

(No. 75 CC 2.—Respondent suspended.)

In re CIRCUIT JUDGE PHILIP F. LOCKE of the
Eighteenth Judicial Circuit, Respondent.

Order entered October 21, 1975.

SYLLABUS

On July 24, 1975, the Judicial Inquiry Board filed a thirteen paragraph complaint with the Courts Commission, charging the respondent with conduct that brings the judicial office into disrepute. The complaint alleged that in July of 1971 a bank, as trustee under a land trust, the beneficiaries of which were Kuhn and Demling, filed an action in the circuit court against DuPage County, seeking a judgment to mine the property which was held in the land trust, and that prior to the above action, another action had been filed in the circuit court concerning the mining of a part of the property by Marino.

The complaint further alleged that during the pendency of that action, Kuhn and Demling purchased Marino's interest in the property and the original action was terminated before the July, 1971 action was filed; that on August 15, 1973, the respondent, failing to disqualify himself, entered an order permitting the beneficiaries of the land trust, Kuhn and Demling, to mine the property although, on August 15, 1973, and for many years prior thereto, the respondent was a close and intimate friend and sometimes business associate of Kuhn. The complaint also alleged that the respondent in October of 1972 learned that Demling desired to sell his interest in the property held in the land trust and the subject of litigation; that the respondent involved himself in an effort to effectuate a sale of Demling's interest to others by arranging a meeting with the prospective buyers and expressing his opinion as to the value of the property, by introducing the said buyers to Kuhn and participating in the discussions and by meeting with said buyers and Demling for the purpose of pursuing his attempt to arrange the purchase of Demling's interest in the property.

The complaint further alleged that during the above course of events, the respondent knew that the property was the subject of litigation and by his involvement he gained personal knowledge of the facts and issues which subsequently came before him; that the respondent on numerous occasions engaged in *ex parte* discussions with Kuhn prior to and during the pendency of the litigation which resulted in the respondent's order of August 15, 1973; that the respondent had full knowledge of Kuhn's substantial financial interest in the property and that Kuhn was one of the principal beneficiaries of

the land trust in which the property was held by the bank, which was the plaintiff; that the respondent did disqualify himself in a hearing on a motion in the action because of his close friendship with Kuhn; and that in failing to disqualify himself and in entering the order of August 15, 1973, the respondent's conduct was "an act of gross impropriety" which created an "appearance of impropriety and a reasonable suspicion of bias and prejudice."

Held: Respondent suspended for six months without pay.

William J. Scott, Attorney General, of Springfield,
for Judicial Inquiry Board.

Robert D. Boyle, of Chicago, for respondent.

Before the COURTS COMMISSION: SCHAEFER,
J., chairman, and EBERSPACHER, STAMOS, DUNNE
and FORBES, JJ., commissioners. ALL CONCUR.

ORDER

The Complaint filed by the Judicial Inquiry Board in this case charged the respondent, Judge Philip F. Locke, with conduct that was grossly improper, conduct that created the appearance of impropriety, and also with conduct which tended to and did bring the judicial office into disrepute.

The Complaint is primarily concerned with the relations between the respondent and certain of his friends and his and their business associates, with respect to judicial and other proceedings involving a tract of land of approximately 80 acres located on the north side of Army Trail Road in Wayne Township in DuPage County. This property has been referred to in these proceedings as the "Army Trail property." The facts before the Commission have in the main been admitted or stipulated, and the admissions and stipulation have been supplemented by exhibits and the testimony of witnesses, including the respondent.

The property in question contained gravel, and the controverted issue with respect to the property

concerned the right to mine that gravel and remove it from the property.

Prior to 1969 certain orders had been entered with respect to this property by the respondent's predecessor, in an action instituted by DuPage County against the then owner of the property, Joseph Marino. Some time prior to March of 1971, the property in question was acquired by John Demling, Harry W. Kuhn and Dominic Accorsi, and they were allowed to intervene as defendants in the *Marino* case. Demling had succeeded to the respondent's law practice when he became a judge. Kuhn had been a client and close personal friend and business associate of the respondent for many years. Kuhn was in the concrete business, and Accorsi was engaged in the mining, processing and sale of gravel.

On March 19, 1971, and again on March 24, 1971, the respondent entered orders in the *Marino* case which allowed the owners of the property to remove existing stockpiled gravel from the property for delivery to DuPage County for use in the construction of a county road. Thereafter, on April 6, 1971, after opposition had been expressed by a property owners' association, the respondent vacated those orders and entered an injunction restraining the owners from removing gravel from the property until the further order of the court.

The following facts are stipulated:

"13. After entering the Order of April 6, 1971, Judge Philip F. Locke advised the intervenors [Demling, Kuhn and Accorsi] that the only way they could mine the gravel on the property would be to develop the property as residential property with a lake; when the intervenors advised that the County Board of DuPage County would not rezone the property for that purpose, Judge Locke offered to call the Zoning Board to a meeting to discuss a possible rezoning.

14. Shortly thereafter, seven members of the eight man DuPage County Zoning Committee met with

Judge Philip Locke in his Chambers to discuss the possible rezoning of the real property involved in the aforesaid *County of DuPage v. Marino*. Members of the Zoning Committee initially stated that they were against changing the zoning to permit the mining of gravel; they agreed, however, to reconsider their position if a plat of subdivision was submitted demonstrating an intent to develop a lake and single family dwellings on the property in question."

The meeting with the members of the DuPage County Zoning Committee took place in the respondent's chambers, out of the presence of the representatives of DuPage County and the intervening objectors, and without notice to them or to their attorneys.

At some time between April 6, 1969 and July 19, 1971, the case of *County of DuPage v. Marino* was dismissed. A new complaint identified as No. 71-1888-G, *West Suburban Bank, et al., Trustees v. County of DuPage*, was filed on July 19, 1971 by the trustees of the land trusts which held title for Demling, Kuhn and Accorsi. Prior to the filing of this complaint and during its pendency, the respondent had on numerous occasions engaged in *ex parte* discussions with Kuhn about the facts and issues in the case, "with a view," as the respondent stated in his answer, "to the settling of the litigation."

The complaint in No. 71-1888-G alleged that an application had been made for a special use permit to allow the mining, loading and hauling of gravel and for a variation, for a period of ten years, which would permit the owners to place equipment, buildings and structures upon the property for screening, crushing, washing and storage of gravel and aggregate. The application had been denied by the Zoning Board of Appeals and that decision had been approved by the Board of Supervisors of DuPage County. The complaint further asserted that the ordinance, insofar as it applied to the property in

question, was unconstitutional and deprived the owners of equal protection and due process of law. The relief requested was a decree declaring that the refusal to issue the special use permit was arbitrary, and also declaring the invalidity of the ordinance and enjoining its enforcement.

A motion to dismiss the complaint was filed on behalf of the County of DuPage. It is stipulated that:

“18. A hearing in a motion to dismiss the Complaint in *West Suburban Bank v. County of DuPage*, 71-1888-G, was scheduled before Judge Philip F. Locke for August 26, 1971; Judge Locke disqualified himself from hearing that motion in as much as he was a friend of Harry Kuhn, and had advised all the judges in the courthouse that he could not hear any contested matter where Harry Kuhn was concerned.”

The motion to dismiss the complaint in No. 71-1888-G was ultimately denied by another judge and an answer was filed on behalf of DuPage County on November 12, 1971. No further action took place in this case, however, until the events of August of 1973 which will be described hereafter.

During September and October of 1972, the respondent was actively endeavoring to bring about a sale of John Demling's interest in the subject property. The following facts have been stipulated:

“19. In September or early October, 1972, John Demling communicated to Judge Philip F. Locke a desire to sell his interests in Parcels I, II, and III.

20. At or about the same time, William Bishop, a neighbor of Judge Philip F. Locke, advised Judge Locke that a friend of Bishop, Edward Sprinkle, had sold a business and was interested in reinvesting his money; Judge Locke informed Bishop of John Demling's desire to sell his interests in Parcels I, II, and III.

21. Shortly thereafter, Judge Philip F. Locke communicated to John Demling the fact that Edward Sprinkle might be interested in purchasing Demling's interests in Parcels I, II, and III.

22. In early October, 1972, Judge Philip Locke, William Bishop, and Edward Sprinkle discussed the possible purchase of Parcels I, II, and III, at the Hinsdale Oasis on the Illinois Tollway.

a. During this discussion, Judge Philip F. Locke told Mr. Bishop and Mr. Sprinkle that the real property involved in Parcels I, II, and III was in litigation before him, that there was a strong possibility that the Forest Preserve District of Du Page County was going to buy the property and had offered \$6,750.00 an acre for it, that Demling was willing to sell at a price of \$6,500.00 an acre because he needed the cash; Judge Philip F. Locke further advised Sprinkle that as the offer Judge Locke had heard about was higher than what Demling wanted, Sprinkle 'couldn't lose.'

b. During the aforesaid discussion, Mr. Sprinkle said he would need an appraisal of the property; coincidentally, one Donald P. Neuses, a real estate appraiser known to Judge Philip Locke entered the Hinsdale Oasis and Judge Philip Locke said, 'There's a good appraiser there.'

c. Donald P. Neuses thereafter joined Judge Philip F. Locke, William Bishop and Edward Sprinkle; Judge Philip F. Locke advised Mr. Neuses of the location of the property under discussion and asked its value. Mr. Neuses rendered a verbal opinion at that time.

23. On another occasion shortly thereafter, Judge Philip F. Locke, Harry W. Kuhn, William Bishop, and Edward Sprinkle met at Arley's Restaurant and discussed Parcels I, II, and III.

24. At the end of October, 1972, Judge Philip F. Locke told Donald Neuses that a meeting would be held that evening for discussion of Parcels I, II, and III and invited Mr. Neuses to that meeting.

25. That evening Judge Philip F. Locke and Donald Neuses went to the home of William Bishop, where they met Edward Sprinkle.

26. Shortly after the arrival of Judge Philip F. Locke and Donald Neuses, John Demling arrived at William Bishop's house with closing statement for the sale of his interests in Parcels I, II, and III.

27. After a brief conversation with Edward Sprinkle at Mr. Bishop's house, John Demling left.

28. A sale of John Demling's interest in Parcels I, II, and III was never consummated with Edward Sprinkle."

On June 20, 1973, the Forest Preserve District of Du Page County filed an eminent domain action to acquire the Army Trail property for public use.

Case No. 71-1888-G had been dormant from November of 1971 until August 13, 1973. During the interim, however, additional property adjacent to the original tract had been acquired, and the title to all the parcels constituting the Army Trail property had been consolidated in a single land trust, the beneficiaries of which on August 15, 1973 were Harry W. Kuhn, Dominic Accorsi and Donald P. Neuses. Neuses was an appraiser and real estate broker, who had frequently testified before the respondent and who, during the preceding year, had assisted the respondent in his efforts to subdivide and develop a 3-acre tract of land owned by the respondent and his wife.

On August 13, leave was granted to the attorney who had originally filed the complaint in No. 71-1888-G to withdraw his appearance, and leave was granted to Calvert Gordon to enter his appearance on behalf of the plaintiff. On that date Gordon moved that the case be set

for trial. This motion was heard by the respondent, who set the case for trial on August 15, 1973. On that date, the respondent proceeded with the trial over the protest of the assistant State's Attorney who was representing Du Page County. Two of the owners of the property testified. At the conclusion of the hearing the following order was entered:

"The Court having considered testimony offered by witnesses, exhibits received in evidence without objection and being fully advised in the premises and being advised that the County of DuPage wishes a week to submit its case,

It Is Therefore Ordered & Decreed that Plaintiff may use its property for gravel mining and related uses pending determination of this cause and the injunction or restraining order affecting the subject premises be and the same is hereby dissolved, set aside & held for naught.

It Is Further Ordered that Defendant present its case at 10:30 A.M. on August 22, 1973."

From the admissions and stipulations, the testimony of the witnesses, and its examination of the exhibits offered by the parties, the Commission is satisfied that the allegations of the Complaint have been proved by clear and convincing evidence.

It is clear that the respondent should have disqualified himself from conducting the hearing which took place on August 15, 1973. The grounds that existed for his disqualification in April of 1971 were even more substantial in August of 1973. Between those two dates, the respondent had pointed out to the owners of the property a method by which he thought their objectives—to mine and remove gravel from the Army Trail property—could be achieved. He had arranged an *ex parte* meeting with the members of the Zoning Committee of DuPage County to bring about the rezoning of the property so that the mining of gravel

would be permitted. He had acquired information concerning an impending eminent domain proceeding and the price that the condemnor proposed to offer for the property, and had transmitted that information to a prospective purchaser. And finally, the manner in which the hearing of August 15, 1973 was conducted by the respondent, as demonstrated by the transcript of those proceedings which was made available to the Commission, was itself sufficient to indicate bias and unfairness.

The Commission is of the opinion that there was gross impropriety in the conduct of the respondent, that there was conduct that created the appearance of impropriety, and that the conduct of the respondent brought the judicial office into disrepute. After careful consideration of the appropriate sanction, it is ordered, pursuant to the provisions of section 15 of article VI of the Constitution of Illinois, that the respondent, Philip F. Locke, be suspended for a period of six months.

Respondent suspended for six months without pay.
