

JUDICIAL REVIEW COUNCIL

In re: Honorable Robert C. Flanagan

FINDINGS

UNDERLYING PROCEEDINGS

On November 13, 1995, the Judicial Review Council received a complaint from Ms. Penny Ross which alleged certain conduct of the respondent. On November 15, 1995, the Judicial Review Council initiated an investigation of the complaint. The investigation included a confidential hearing held on February 15, February 16, and February 28, 1996.

At the confidential hearing the respondent appeared, was represented by counsel, examined and cross-examined witnesses. Upon completion of the hearing, the Judicial Review Council found probable cause to believe that certain of the alleged conduct of the respondent did violate Section 51-51i (a) of the Connecticut General Statutes.

Following timely publication of notice, and pursuant to Section 51-511 (c) of the Connecticut General Statutes and Council regulations, a public hearing was held on April 17, 1996, on the following charges:

Charge 1

Between March 1, 1992, and October 30, 1995, the Honorable Robert C. Flanagan engaged in a consensual sexual relationship with a married court employee, which conduct resulted in his failure to observe high standards of conduct so that integrity and independence of the judiciary might be preserved, in violation of Canon 1 of the Code of Judicial Conduct and Section 51-51i (a) (2) of the Connecticut General Statutes.

Charge 2

Between March 1, 1992, and October 30, 1995, the Honorable Robert C. Flanagan engaged in a consensual sexual relationship with a married court employee, which conduct resulted in his failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A of the Code of Judicial Conduct and Section 51-51i (a) (2) of the Connecticut General Statutes.

The respondent filed the following Answer to Charges:

Charge 1

The respondent admits between March 1, 1992, and October 30, 1995, the Honorable Robert C. Flanagan engaged in a consensual sexual relationship with a married court employee, the complainant, Ms. Ross, but denies the remainder of the charge.

Charge 2

The respondent admits between March 1, 1992, and October 30, 1995, the Honorable Robert C. Flanagan engaged in a consensual sexual relationship with a married court employee, the complainant, Ms. Ross, but denies the remainder of the charge.

The respondent attended the public hearing, was represented by counsel, examined and cross examined witnesses, submitted evidence and was fully heard.

FINDING OF FACTS

The following facts are found by clear and convincing evidence:

1. The respondent was, at all relevant times, an active judge of the Connecticut Superior Court.
2. The complainant, at all relevant times, was a court reporter employed by the State Judicial Branch.
3. The complainant, at all relevant times, was a married woman.
4. The respondent engaged in a consensual sexual relationship with the complainant from March 1992, to October 1995.
5. For substantial periods of time during this relationship, the complainant was consistently assigned as a court reporter to the courtroom in G.A. 6, New Haven, over which the respondent presided.
6. On many occasions the complainant was present in the chambers of the respondent before the opening of court, during pretrial conferences with counsel present, and during recesses.
7. From early January 1995 to the fall of 1995, the complainant also had a sexual relationship with Attorney Shepard Sherwood.
8. Attorney Sherwood was, at all relevant times, an assistant public defender at G.A. 6, New Haven, and weekly, and sometimes more often, appeared before the respondent for pretrials in his chambers and other matters in court in the presence of the complainant as the assigned court reporter.
9. The expert opinion evidence offered by the respondent was not persuasive.
10. The respondent willfully engaged in the conduct alleged.

DECISION

Charge 1

The conduct of the respondent, as found above, resulted in his failure to observe high standards of conduct so that the integrity and independence of the judiciary might be preserved.

On motion made and seconded, on a vote of nine to three, the Judicial Review Council found the respondent guilty as charged in Charge 1.

Charge 2

The conduct of the respondent, as found above, resulted in his failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

On motion made and seconded, on a vote of nine to three, the Judicial Review Council found the respondent guilty as charged in Charge 2.

Hartford, Connecticut, April 24, 1996.

R. Bartley Halloran

Chairman

Dissent to Decision in re: Honorable Robert C. Flanagan

Having found at the Hearing in Probable Cause that the sexual relationship between Judge Flanagan and Ms. Penny Ross was consensual, the Council nonetheless filed two charges in this case against the Judge, which were the subject of a public hearing on April 17, 1996. Both charges alleged Judge Flanagan "engaged in a consensual sexual relationship with a married court employee" for a period lasting approximately 3½ years. In his Answer and at the public hearing, Judge Flanagan, a bachelor, admitted the relationship but denied the charge that it violated the canons and statutes pled in the charges.

No case was cited to the Council which held that a consensual sexual relationship between a judge and a court employee (married or unmarried) violated any canon or statute. Neither is there any written guideline or policy of the Judicial Department prohibiting same.

The applicable standard of proof in cases such as these is clear and convincing evidence. No evidence was introduced that the relationship in any way affected any judicial decision made, the movement of the court docket, or the job performance of Judge Flanagan.

Probing into the personal lives and conduct of judges - where there is no evidence of any adverse impact on judicial performance - is a dangerous and slippery slope. The Council cannot and should not impose its own personal moral code on judges who come before it.

The evidence offered at the hearing did not approach the high standard of proof required to find Judge Flanagan "guilty." Accordingly, I dissent from the majority vote and vote "not guilty" on both charges.

Hugh F. Keefe

Member

April 19, 1996