

(No. 86 CC 1.—Complaint dismissed.)

In re CIRCUIT JUDGE ROBERT J. DEMPSEY
of the Circuit Court of Cook County, Respondent.

Order entered January 28, 1987.

SYLLABUS

On June 20, 1986, the Judicial Inquiry Board filed with the Courts Commission a four-count complaint (later amended), charging the respondent with willful misconduct in office and with conduct that is prejudicial to the administration of justice and that brings the judicial office into disrepute. In summary form, the complaint alleged, in Count I, that, prior to becoming a judge in 1964 and while in the practice of law, the respondent entered into a referral-fee arrangement with another attorney in which the respondent would refer four client-companies to the attorney for legal work on personal property tax matters and would receive 50% of the fees paid to the attorney; and that after becoming a judge the respondent occasionally, during the period 1964-80, received from the attorney "substantial monetary payments" under the referral-fee arrangement, including at least \$5,000 during the period 1976-80. The complaint alleged that the respondent's conduct described in Count I violated Supreme Court Rules 61(c)(4), 61(c)(21), 61(c)(22), and 61(c)(23) (Ill. Rev. Stat., ch. 110A, pars. 61(c)(4), 61(c)(21)—61(c)(23)).

Count II alleged that during 1979 and 1983 the respondent obtained a financial interest in various parcels of real property located in the city of Chicago and obtained "equal interests" in said parcels, along with certain attorneys, through court-ordered demolition or scavenger sales; that in 1981 the respondent presided at judicial tax proceedings involving one of the parcels and entered an order that resulted in a property tax refund and removed a delinquent tax lien on the parcel; and that during 1979-83 the respondent was responsible for assigning cases concerning deeds to property sold through court-ordered scavenger sales and, while having a financial interest in some of the above-mentioned parcels, the respondent assigned to other judges, without disclosing his financial interest in the parcels, cases concerning deeds to the parcels. The complaint alleged that the respondent's conduct described in Count II violated Supreme Court Rules 61(c)(4), 61(c)(12), 61(c)(21),

61(c)(23), and 66 (Ill. Rev. Stat., ch. 110A, pars. 61(c)(4), 61(c)(12), 61(c)(21), 61(c)(23), 66).

Count III alleged that, on various occasions during 1964-80, the respondent failed to recuse himself or disclose his financial relationship to opposing counsel in court cases pending before him in which the attorney with whom he had the ongoing referral-fee arrangement appeared and represented litigants; and that, during the period 1971 to the present, when the respondent was a co-owner of, and maintaining a financial interest in, numerous parcels of property with certain attorneys, each of said attorneys appeared as counsel of record in court cases pending before the respondent, and the respondent failed to recuse himself or disclose his financial relationships with said attorneys in those cases in which they appeared. The complaint alleged that the respondent's conduct described in Count III violated Supreme Court Rules 61(c)(4), 61(c)(12), 61(c)(21), and 61(c)(23) (Ill. Rev. Stat., ch. 110A, pars. 61(c)(4), 61(c)(12), 61(c)(21), 61(c)(23)).

Count IV alleged that, during the period 1974-80, the respondent and a certain attorney were co-owners of certain real property which in 1980 was sold to the city of Chicago, and that the respondent derived from said sale a net profit of more than \$10,000, which he failed to report as income to the United States Internal Revenue Service or Illinois Department of Revenue and failed to fully disclose in any statement of economic interest required to be filed pursuant to Supreme Court Rule 68; and that the respondent failed to fully disclose the above-described referral-fee arrangement and financial relationships with certain attorneys in any statement of economic interest required to be filed pursuant to Rule 68. The complaint alleged that the respondent's conduct described in Count IV violated Supreme Court Rules 61(c)(4) and 68 (Ill. Rev. Stat., ch. 110A, pars. 61(c)(4), 68).

Held: Complaint dismissed.

Prior to the filing of the Judicial Inquiry Board's complaint with the Courts Commission on June 20, 1986, the respondent submitted a letter, dated June 19, 1986, to the chief justice of the Illinois Supreme Court wherein he resigned his "position as Circuit Court Judge effective at the close of business this date June 19, 1986." The letter was hand-delivered to the chief justice's office in the afternoon of June 19. Thereafter, on June 23, the Judicial Inquiry Board filed in the supreme court a "Petition To Stay Action on Letter of Resignation of Judge Robert J. Dempsey." The court held a hearing on the petition

and, after considering the briefs and arguments of counsel, denied the petition on June 30, 1986, ruling that, "under the principles stated in prior decisions, including *People ex rel. Adamowski v. Kerner* (1960), 19 Ill. 2d 506, and *Cole v. McGillicuddy* (1974), 21 Ill. App. 3d 645, Judge Dempsey's letter of resignation delivered to the Chief Justice was final and effective when received." *In re Resignation of Hon. Robert J. Dempsey, Judge of the Circuit Court of Cook County* (June 30, 1986), S. Ct. Doc. No. M.R. 4001.

Winston & Strawn, of Chicago, for Judicial Inquiry Board.

William J. Martin, of Oak Park, and George J. Murtaugh, Jr., of Chicago, for respondent.

Jerold S. Solovy and Gary T. Johnson, both of Chicago, for *amicus curiae* the Special Commission on the Administration of Justice in Cook County.

Before the COURTS COMMISSION: MORAN, J., chairman, and LORENZ, JONES, MURRAY and SCOTT, JJ., commissioners. ALL CONCUR.

ORDER

This action arises on a four-count amended Complaint filed by the Illinois Judicial Inquiry Board (Board) against the respondent, Robert J. Dempsey, charging him with willful misconduct in office, and a motion to dismiss the Complaint filed by the named respondent. The motion to dismiss attacks the jurisdiction of this Commission and charges that the issues raised by the Complaint are moot.

The Board filed a memorandum in opposition to the motion to dismiss, contending that the issues were not moot and asserting jurisdiction in the Commission over the controversy. Also, by leave, the Special Commission on the Administration of Justice in Cook County (Special Commission) was permitted to intervene as *amicus curiae* and has filed a memorandum in support of the Commission's jurisdiction.

The respondent filed no memorandum, but by letter dated September 10, 1986, indicated that he had no desire to participate in the proceeding and had so advised his attorney. He indicated in his letter that he intended to stand on his motion to dismiss in the event this Commission denied the motion.

The facts, which are undisputed in light of the respondent's motion and his election to stand on it, are as follows:

In late 1983, the Board began investigating charges that the respondent, then a judge of the circuit court of Cook County, violated the Illinois Supreme Court Standards of Judicial Conduct while serving in the county division of that court. On February 22, 1984, he was informed of the allegations and requested to appear before the Board as required by its Rule 4(d) (see Judicial Inquiry Board Report (1986), p. 8).

While the Board was conducting an investigation of the allegations of misconduct, the United States Attorney for the Northern District of Illinois was also investigating the respondent. Rather than appear before the Board, the respondent requested that it defer its investigation pending conclusion of the Federal investigation. On March 14, 1984, the Board wrote to the respondent stating that it would stay any further proceedings until the Federal government concluded its investigation.

In May 1986 the Federal government concluded its investigation. The United States Attorney and the respondent agreed that the evidence gathered in the Federal grand jury investigation would be disclosed to the Board for use in any disciplinary proceedings. The Board received the evidence pursuant to an order of the United States District Court.

Armed with the additional evidence against the respondent, the Board wrote to him on May 22, 1986, summarizing the charges under consideration and again

requiring that he appear to answer the allegations. On June 13, 1986, the respondent appeared before the Board with counsel. He requested the Board to give him a one-week continuance to obtain additional counsel. The Board granted the continuance.

On the morning of June 20, 1986, the respondent again appeared before the Board with the same counsel that accompanied him at his previous appearance. Through his lawyer he stated he had tendered his resignation to the chief justice of the Illinois Supreme Court the preceding afternoon. He contended that his tendered resignation divested the Board of authority to take any further action and refused to answer any questions concerning the allegations. The Board excused him and deliberated in confidence. Thereafter, the Board concluded that the evidence warranted the filing of a complaint with this Commission and did so.

At about the same time or simultaneously, the Board filed a petition with the Illinois Supreme Court requesting that the respondent's tendered resignation be stayed pending action by this Commission upon the Board's Complaint. The supreme court denied the Board's petition, holding that under Illinois law the respondent's resignation was effective when tendered.

During oral argument, in response to a question put by the Commission to counsel for the Board, we were advised that the Board had no knowledge of the respondent's intended resignation and learned of it only after it was made.

The charges against the respondent are most serious ones, ranging from charges of an illegal fee-splitting deal with attorneys during a 16-year period, entering a judgment in a tax case resulting in a refund and removal of delinquent taxes on property in which he had a financial interest, failure to recuse himself in cases

involving attorneys with whom he was a business partner, failure to report income from his real estate dealings to the Internal Revenue Service and Illinois Department of Revenue, and failure to report to the Administrative Office of the Illinois Courts his financial relationships as prescribed by Supreme Court Rule 68 governing declarations of economic interest by judges.

There is no doubt that the charges that stand admitted by the respondent in his motion to dismiss and his election to stand thereon constitute willful misconduct in office. Nor are they necessarily moot issues. Under the Illinois Constitution, the Illinois Supreme Court has jurisdiction to assign him to judicial service as a retired judge (Ill. Const. 1970, art. VI, sec. 15 (a)). Further, under Illinois law, the respondent, as a retired judge, can still perform marriages in this State (Ill. Rev. Stat. 1985, ch. 40, par. 209). Had he been removed as a judge by this Commission on the Board's Complaint, he would have been precluded from performing that function by reason of Illinois law. The real question presented, therefore, is not mootness, but the question of the jurisdiction of this Commission over a judge who has resigned. (In four previous cases involving resignation of judges who had submitted resignations or whose term had expired, this Commission dismissed the Board's Complaint. Judicial Inquiry Board Report (1986), Appendix D, p. 17 *et seq.*)

Despite the able arguments contained in the brief of the attorneys for the Board and Special Commission to the contrary, we conclude that neither the Commission nor the Board has jurisdiction over the matter because of the respondent's resignation prior to the filing of the Complaint.

Section 15(e), article VI, of the Illinois Constitution of 1970 vests the Illinois Courts Commission with exclusive jurisdiction to convene disciplinary proceed-

ings against a judge upon the filing of a complaint by the Judicial Inquiry Board and, further, vests the Commission with the exclusive jurisdiction to discipline a judge, as warranted, at the conclusion of such proceedings. Thus, the Courts Commission "shall have authority * * * to remove from office, suspend without pay, censure or reprimand a Judge or Associate Judge for willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute * * *." (Ill. Const. 1970, art. VI, sec. 15(e).) While the Commission's jurisdiction is exclusive it is not unlimited. Thus, in *People ex rel. Harrod v. Illinois Courts Com.* (1977), 69 Ill. 2d 445, 466-70, the Illinois Supreme Court acknowledged the Commission's exclusive jurisdiction but held that the Commission could discipline judges only for violations of the Standards of Judicial Conduct as promulgated by the court. Accord, *People ex rel. Judicial Inquiry Board v. Courts Com.* (1982), 91 Ill. 2d 130, 135-36.

The Standards of Judicial Conduct, however, apply only to active judges, including "circuit and associate judge[s] and judges of the appellate and Supreme Court." (Ill. Ann. Stat., ch. 110A, par. 61(a), and Historical and Practice Notes at 67, 68 (Smith-Hurd 1985).) Reading together section 15(e) of article VI, the supreme court's holding in *Harrod* and Supreme Court Rule 61, it is apparent that the Courts Commission, while being the exclusive judicial disciplinary body, may exercise its exclusive jurisdiction only with respect to active, sitting judges. A former judge, such as the respondent, who leaves the judiciary by way of resignation or retirement is beyond the exclusive jurisdiction of the Commission and cannot be disciplined.

We have reviewed the cases relied upon by the Judi-

cial Inquiry Board for its contention that it has the authority to discipline the respondent despite his resignation. However, we find these cases inapposite. In each case cited by the Board, disciplinary proceedings were initiated by an administrative body analogous to the Illinois Courts Commission but, unlike Illinois, the State supreme court functioned as the ultimate arbiter, determining precisely what sanction would be imposed. Thus, in *In re Probert* (Mich. 1981), 308 N.W. 2d 773, 775, 782, the Michigan Supreme Court acted as the final disciplinary body in censuring and conditionally suspending a judge who had resigned from the bench, basing its decision on its exclusive constitutional authority to discipline members of the judiciary. Similarly, in *In re Sterlinske* (Wis. 1985), 365 N.W. 2d 876, 881-82, n.5, the Supreme Court of Wisconsin, relying upon its express constitutional grant of authority to discipline judges, sanctioned a former judge who had resigned by "remov[ing] him, for cause, from eligibility to serve in that judicial office." In *West Virginia Judicial Hearing Board v. Romanello* (W. Va. 1985), 336 S.E.2d 540, the supreme court of appeals, the State's highest court, observed that "[t]he law contemplates that this court will make an independent evaluation of the record in a disciplinary proceeding, and not give conclusive weight to recommendations of the Judicial Hearing Board." Finally, in *In re Whitaker* (La. 1985), 463 So.2d 1291, 1298, the Supreme Court of Louisiana observed that it "is the court of original jurisdiction in judicial disciplinary proceedings."

We do not believe that these cases, insofar as they concern the discipline of judges who have resigned from the judiciary, control the case before us. In our view, the cases cited by the Board reflect two factors not applicable to cases of judicial discipline in Illinois: (1) use of the inherent authority of a state supreme court to

control the judiciary and (2) construction of this authority to encompass the discipline of former judges.

The situation in Illinois, as discussed above, is not analogous. In Illinois, the Courts Commission has exclusive authority to discipline judges pursuant to rules promulgated by the Illinois Supreme Court, rules which apply only to judges actually serving in a judicial capacity.

Even though the Commission is without the jurisdiction necessary to discipline the respondent, the Commission is not without recourse. We refer specifically to section 15(a), article VI (Ill. Const. 1970, art. VI, sec. 15(a)), which empowers the supreme court to assign retired judges to judicial service. Therefore, we strongly suggest to the Supreme Court of Illinois that it not recall the respondent and assign him to any available judicial position.

For the reasons stated herein, we find that the Courts Commission is without jurisdiction in this matter and that the Complaint should be dismissed. It is so ordered.

Complaint dismissed.
