conduct provides:

**A Judge should Avoid Impropriety and the Appearance of Impropriety in All His Activities**

3. Having found by clear and convincing evidence that Respondent did the acts set out in the Findings of Fact, the Commission finds that those acts constitute violations of Canon 2 of the Code of Judicial Conduct for the reason that those acts are very similar to certain of the conduct found by the United States Supreme Court in Harris v. Forklift Systems, Inc., \_\_\_ U.S. \_\_\_, 126 L.Ed.2d 295, 114 S.Ct. 367 (1993), and Meritor Savings Bank FSB v. Binson, 477 U.S. 57, 91 L.Ed.2d 49, 106 S.Ct. 2399 (1986), which are its recent decisions on sexual harassment, to be improper. The Commission finds that Canon 2 creates a higher standard than the legal standard for sexual harassment set out in the recent Supreme Court decisions; therefore, the conduct of the Respondent is a violation of Canon 2.

#### DISPOSITION

Pursuant to Supreme Court Rule 620, based upon the foregoing Findings of Fact and Conclusions of Law, and based upon

an affirmative vote of five or more members, the Commission on Judicial Qualifications admonishes Respondent that his conduct violated Canon 2 of the Code of Judicial Conduct.

One of the reasons for this lowest level of possible dispositions is that Respondent, Judge Robert L. Morrison, has been recognized as a hard working dedicated jurist since he took the bench in July 1961. He was the presiding judge of the Juvenile Department from 1976 to 1991, and continued in that department after he resigned as presiding judge in October 1991, until his retirement in January 1993. He is generally recognized as having made significant contributions to the handling of juveniles in the judicial system of the State of Kansas. Probably no one in this state has done more to improve procedures for handling juveniles than Respondent.

Even with this kind of record, it is essential that Respondent be admonished so that it can be made clear to the entire judiciary of the State of Kansas that this or similar conduct will not be allowed to go unpunished.

Dated this 12<sup>th</sup> day of May, 1994.

COMMISSION ON JUDICIAL QUALIFICATIONS

BY J. Patrick Brazil

Certificate of Mailing

I hereby certify that a true copy of the Findings of Fact and Conclusions of Law was mailed to Judge Robert L. Morrison, 9012 East Skinner, Wichita, Kansas 67207, and Edward G. Collister, Jr., Attorney at Law, 3311 Clinton Parkway Court, Lawrence, Kansas 66044, by depositing same in the United States mail, postage prepaid, on the 12th day of May, 1994.

Carol G. Green  
Carol G. Green, Secretary



**INQUIRY CONCERNING A JUDGE; DOCKET NO. 477**

**DISSENT:**

The Commission has chosen to issue a letter of admonition to Judge Morrison. Although this is the least rebuke we could give, I still must dissent. If no unethical conduct is proven, then only a dismissal of the charges is appropriate. At the hearing on this matter I heard the following facts from which the stated conclusions were inescapable.

Count I deals with allegations of Ms. Pam Seavey who was formerly employed as a secretary in the Child In Need of Care ("CINC") Division of the Juvenile Department of the 18th Judicial District and later became an administrative assistant in the Juvenile Department.

In November 1989, employees of the CINC of the Juvenile Department had a short coffee and cake celebration of an employee's 15 years of employment after their weekly staff meeting. The judges and other employees in the department were invited to stop by and extend congratulations. Some of the CINC staff had removed the debris from their three hole punches to use as confetti to throw at the honoree. When Judge Morrison walked into the room, after the initial surprise for the honoree, confetti was thrown at him by Pam Seavey and apparently others. He scooped some confetti up from the floor and threw it. The testimony varied substantially as to where he threw the confetti, as is not surprising for a brief instance that occurred in November 1989. Ms. Seavey testified that Judge Morrison grasped her turtleneck blouse and pulled it out a short distance to throw the confetti down her blouse. She also described a stunned silence following this activity. The testimony of the other witnesses varied dramatically with regard to whether Respondent touched Ms. Seavey or even threw the confetti towards her. None of the other witnesses described the stunned silence nor did anyone attach any great significance to whatever they thought had occurred. Ms. Seavey was at that time the secretary for the CINC Division.

Sometime between June 1991 and September 1992, Ms. Seavey was in Respondent's office looking at Respondent's computer. He was seated in a large swivel chair and she was standing to his right in a corner formed by the computer table and his desk. Ms. Seavey says Respondent scooted over in his chair and patted the small portion of the seat beside him and said "sit down". She didn't sit down because she didn't consider it appropriate to do so. Respondent doesn't recall the incident, but agrees there wasn't room in the chair for both of them. He indicates that others have sat or "perched" on the overhang of his chair when they have had to consult at his computer for extended periods of time. He doesn't know if he offered to let her sit there or not.

On July 17, 1992, Ms. Seavey came into the Respondent's office to put his mail on the credenza behind his desk. Respondent was seated at his desk with two attorneys and a legal intern seated in front of his desk. All were listening to a tape of a telephone conversation relating to a case in which they were involved. While Ms. Seavey was standing behind his chair putting his mail on the credenza Respondent extended his right arm holding some papers he wanted Ms. Seavey to see and reached or swung his arm to his rear striking Ms. Seavey's buttocks with the papers. Neither Respondent nor Ms. Seavey saw what happened but, of course, Ms. Seavey felt the papers touch her buttocks and the legal intern sitting across the desk from Respondent saw the papers "swat" Ms. Seavey's buttocks. The intern was surprised, Ms. Seavey was angry, and the Respondent knew she was angry but hadn't seen what he had done. They discussed the papers and Ms. Seavey left. When the pending case was concluded in approximately 45 minutes, Respondent located Ms. Seavey on the patio outside the Judicial Center, asked her what was wrong, and apologized. Ms. Seavey didn't consider the apology adequate and commenced consulting other present and former female employees of the Judicial Department to find others who had been offended by Respondent's conduct in the past. She was able to locate Ms. Martens, a personal friend, and Ms. Collins. Here there is no conflict in the testimony of the witnesses except for Ms. Seavey's conclusion that the Respondent's actions, literally behind her back, were intentional. Since he had an appropriate purpose for calling her attention to the papers, was not looking where he swung the papers, and apologized when he realized she was angry, this Commission cannot find that the impact of the papers with Ms. Seavey's buttocks was either intentional or unethical.

Count II involves Ms. Margie Martens who is a court services officer, ("CSO"), in the CINC of the Juvenile Department of the 18th Judicial District. The Commission's general finding regarding her is considered with the other general findings after consideration of the more specific findings about Diana Collins.

Count III involves Diana Collins who was formerly a court services officer in the Juvenile Department from 1984 to 1989 and is now, since June 1989, a CSO in Adult Probation in the 18th Judicial District with an office downtown.

Ms. Collins worked with the Respondent from 1984 until 1989. Her responsibilities in developing and managing a victim's restitution procedure required her to work closely with Respondent. By Ms. Collins' testimony and the testimony of other witnesses, she appeared to like and respect Respondent and enjoy her job until 1989. In January 1989, Respondent advised Ms. Collins that due to a change in assignments including some changes in the District Attorney's Office, her position would be eliminated. She would have to transfer back to the CINC Division. In the spring of 1989, an opening occurred for a supervisor (CSO-3) in the Probation Division of the Juvenile Department. Ms. Collins was an applicant for the position and was one of two or three finalists, but was not selected.

The selection in which Respondent participated occurred in early April 1989, and the man selected assumed his duties April 14, 1989.

Ms. Collins testified that in April or May 1989, she was working at her computer in her office when Respondent came in, stood behind her, leaned over and put his hands on her waist with his face right down by her shoulder. She was shocked and pushed the chair back. Respondent left without any comment on his conduct by either of them. Respondent denies the incident but states that he has on occasion massaged the back of Ms. Collins' neck and shoulders at her request when she complained after long hours at her computer. Ms. Collins denies requesting or receiving any such massages, but the Respondent's version of these incidents is supported by the testimony of the secretary in the adjoining office who said she heard the requests and observed the massages as Respondent described.

In the first or second week of May 1989, Ms. Collins and Respondent were walking down the hall and he put his arm on her shoulder. She said, "that makes me feel uncomfortable, please don't". Respondent removed his hand and never touched her again. Respondent confirms this incident and adds that he had a habit of touching the shoulder, elbow or upper arm of men and women as he walked with them. He testified that he had previously touched Ms. Collins in this manner without any complaint or suggestion of discomfort on her part. He interpreted her statements in early May 1989 to relate to unhappiness for not getting the promotion in April and being required to take a position as CSO in the CINC Division.

Ms. Collins denies any dissatisfaction at being required to take the CINC position. Judge Bell recalls her expressing her displeasure on this transfer to CINC. Ms. Collins denies ever discussing the subject with Judge Bell.

On May 15, 1989, Mr. Collins reported these incidents to Ms. Amy Cullom, Chief Court Services Officer, her senior supervisor at the Judicial Center. Ms. Cullom immediately reported the matter to Mr. Hentzen, her supervisor at the downtown courthouse. Ms. Collins met with Mr. Hentzen and Judge Corrigan and was able to resolve her problem by arranging a transfer to an open CSO position in Adult Probation downtown. This transfer was accomplished without anyone discussing the complaints or the transfer with Respondent.

Ms. Seavey, Ms. Martens, and Ms. Collins all relate instances when they walked down the hall with Respondent and he would put his hand on their shoulder, take their arm, or hold their upper arm. They stated that when he held their arm, the back of his hand would touch their breast and this would make them feel uncomfortable. The only complaint any of them ever made about this conduct was that described by Ms. Collins in May 1989, until

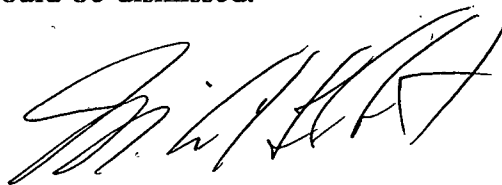
the present complaint arose. Respondent testified that he commonly touches the arm or shoulder of men or women as he walks with them, but he did not intend the conduct to have any sexual overtones. Other male and female witnesses testified that he touched them while walking in a similar manner, but they did not find the conduct offensive. The evidence reveals only one complaint about this habit, that being the complaint by Ms. Collins in May 1989, which Respondent associated with her resentment at not getting the supervisor's promotion and being required to transfer to the CINC position.

I agree with a portion of the majority report discussing Judge Morrison's records and accomplishments. In fact, I wrote it. He is and has been a truly outstanding jurist, working long hours to stem the tide of problems besetting young people in his Sedgwick County community.

Perhaps more important for this hearing, he has routinely worked closely with the predominately female staff of the Juvenile Center for 17 years. When Ms. Seavey became angry with Respondent for what she perceived as his sexually harassing conduct, she attempted to assemble other complaints to support her position. She testified to contacting a half dozen or more potential complainants. Several of the witnesses who testified on behalf of Judge Morrison indicated they had been so contacted. The resulting complaints we have heard in this hearing fall far short of establishing a hostile work environment and do not constitute clear and convincing evidence of unethical conduct by the Respondent.

The working relationship between a judge and judicial staff or court administration employees is often close and the judge must be treated with respect and deference. Because of this required relationship, it is appropriate for this Commission to be vigilant for ethical abuses existing in the relationship including sexual harassment. Nevertheless, we do no service for women in the work place by finding sexual harassment where none is proven. In fact, we run the risk of creating artificial impediments to a normal productive work environment.

The charges against Respondent should be dismissed.



Mikel L. Stout