2011 IL Cts Com 001

(No. 10–CC-2 - Complaint dismissed.)

In re ASSOCIATE JUDGE CHRISTOPHER G. PERRIN,
of the Circuit Court of the Seventh Judicial Circuit, Respondent.

Order entered September 9, 2011

SYLLABUS

On November 8, 2010, the Judicial Inquiry Board filed a complaint with the Courts Commission, charging respondent with conduct that was prejudicial to the administration of justice and brought the judicial office into disrepute in violation of the Code of Judicial Conduct, Illinois Supreme Court Rules 61, 62 and 63. In summary form, the complaint alleged that on June 2, 2010 respondent improperly spoke to another judge, who was scheduled to preside over the hearing on respondent's daughter's traffic citation. Subsequent to this conversation, respondent's daughter's traffic citation was dismissed *sua sponte*.

Held: Complaint dismissed.

Sidley Austin LLP, of Chicago, for Judicial Inquiry Board.
Brainard Law Offices, of Charleston, for respondent.

Before the COURTS COMMISSION: HOOKS, Chairman, FREEMAN, GOMORA, MCBRIDE, and SCHMIDT, commissioners, CONCURRING; WOLFF, commissioner, DISSENTING.

ORDER

I. BACKGROUND

The Illinois Judicial Inquiry Board (Board) filed a complaint with the Illinois Courts Commission (Commission), charging Associate Judge Christopher G. Perrin of the Seventh Judicial Circuit Court (respondent) with conduct that is prejudicial to the administration of justice and which brings the judicial office into disrepute.

The hearing before the Commission was based on the following stipulation of facts. On April 30, 2010, respondent's daughter received a traffic citation in Leland Grove, Illinois. The citation set a June 7, 2010 court hearing at the Sangamon County courthouse. The courthouse is the same courthouse to which respondent has been assigned since his appointment to the bench in 2009.

Several weeks after the issuance of the citation, in early May, respondent spoke to Sgt. Greg Lokaitis of the Springfield Police Department. Lokaitis worked in the Sangamon County

courthouse as the police liaison who coordinated the court appearances of all officers in the county. Respondent wanted to ask Lokaitis about the ticket that his daughter had received.[1] During this conversation, respondent told Lokaitis that his daughter had been driving a classmate home from school and that the classmate lived a block down from the road closed sign. His daughter had taken the classmate home and had driven past the sign on numerous occasions and had encountered no problem. He asked Lokaitis whether exceptions to the road closed sign existed for those attempting to drive someone home. Lokaitis responded that he did not know how the signs were enforced, but that he would find out. Lokaitis also told respondent that he was going to report the citation to his superiors because when a citation is issued to a judge or a judge's family member, a special setting and a special prosecutor is required. At that point, respondent told Lokaitis to "do whatever you feel you need to do." Respondent understood that Lokaitis was going to notify the county about the ticket. Although Lokaitis asked respondent for the name of the officer who issued the ticket because he (Lokaitis) wanted to speak with him, respondent told Lokaitis that he did not know the name of the officer and that he did not want Lokaitis to contact him.

After his conversation with Lokaitis, respondent next approached Associate Judge John Mehlick. Judge Mehlick was respondent's Supreme Court-appointed "new judge mentor." Respondent was concerned about the need for a special prosecutor and wanted the advice of his mentor. Judge Mehlick explained that two options existed for respondent's daughter. She could either plead guilty and pay the fine, or contest the citation. If she chose the latter option, a special prosecutor and an out-of-circuit judge would be brought in the proceedings. Subsequent to this initial conversation, respondent had several other discussions with Judge Mehlick concerning his daughter's situation. Relevant to these proceedings, it is important to note that the Board has not alleged that any of the conversations between respondent and either Lokaitis or Judge Mehlick were improper.

What the Board does allege as the basis for the charges of impropriety is the conversation that respondent had with Associate Judge Robert T. Hall of the Seventh Judicial Circuit on June 2, 2010 and what occurred in its aftermath. Respondent, who was on the bench on June 2, had before him a small claims case from which he had to recuse himself. As he began to write the recusal order, he realized that the case had not been assigned to him after all, but to Judge Hall. Knowing that Judge Hall was set to retire, respondent wanted to ask Judge Hall whether he wanted to continue to handle it or if he wanted respondent to send it up and have it reassigned to another judge. It is not alleged that respondent knew, at this time, that Judge Hall had been assigned respondent's daughter's traffic citation case.

Respondent took the file and went up to the Judge's Reception area on the sixth floor of the Sangamon courthouse. There he saw Judge Hall, who was "ranting" to the people who were sitting there about the number of traffic cases to which he had been assigned. As respondent walked up to him, Judge Hall stated, "look at what they did to me next week, Leland Grove has 700 cases set for Monday afternoon." Respondent, who had been assigned to traffic court previously, thought the 700 number was "more than double" the biggest case load he had ever

[1] The record indicates that respondent's daughter was ticketed for driving down a street that had been marked with a "road closed" sign.

had and was surprised by it. After commenting on his surprise at the amount of the call, he added to provide levity, "if it's any consolation, my daughter is one of those cases, and she's scheduled to be out of town next week."

Judge Hall then asked where she was going, and if it was a vacation. Respondent replied that it was not a vacation, but that "there was a nun at her high school who every year had organized a few dozen students, some faculty members, a priest, and a couple of nuns and maybe a few parents, and they take a road trip in cars and vans across the country to Steubenville Ohio, which is on the Ohio, West Virginia border. That they sleep in a church at night, and during the day they refurbish houses for some of the poor and indigent residents there in Appalachia."

According to respondent, Judge Hall replied that it was an "admirable or reasonable excuse to miss court." He then told respondent to tell his daughter to go on the trip and not worry about her first appearance date. Judge Hall indicated that he would take care of continuing it. Respondent then stated that Judge Hall asked if the case was a misdemeanor or not, and respondent replied that it was a traffic ticket and that she had disobeyed a neighborhood road closed sign. Respondent did not ask for the continuance nor did he ask Judge Hall to dismiss the case.

On either June 3 or 4, Judge Hall requested the respondent's daughter's docket sheet be brought to his chambers. He recognized that respondent's daughter lived but three or four blocks from the scene of the alleged occurrence. Judge Hall knew that these "street closed" tickets in that area of Leland Grove were routinely dismissed when the recipient of the citation was either a Leland Grove resident or resided within close proximity to the scene. Judge Hall then filled out the docket sheet initialing that the case was dismissed on the motion of the State. He left the line for the State's initials blank in order to obtain an assistant state's attorney's consent later. It was his intention that the State would acquiesce and sign off on the dismissal. Despite this intention, Judge Hall summarily dismissed the citation.

Judge Hall resigned from judicial office effective June 30, 2010. Following his retirement, Circuit Judge Peter Cavanaugh appointed Charles Zalar of the Office of the Illinois Appellate Prosecutor to conduct an investigation into the dismissal of the citation. On October 29, 2010, the special prosecutor filed a Petition for Adjudication of Indirect Contempt of Court in which Judge Hall admitted to falsifying court documents. During the contempt proceedings, the special prosecutor advised the court that there was no evidence that respondent had asked Judge Hall to dismiss the ticket.

II. THE ALLEGATIONS

On November 8, 2010, the Board filed a complaint which alleges that respondent's conduct during his June 2 conversation with Judge Hall violated the Code of Judicial Conduct. Specifically, the complaint alleges that respondent's conduct violates Supreme Court Rule 61 (Ill. S. Ct. R. 61) which provides in pertinent part that "[a] judge should participate in establishing, maintaining, and enforcing, and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved." The Board also alleges that this conduct violates Supreme Court Rule 62 (A) and (B), which provides that a judge "should respect and comply with the law and should conduct himself at all times in a

manner that promotes public confidence in the integrity and impartiality of the judiciary [and] should not allow the judge's family *** relationships to influence the judge's judicial conduct or judgment." Finally, the Board alleges that respondent's conduct violates Supreme Court Rule 63(A)(4) which provides that a judge "should not initiate, permit, or consider *ex parte* communications *** outside the presence of the parties concerning a pending *** proceeding." Respondent has admitted that his actions constituted violations of these judicial canons. Given these admissions, the Commission concludes that the Board has proved a violation of the above rules during respondent's conversation with Judge Hall on June 2, 2010.

III. BURDEN OF PROOF

This Commission has recognized that "because of the grave nature and serious consequences of charges of judicial misconduct," allegations of wrongdoing must be proved by the Board by "clear and convincing evidence, rather than merely by a preponderance of the evidence." *In re Vecchio*, 4 Ill. Ct. Com. 92, 97 (1998) citing *In re Karns*, 2 Ill. Ct. Com. 28, 33 (1983).

IV. ANALYSIS

Section 15 (c) of our state Constitution empowers the Commission to not only hear and decide complaints filed by the Board, but also to determine under what circumstances discipline is to be imposed. Ill. Const. 1970, art. VI, sec. 15 (c). Violations of the Code of Judicial Conduct may subject a judge to discipline, "but discipline is not imposed automatically upon a finding that a rule has been violated." *In re Vecchio*, 4 Ill. Ct. Com. 92, 97 (1998).

At the close of the hearing, the Commission asked for recommendations concerning the sanction to be imposed. Counsel for the Board represented to the Commission that the Board "had no objection to a reprimand." Respondent's attorney took a different position, arguing that the case should have been "resolved informally between the Board and the judge concerned." When asked by a Commissioner as to what that would have entailed, counsel responded the Board had the option to "dismiss the proceeding with what we call an admonition."

The Preamble to Illinois' Code of Judicial Conduct makes clear that discipline is not always mandated for every infraction of a rule:

> "The canons are not standards of discipline in themselves, but express the policy considerations underlying the rules contained within the canons. The test of the rules is intended to govern the conduct of judges and to be binding on them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text of the rules and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and

> the effect of the improper activity on others or on the judicial system." Preamble to Code of Judicial Conduct.

The Commission has previously viewed language similar to this as the Illinois Supreme Court's "invitation" to the Board "not to file formal charges with the Courts Commission against a judge for inadvertent violations or insignificant conduct." *In re Alfano*, 2 Ill. Cts. Com. 11, 25 (1982). Indeed, violations of the Code of Judicial Conduct may subject a judge to discipline, "but discipline is not imposed automatically upon a finding that a rule has been violated." *In re Vecchio*, 4 Ill. Ct. Com. 92, 97 (1998). This view is supported by the Commentary to Rule 6 of the American Bar Associations' Model Rules for Judicial Disciplinary Enforcement,[2] which echoes the language of the Preamble. ABA Model Rules for Judicial Disciplinary Enforcement, Rule 6, Commentary (1988) (noting "[s]ome misconduct is so minor that it is appropriate not to impose any discipline. It is not intended that every transgression of the Canons and Sections of the Code of Judicial Conduct will result in the imposition of discipline ***").

Based upon the ABA Rules relevant to Illinois' Code, the Commission has cited to the ABA Model Rules with approval in the past. See *Alfano*, 2 Ill. Cts. Com. at 25-26. As such, the Commission has noted that, in some cases, the informal resolution noted by respondent's counsel can be used effectively as a private sanction less harsh than a public reprimand. *Id*, at 27. Again, the ABA Model Rules provide guidance to this question. Rule 6 states that sanctions for a rule violation range from removal of office to a

> "private admonition by an investigative panel of the commission with the consent of the judge, provided that a private admonition may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of the sanction to be imposed ***."

ABA Model Rules for Judicial Disciplinary Enforcement, Rule 6, (1988).

The Board acknowledges all of the above, but maintains that some form of public discipline is required in this case because, unlike the conduct in *Alfano*, where the judge's violations were "provoked" by the wrongful issuance of a traffic violation to the judge's son, respondent's conduct here was unprovoked. The Board points out that it was respondent himself who first raised the issue of his daughter's traffic violation with Judge Hall during their June 2 conversation. The discussion, the Board maintains, went beyond commiseration over court scheduling matters. Further, respondent had taken no steps to request a continuance from the State's Attorney before obtaining one from Judge Hall through the *ex parte* communication, and failed to even alert the State's Attorney of his contact with Judge Hall.

We agree that respondent's comments to Judge Hall were unprovoked, which serves to distinguish *Alfano* from the case before us. *Alfano*, however, is not the only case in which a violation was proven, but no discipline was imposed. In *In re Buckley*, 3 Ill. Cts. Com. 1 (1991), the respondent was found to have violated Rules 61, 62A, and 67(B)(1)(c) when, in the course of running for a seat on the Illinois Supreme Court, he circulated campaign advertising that portrayed him as being tough on crime, particularly rape. This violated the Rules because the ads

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[2] The ABA canons have long been recognized as the source for Illinois' Code of Judicial Conduct. See Committee Commentary, Preface.

intimated that the respondent would, upon review, impose a higher standard on criminal defendants convicted of rape. *Id.,* at 5. Moreover, the Commission viewed the ads as an implicit pledge that rape convictions would be treated summarily by the respondent. The statements thus ran counter to promoting confidence in the impartiality of the respondent as well as impacting negatively on preserving the independence of the judiciary in contravention of Rules 61 and 62A. *Id.* Notwithstanding the public nature of the respondent's campaign and the respondent's intent that the ads influence voters, the Commission found the violations to be insubstantial and insignificant and did not warrant the imposition of a reprimand. *Id.* at 6.

In re Murphy, 1 Ill. Ct. Com. 3 (1970) also provides guidance. There, the respondent was charged with conduct unbecoming a judicial officer and which brought the court system into disrepute in that he set bonds during evening hours and in locations outside of the courthouse. Although the Commission found that the conduct was "neither politic, prudent, nor discreet," it did not establish "sufficient grounds for the imposition of sanctions by this Commission." *Id.* at 9. Similarly in *In re Pistelli*, 1 Ill. Cts. Com. 111, (1977), the Commission did not impose sanctions on a judge who made discourteous, rude and ridiculing comments to a young attorney appearing before him. This was so even though the Commission found that the respondent's conduct "did not comport with that to be expected of a member of the judiciary *** was far from exemplary and is not to be condoned." *Id.* at 112. The same result obtained in *In re Teschner*, 2 Ill. Ct. Com 43 (1983) where sanctions were not imposed even though the respondent used vulgar, insulting, and obscene language during juvenile proceedings. In dismissing the complaint, the Commission noted that it did not "approve of respondent's selection of language at issue and [would] not look favorably upon future use of such language." *Id.* at 60.

Previous reported decisions of the Commission therefore teach that each case must be evaluated on its own facts. As this Commission has noted, not all errors in judgment should result in disciplinary charges. *In re Scrivner*, 3 Ill. Cts. Com. 6, 8 (1993). The facts here suggest that respondent's motivation in his discussions with both Sgt. Lokaitis and Judge Mehlick was to gain insight into the enforcement of the closed road citations so that he could explain to his daughter what she did wrong. This is a normal reaction for most parents. However, as was made clear in *Alfano*, those "who have assumed the responsibilities of a judge are not always permitted the privilege of reacting normally" to situations involving their children because the public may perceive that the judge is attempting to use his office to influence others for his child's benefit. *Alfano*, 2 Ill. Cts. Com. at 17. Indeed, the Commission has stated that when a judge is new to the bench, as respondent here was, the transition from lawyer to jurist is a "profound and fundamental transition that does not always come quickly or easily." *Vecchio*, 4 Ill. Cts. Com. at 98-99. As noted previously, however, the Board has not charged any violations based on those conversations, and the record before us justifies the decision. The evidence adduced before this Commission reveals that when Sgt. Lokaitis sought to speak to the officer who issued the ticket, respondent affirmatively told him not to do so and thus did not seek to use his position in a way to help his daughter.

That respondent erred in bringing up his daughter's traffic citation to Judge Hall on June 2 is apparent. The better course of conduct for respondent would have been to remove himself from the conversation once he learned that Judge Hall was to preside over the matter. Indeed, with the exception of his speaking to his judicial mentor, the best practice for respondent to have

followed would have been to avoid any discussion of his daughter's case with any of his fellow judges. By reaching out to Judge Hall, respondent did not conduct himself in a manner that promotes public confidence in the judiciary. However, the Board has presented the Commission with no compelling evidence that respondent made his remarks with the intent that Judge Hall take any action in his daughter's case. Respondent did not ask for the continuance from Judge Hall and certainly did not ask for Judge Hall to dismiss the case in the manner in which he ultimately did. This lack of evidence was substantiated in the contempt proceedings against Judge Hall in which the special prosecutor told the court that there was "no evidence" that Judge Hall acted in response to any request from respondent. Indeed, referring to Judge Hall, the special prosecutor stated that he "may very well have done it for another child who was not the child of a judge. It would be completely consistent with his character." Judge Hall, in an affidavit submitted to the Commission, averred that respondent "never asked me to dismiss his daughter's ticket nor did he suggest or imply that the ticket be dismissed." Respondent's inadvertent mention of his daughter's case had an unfortunate effect on Judge Hall, but there is no evidence in the record before us that respondent expected, intended, or wished for that effect.

V. FINDINGS & CONCLUSION

This is not a judicial corruption case. Therefore, while respondent's conduct constitutes violations of the Code of Judicial Conduct, we disagree with the Board as to the degree of discipline that should be imposed. Given the evidence before us and considering the nature of the transgressions as well as the mitigation of record, we agree with respondent's counsel that a private admonition would have been appropriate in this matter, rather than the more harsh sanction of a reprimand. An admonition would have served to make clear that respondent's conduct was unacceptable. Although this form of discipline is less public than that sought by the Board, it is by no means an empty gesture. In having to answer for his conduct, respondent has already paid a very public price. Respondent has presumably incurred substantial attorney fees as a result of his improper conduct. More significantly, he has suffered a very substantial, private and public embarrassment, not just to himself, but to his family as well. Respondent's reputation as a judge has been called into question as a result of these proceedings. These consequences constitute a heavy penalty in and of themselves. Respondent, in his statement made to the Commission during the hearing, recognized his own role in the series of events which led to Judge Hall's dismissal of his daughter's traffic citation. He admitted that his conversation with Judge Hall looks "suspect to others" and that he made a mistake. Respondent most sincerely apologized for his conduct and took complete responsibility for it. Considering the nature and circumstances of the improper conduct, taken in context with the respondent's distinguished legal career, as well as his numerous letters of good character sent to us,[3] which we view favorably in mitigation, we do not believe a reprimand is warranted.

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[3] The Commission received 18 letters written on behalf of respondent. The letter writers consist of a varied group, some personal friends of respondent, others with professional and community ties to respondent. The letters reveal that respondent is well-liked in the community and is considered a man of high integrity and character.

VI. SANCTION

The Board's complaint is dismissed.

Complaint dismissed.

WOLFF, dissenting:

The facts in this case are not in dispute. The majority opinion outlines the circumstances which have led to the hearing before the Commission. As that opinion states, the respondent's conduct constitutes violations of the Code of Judicial Conduct. There is not a question of proof, since the respondent admits to his actions. There is no disagreement about whether this Commission can determine what penalty should be imposed. In these respects, I concur with the majority.

What is in dispute is the question of the degree of discipline which should be imposed. The respondent admitted, as the majority says, that "his conversation with Judge Hall looks 'suspect to others' and that he made a mistake." If, in fact, he had made only one mistake and if he had not been trained to understand the profound significance of these mistakes, the position of the majority, to assign no sanction to the case, might be appropriate. The fact that he engaged in conduct that violates the Code and made at least three mistakes, each compounding his conduct in violation of the Code, that he did so although he had participated in training specifically designed to teach judges to avoid just such conduct, and that he disregarded the ethical advice from his mentor, suggests a sanction is in order.

The point of the Code of Judicial Conduct is to hold judges to appropriate standards in order to maintain the integrity of their office. That integrity is essential to the functioning of our democracy, a form of government in which judges are not only enormously powerful and influential in defining the public ethics and moral standards for the society, but also serve as models for the citizens whom they govern through their interpretation and application of our laws. The Code is critical to the operation of the judiciary and, for that reason, it is essential that all judges understand it and adhere to it.

The respondent is a relatively new judge. Like all new judges, he is expected to learn about the Code. Last year, in 2010, he participated in three and a half hours of that ethics training offered at the biennial judicial education conference mandated by the Supreme Court. The materials used in this training turn out to be right on point. According to the record of that training, it included substantial exposure to material concerning *ex parte* communication conduct for judges. One section captioned "What are the limitations upon a judge discussing a pending or impending case with another judge?" includes an entry: "A judge should not attempt to improperly influence another judge."[4] This segment cites the *Markey* case (696 N.E. 2nd523, 526 [Mass 1998]) as the supporting text to illustrate the prohibited actions. *Markey* concludes that a

[4] Section F: Judicial Ethics of Ex Parte Communication, p 5, section 3a.

judge should be sanctioned for trying to influence the outcome of a case before another judge and quotes from another case, *Matter of DeSaulnier* (360 Mass. 787, 813 [1972]),

> "Any attempt to tamper with a judicial disposition constitutes a vicious attack on the dispensation of even-handed justice. It does not matter whether the interference comes from a member of the bar, another judge, an elected or appointed official, or even a member of the general public. It does not matter whether it involves a traffic ticket, a probate disposition……."

From the perspective of a public member, judges actually are different from others. As the ethics training suggests, they cannot act in a way that results in or even suggests that they or their families are advantaged in the legal system because of their status as judges. They must be scrupulous about abiding by the same rules that apply to others in the system.

In this case, the respondent made three mistakes which advantaged him and his daughter by virtue of his position as a judge. They may have been done because he is a father and wanted to help his daughter; but that does not change the fact that he used his special position in a way that the ethics training and the Code define as incorrect:

- first, he talked to a police officer, an officer of the court in a position of deference to the judge, about his daughter's ticket;
- second, after he talked to his mentor, who counseled him that there were two ways to deal with the case appropriately (have his daughter plead guilty or contest the ticket), he took neither of those actions;
- third, in direct conflict with the advice or direction of his mentor and with the ethics training, he talked to the judge who had jurisdiction over the case and told that judge about his daughter's case. This act was the instigating factor in subsequent investigation and finding of impropriety.

The Commission does not have to address or interpret the motives of the respondent. Just as it is in cases of sanctioning for driving under the influence (DUI), for example, the role of the Commission is not to determine what motivated the judge to violate the Code but it is to ascertain the actions of the respondent and assess whether those actions violate the standards established in the Code—in this case Rules 61, 62 (A) and (B) and 63 (A)(4). The majority opinion acknowledges that the respondent admits his discussion with Judge Hall was a violation of three of the Supreme Court rules.

Although the majority decision presents some precedents to support the Commission not imposing any sanction, at least one prior case pertaining specifically to *ex parte* actions decided by the Commission suggests that a reprimand is also an appropriate sanction. In the case of *In re Klein* a reprimand was issued. The judge –in addition to wearing in public a baseball cap with an endorsement— initiated *ex parte* communication with a military recruiter about a case, took the case on his call, and allowed the communication to influence his decision in the case.

The sanction in any case is determined by a vote of the Commission, based on the facts in the case and reflecting the judgment of each Commissioner about the "reasonable and reasoned application of the text of the rules and should depend on such factors as the seriousness of the

transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system." [Preamble to the Code of Judicial Conduct]

In this case, the majority and I disagree about all three of the factors. These actions go to the heart of the Code's prohibition of *ex parte* communication and appropriate judicial conduct delineated in the ethics training the court provided to this judge. There is a pattern of three actions contrary to the training and a mentor's advice to the contrary. The impact of these actions on the judicial system is significant--- in part because of the violation of a central tenet of the Code and in part because the Commission's judgment of them will be reflected in the opinion of this body and serve as guidance for all the judges who now serve and will serve in the future in the Illinois judiciary. Therefore, I respectfully dissent from the majority opinion concerning the sanction and believe that a reprimand is appropriate.