
(No. 75 CC 1.—Respondent removed from office.)

In re ASSOCIATE JUDGE JAMES L. OAKY, JR., of
the Circuit Court of Cook County, Respondent.

Order entered July 16, 1975.

SYLLABUS

On March 7, 1975, the Judicial Inquiry Board filed a three-count complaint with the Courts Commission, charging the respondent with willful misconduct in office, conduct that is prejudicial to the administration of justice and conduct that brings the judicial office into disrepute. In summary form, Count I alleged that during 1971, the respondent, while occupying judicial office, performed services for, and received compensation from, a private business organization; that he assumed an active role in the management of the business; and that he occupied a position of profit in the business.

Count II alleged that during 1972, the respondent acted as a sales representative of, and received compensation from, another business organization which had ties to the aforementioned business organization; that he performed services as an employee of, and received compensation from, the business organization; that he assumed an active role in the management of the business; and that he held a position of profit in one or both business organizations. Count

III alleged that the respondent during 1971 and 1972 received additional compensation for services performed for the business in the guise of a cash gift and of a sale of common stock in the business. *Held*: Respondent removed from office.

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

David P. Schippers, of Chicago, for respondent.

Before the COURTS COMMISSION: SCHAEFER, J., chairman, and EBERSPACHER, STAMOS, DUNNE and FORBES, JJ., commissioners. ALL CONCUR, except STAMOS, J., who DISSENTS in part.

ORDER

The respondent, James L. Oakey, Jr., was admitted to the bar in 1955. He became a magistrate of the circuit court of Cook County in January of 1966 and has subsequently occupied judicial office as an associate judge of that court. While he was serving as a magistrate, he was also engaged in "the security and guard business," a business in which his father, a former police officer, had been engaged for many years.

In June of 1967, the respondent entered into a written contract with Central Watch Service, a Chicago security and guard service. By the terms of the contract, he was to be paid a commission based upon a set percentage of the gross billing in connection with any contract for security service which he might obtain for Central Watch Service. The commission was to be payable during the life of any contract he procured. In 1968, the respondent procured a contract by which Central Watch Service was to provide services for the Chicago Housing Authority. It is stipulated that "under the terms of Judge Oakey's contract with Central Watch Service dated June 15, 1967, he then became entitled to payment of the commission based upon gross billing to the Chicago Housing Authority by Central Watch for the

entire life of that job." Thereafter the business of Central Watch Service was acquired by Baker Industries, Inc., doing business as Wells Fargo Security Guard Service. Wells Fargo continued to pay commissions to Judge Oakey in accordance with the original agreement until July of 1970.

The respondent and his father, James L. Oakey, Sr., owned Security Investigators, Inc. (hereafter "SI"). The respondent was vice-president and his father was president of that company. On July 20, 1970, the respondent, as vice-president, executed a commission agreement between SI and Wells Fargo which provided that SI would serve as a sales representative for Wells Fargo for a commission of 4% on all services sold. The agreement also provided that the representative of SI be additionally compensated with two annual trips to California where the offices of Baker Industries, Inc. were located. The contract contained the following provisions:

"This commission is to last the life of the job; that is, this four (4%) per cent will continue so long as the Company is performing services for the customer furnished by Sales Representative. This commission will continue even if the Sales Representative and the Company have terminated, by agreement, this contract."

Prior to 1971, judges and magistrates in Illinois were required by the Constitution and rules of the Supreme Court of Illinois to devote full time to their judicial duties and were prohibited from practicing law or holding any governmental office or position of profit.

Rules 63 and 65 of the rules of the Supreme Court of Illinois (Ill. Rev. Stat., ch. 110A, pars. 63, 65) were adopted January 30, 1970, and became effective January 1, 1971. They provide:

"RULE 63. BUSINESS ACTIVITIES.

A judge shall not assume an active role in the

management of any business or serve as an officer or director of any for-profit corporation. The rule is not intended to prohibit personal investments. If a judge does not neglect his judicial duties in so doing, he may engage in the activities usually incident to the ownership of investment property and may also serve as an officer or director of a not-for-profit corporation. This rule shall become effective January 1, 1971." (Emphasis added.)

"RULE 65. COMPENSATION FOR NONJUDICIAL SERVICE.

A judge shall not accept compensation of any kind, whether in the form of loans, gifts, gratuities, or otherwise for service hereafter performed or to be performed by him except as provided by law for the performance of his judicial duties or as provided by the Illinois constitution; however, a judge may accept reasonable compensation for lecturing, teaching, writing or similar activities. This rule shall become effective January 1, 1971." (Emphasis added.)

On July 1, 1971, paragraph b of section 13 of article VI of the 1970 Constitution of Illinois became effective. It provides:

"(b) Judges and Associate Judges shall devote full time to judicial duties. *They shall not practice law, hold a position of profit, hold office under the United States or this State or unit of local government or school district or in a political party. Service in the State militia or armed forces of the United States for periods of time permitted by rule of the Supreme Court shall not disqualify a person from serving as a Judge or Associate Judge.*" (Emphasis added.)

The Complaint filed by the Judicial Inquiry Board charges that in violation of the Constitution and rules of the Supreme Court, the respondent assumed an active role in the management of the business of SI during all or a material part of the calendar years 1971 and 1972, and

that he held a position of profit in SI or in Wells Fargo, or in both, during those years.

Most of the relevant facts are either admitted by the respondent or covered by stipulation. After July of 1970, Wells Fargo paid to SI all commissions due under the contract, and SI agreed to pay 90% of those commissions to the respondent. During 1971, the respondent received from SI the sum of \$36,447.87 and during the year 1972, the respondent received from SI the sum of \$10,979.48 and from James L. Oakey, Sr., the sum of \$18,250. It is also stipulated that in 1971 Wells Fargo paid \$1,000 to the respondent in lieu of the two California trips.

It was also stipulated that:

“(a) On or about May 5, 1971, Judge Oakey met with a representative of Wells Fargo to discuss its client relations program.

(b) On or about May 7, 1971, Judge Oakey met with a representative of Wells Fargo in connection with a request by Virgil Poole of the Chicago Housing Authority that he be given a loan by Wells Fargo.

(c) On or about December 23, 1971, Judge Oakey supplied Wells Fargo with a list of local Chicago officials to whom gifts should be sent.

(d) On or about August, 1972, Judge Oakey caused Sailor Enterprise (“Sailor”) to be incorporated with him and his wife as principal shareholders, but with an attorney, Mayster, to serve as president and business manager for the corporation.”

R. L. Arko is an employee of Baker, and it is stipulated that if called as a witness, he would testify that:

“On or about December 30, 1971, he was advised by Judge Oakey that the latter was about to close an alarm account and that Judge Oakey inquired as to the commission rate.

He and Eugene Mora met with Judge Oakey on March 4, 1972, in Morristown, New Jersey, to discuss

the arrangement between Judge Oakey and Wells Fargo. At that time no changes were made in the agreement. Further, Judge Oakey stated that he felt 'good' about the meeting, felt he was a part of the Baker Team and would assist Baker with Chicago Housing Authority negotiations."

In April or May of 1972, the respondent was dissatisfied with his relations with his father and SI, and he sought independent advice from an attorney. The respondent's longhand request for advice and some handwritten "Words of Caution" given him by the attorney are as follows:

"Aim:

To provide a shelter for outside income—in conformity with Judicial Ethics and existing state laws.

Sources of Income:

Basically, I am a commission salesman—straight commission normally 4% without expenses. I sell guards, watchmen, janitorial services, all types of security devices, such as: burglar alarms, central station units etc., fire protection devices such as automatic snifters (pyra alarm). This is almost all of my outside income, presently. I have also been in other businesses—such as selling & servicing gum ball machines. God knows, what businesses I'll be in in the future, such as printing, insurance, real estate etc. (2) Material Service.

Family Corporation:

Until about 6 years ago I was not connected with Security Investigators, (SI) except as a nominal Sec-Treas. Some time after becoming a Magistrate on 1/1/66, it was decided I should funnel my income thru S.I. Until I became a Magistrate I received \$25,000 per year, plus expenses, as a retainer from Material Service Corp. (MS) After becoming a Magistrate this was cut to \$12,000 per year plus expenses from MS. This was

paid to SI who in turn paid me. Any expenses were submitted to SI who obtained reimbursement from MS and then paid them to me—they weren't much. About 1 year later S.I. (Dad) felt I shouldn't take expenses and stopped them. About this time, I landed the contract with Central Watch, later succeeded by Wells Fargo—W.F. This called for 4% of all my gross sales. Later, this contract was put in the names of WF & S.I. Thus, this income of mine was funnelled thru S.I. I was paid these commissions as salary from S.I.—less 10% for S.I.

In the fall of 1971, my father and I had an argument and he withheld my salary for three months. I sold my U.S. bonds to meet current obligations. Then he *gave(?)* me a gift of \$6,000—actually, my past due earnings.

About the end of April, 1972 Dad had a 3 week field audit. Among other things, the IRS man asked Dad how I earned so much money from S.I. when I was a full-time Judge. This and the law requiring full disclosure of income by state officials (declared unconstitutional) have made Dad very shaky. He wants me to give up all outside income. This I cannot do. I told Dad I'd set up something totally unconnected with him. He agreed to this, but, most recently, is now suggesting that he'll get my income in S.I. if its advisable.

Presently, as of 4/1/72 S.I. became a Chap S Corp. My wife & I own 25%—Dad & Mom the other 75%. However, Dad refuses to declare a dividend because he'd have to take three times as much as I, and there's not that much money—and he's afraid after the audit. So—again my outside income is frozen.

Desires:

1) Separate entity controlled by me to funnel all present outside income and any other future business ventures.

2) Possibly lighten my tax burden by taking expenses that I actually incur.

3) *New Problem*—Within the next month I might switch working (selling) for Wells Fargo and sell for Task Power, Inc.—another guard co. I also would receive stock and stock options.

Timing:

As soon as possible. The need is urgent.

Questions:

I would prefer to answer them by phone from home because of a very tight schedule. Law office conferences are hard for me to set up.

WORDS OF CAUTION TO JUDGE

- (1) At no times must checks, papers, or documents pertaining to corporation be signed by Judge.
- (2) Must not participate in management or control of corporation.
- (3) Must not sign for any expenses for corporation.
- (4) Name must not appear anywhere nor must he represent himself in any capacity on behalf of corporation.
- (5) Wife must not take an active part in corporation.
- (6) Who will be contact man for all negotiations etc. on behalf of corporation. If Larry is the one he should meet people involved & keep a diary of all meetings, contracts & agreements.
- (7) Mayster must be with Judge at all meetings pertaining to business of corporation.
- (8) Travel?"

It is also stipulated that, if called as a witness, Joseph H. Gamble would testify that he is president of Wells Fargo Guard Services and a resident of New Jersey, that on June 7, 1973, he met with the respondent in Chicago and that at that meeting:

"3. Judge James L. Oakey, Jr. stated he was owed commission payments under his supposed contract with my company and further stated he had been

rebuffed by my division whenever he tried to collect these sums.

4. Judge James L. Oakey, Jr. further stated he wanted these commission payments to be made to Sailor Enterprises, Inc., an Illinois Corporation, apparently organized in his behalf by Attorney Larry Mayster, which was an attempted transfer of commission from either Judge James L. Oakey, Jr. or Security Investigators, Inc.

5. Judge James L. Oakey, Jr. further stated that the Bar Association has established stringent rules for judges in Chicago and in order to circumvent these rules, he formed Sailor Enterprises, Inc. He further stated Larry Mayster was a 'front' but the transfer of the commission payments to Sailor Enterprises, Inc., would insure Wells Fargo Guard Services keeping the Chicago Housing Authority guard business at various sites.

6. Judge James L. Oakey, Jr. further stated to me that the commission payments made to Sailor Enterprises, Inc., would be returned to him, James Oakey, in the way of a dividend.

7. On further query of Judge James L. Oakey, Jr., as to how he attempted to avoid public policy or the rules of the Bar Association by this request for transfer of commission payments to Sailor Enterprises, Inc., Judge James L. Oakey, Jr. stated to me: 'You are doing business with Sailor Enterprises, Inc., and do not know of my association with them.'

8. I told Judge James L. Oakey, Jr. that I would have to be certain that the arrangement is legal, and, frankly, there was doubt in my mind. I reminded him also that an executory contract is terminable if there is no fixed time that it is to remain in force. Judge James L. Oakey, Jr. said to me: 'I will give you a time—99 years or for my lifetime.' I then told Judge James L.

Oakey, Jr. that in the event that a contract is written, it should be no longer than four years with a sliding scale for commission from four to one percent.

9. Judge James L. Oakey, Jr. became angry and stated he would not scale down his commission. He further stated: 'You're pushing me into a corner. If you discontinue, you'll be out of C.H.A. in 30 days. You try me.' He added that another company offered him one and a half percent more and he had the offer in his pocket.

10. Judge James L. Oakey, Jr. stated he needed money and the matter would have to be resolved in 30 days. He said he wanted a tentative unsigned contract submitted to Sailor Enterprises, Inc., within one week setting forth the same conditions outlined in the contract with Security Investigators, Inc.

11. My Chicago Branch Manager, Arthur R. Glick, was with me at this meeting."

The respondent does not deny the receipt of the amounts of money described in the Complaint. His position is that all conditions precedent to a right to commissions under the contract with Central Watch Service to provide guard services for the Chicago Housing Authority had been fulfilled before January 1, 1971, when Supreme Court Rules 63 and 65 (Ill. Rev. Stat., ch. 110A, pars. 63, 65) became effective. That contract had thus become a valuable asset, he contends, and his activities in connection with it after January 1, 1971, were limited to efforts to preserve that asset.

We are unable to agree with the respondent's appraisal of his conduct.

He received money from SI which was treated as wages by SI. He was SI's representative for the purpose of receiving \$1,000 from Wells Fargo in lieu of two trips to California. It was with the respondent that Wells Fargo discussed its "client relations program" and the request from a Chicago Housing Authority official for a

loan from Wells Fargo. After he had drafted and executed the contract between SI and Wells Fargo in July of 1970, he caused Sailor Enterprises to be incorporated in August of 1972 as a means by which he could continue to serve as a salesman for Wells Fargo or for new employers while concealing his participation.

Acceptance or rejection of the respondent's version is ultimately a question of credibility: while the respondent does not dispute that any of the meetings and discussions described in the stipulated testimony of Arko and Gamble took place, he does deny that he made some of the statements attributed to him by those witnesses. Any question of credibility is resolved, in the opinion of the Commission, by the respondent's handwritten instructions to his attorney in May or June of 1972. Those instructions unequivocally state the respondent's intention to continue, and if possible to increase, his activities as a salesman, for Wells Fargo and if possible others, while continuing to hold judicial office. That expressed intention on the part of the respondent is consistent with the testimony of Gamble (1) as to the efforts of the respondent, in June of 1973, to force Wells Fargo to pay commissions to Sailor rather than to SI, and (2) as to the respondent's intention to do business with new customers. The information put before the respondent's attorney and the cautions received by the respondent from his attorney in May or June of 1972 are also consistent with Gamble's testimony that in June of 1973 the respondent stated: "You are doing business with Sailor Enterprises, Inc., and do not know of my association with them."

We find that the charges of the Judicial Inquiry Board have been proved by clear and convincing evidence.

We come, then, to the question of the sanction to be imposed for the respondent's violation of section 13(b) of article VI of the Constitution and Supreme Court Rules

63 and 65 (Ill. Rev. Stat., ch. 110A, pars. 63, 65). The Constitution, in section 15(e) of article VI, authorizes the following sanctions in declining order of severity: removal from office; suspension without pay; censure; or reprimand. There was ample time for the respondent to have brought himself into compliance with the rules and the Constitution, for it has been stipulated that at least after May 22, 1970, he was aware that conducting a private business enterprise might conflict with them. Rather than pursuing a plan of curtailing his outside activities, the respondent embarked upon a course of conduct that not only preserved his business interests but fashioned it to enhance and enlarge them while deliberately concealing them from and misleading duly constituted authorities. There is nothing in the record that shows an intention or a good faith effort on the part of the respondent to comply with the provisions of the Constitution and the rules of the Supreme Court.

Pursuant to section 15 of article VI of the Constitution of Illinois, it is ordered that the respondent, James L. Oakey, Jr., is hereby removed from office as an associate judge of the circuit court.

Respondent removed from office.

STAMOS, J., dissenting in part:

I concur in the findings, but dissent from the sanction.