
(No. 78 CC 2. Complaint dismissed.)

In re CIRCUIT JUDGE L. KEITH HUBBARD of the Seventh Judicial Circuit, Respondent.

Order entered September 17, 1979.—Motion for correction denied November 17, 1979.

SYLLABUS

On August 21, 1978, the Judicial Inquiry Board filed a multi-paragraph complaint with the Courts Commission, charging the respondent with conduct that is prejudicial to the administration of justice and that brings the judicial office into disrepute. In summary

form, the allegations were: that a law firm with offices in Madison County, located about 35 miles from Greene County where the respondent presides, conducted a material part of its practice in Greene County; that said firm followed the consistent practice of filing motions for change of venue and for substitution of judge in cases assigned to the respondent; that the respondent repeatedly failed and refused to grant said motions forthwith upon presentation and instead took all or some of the following action: (a) required the firm's attorneys to personally appear to argue said motions, (b) interrogated the firm's attorneys as to the reasons for and the factual basis of the motions, (c) denied the motions on the grounds that they were unfounded and without basis in fact, and (d) granted, after denying the motions, change of venue and substitution of judge on the court's own motion; that such motions presented by other law firms were regularly granted forthwith by the respondent without his engaging in the above-described conduct; that in denying said law firm's motions, the respondent disregarded the established law of Illinois and imposed the burden of inconvenience and subjection to improper questioning on the law firm; and that by engaging in said conduct, the respondent violated Supreme Court Rules 61(c)(1) through 61(c)(5) (Ill. Rev. Stat. 1977, ch. 110A, pars. 61(c)(1) through 61(c)(5)).

Held: Complaint dismissed.

Devoe, Shadur & Krupp, of Chicago, for Judicial Inquiry Board.

Paul C. Verticchio, of Gillespie, for respondent.

Before the COURTS COMMISSION: RYAN, J., chairman, and LORENZ, SEIDENFELD, HUNT and MURRAY, JJ., commissioners. ALL CONCUR.

ORDER

The Illinois Judicial Inquiry Board filed a Complaint with the Illinois Courts Commission charging that the respondent, Circuit Judge L. Keith Hubbard, of the Seventh Judicial Circuit, violated one or more of the Illinois Supreme Court Standards of Judicial Conduct as set forth in Supreme Court Rules 61(c)(1), 61(c)(2), 61(c)(3), 61(c)(4) and 61(c)(5). (58 Ill. 2d R.61(c)(1), R.61(c)(2), R.61(c)(3), R.61(c)(4), R.61(c)(5); Ill. Rev.

Stat., ch. 110A, pars. 61(c)(1) through 61(c)(5).) The specific allegations of wrongdoing all relate to the filing of petitions for change of venue (Ill. Rev. Stat. 1977, ch. 110, par. 501), and motions for substitution of judge (Ill. Rev. Stat. 1977, ch. 38, par. 114—5) by the law firm of Wiseman, Shaikewitz, McGivern & Wahl. (For uniformity, the term "motion" will be used herein whether for change of venue or substitution of judge.) It is alleged that this law firm followed the consistent pattern of filing motions for change of venue or substitution of judge in all of its cases assigned to the respondent judge, and that the respondent has failed and refused to grant the motions forthwith upon presentation but (1) has required the attorney presenting the motion to appear in person to argue the same, (2) has interrogated the attorney as to the reason and factual basis for the motion, (3) has denied the motions on the grounds that they were unfounded and without basis, and (4) after denying the motion, the respondent has granted a change of venue or substitution of judge on his own motion. It is alleged that in one instance the respondent interrogated a client of this law firm concerning his belief as to the judge's prejudice when the attorney was absent. It is further alleged that when similar motions were presented by attorneys other than those of this firm, the respondent judge regularly granted the motions without following these practices.

The Wiseman firm has its office in Alton, Illinois, about thirty-five miles from Carrollton, the county seat of Greene County, where the respondent judge presides. The respondent was appointed resident circuit judge of Greene County to fill a vacancy and took his oath of office on September 1, 1976. Mr. Shaikewitz testified that before the respondent assumed office, a meeting was held of the partners of his law firm at which it was decided that a motion for a change of venue or substitution of judge would be filed in all of that firm's

cases that would be assigned to the respondent. Gerald McGivern, a partner in the Wiseman firm, appeared in the Greene County courthouse on September 2, 1976, the first day that Judge Hubbard held court, and filed a blanket motion for a change of venue or substitution of judge in all of their cases assigned to Judge Hubbard, and also filed a motion in that firm's case that was set before the respondent judge on that date. A hearing was had on the motion in the case set and the judge found it to be "unfounded" and denied it. However, he immediately granted a substitution on the court's own motion.

From that date until May 12, 1977, the Wiseman firm filed similar motions in six cases. These motions were mailed to the clerk who presented them to the respondent judge. The judge denied the motions, finding that they were without basis or foundation and then, as in the previous case, granted a change of venue or substitution of judge on his own motion.

In May 1977 the respondent adopted the policy of setting these motions for hearing and requiring counsel to be present and argue the same. The Wiseman firm's motions all contained a general allegation that the law firm felt that the respondent was prejudiced against it and that this prejudice would preclude its client from receiving a fair trial. At the hearings on these motions the respondent gave the attorney present an opportunity to state the basis for such an allegation. The attorneys from the Wiseman firm would stand by the motions' general allegations and would not specify the basis for the allegation. The respondent judge would routinely deny the motion and then would grant the change of venue or substitution of judge on his own motion.

On one occasion an attorney from the Wiseman firm did not appear at the hearing that had been set on the motion; however, the client did. The respondent questioned the client as to the basis for the allegation of

prejudice and the client indicated that he did not feel that the judge would be biased and that his case would be prejudiced. The hearing on the motion was then continued and the attorney later appeared.

In all, the Wiseman firm filed motions for change of venue or substitution of judge in some thirty cases wherein the practice outlined above was substantially followed. The motions that were prepared by this firm were carelessly drawn. On occasions, they referred to the wrong section or a nonexistent section of the statute. The judge on a few occasions noticed a discrepancy between the purported signature of some members of the firm and the same member's signature on other documents. Mr. Shaikewitz, a partner in the firm, testified that on some of the motions that were filed he had his secretary sign his name to both the motion and the verification under oath attached to the motion.

On May 12, 1977, a complaint was filed by Mr. Shaikewitz along with a motion for a change of venue. The motion was set for hearing on June 14, 1977, and notice was sent to Mr. Shaikewitz. No one appeared at the hearing and the hearing was continued generally. The court later set the motion for hearing on November 29, 1977, at which time another attorney from the Wiseman firm appeared. The court dismissed the motion because Mr. Shaikewitz had not appeared as directed, and he was given ten days within which to appear and argue his motion. On December 12, 1977, Mr. Shaikewitz not having presented his motion, the court again set it for hearing for December 23, 1977. On that date Mr. McGivern of the Wiseman firm appeared and reported that Mr. Shaikewitz was out of the country. The court then reset the motion for January 9, 1978, and directed Mr. Shaikewitz to appear and stated that failure to do so would result in a denial of the motion, and may result in a holding of Mr. Shaikewitz in contempt of court. On January 9, 1978, Mr. Shaikewitz appeared as directed.

At the hearing Mr. Shaikewitz stated that he did not think the court had a right to go behind the motion and inquire as to its basis. He stated to the court, "Your Honor has made it costly for us and difficult and expensive for us to practice in Greene County." The respondent then informed Mr. Shaikewitz that the matter of the Wiseman firm's motions had been taken up and discussed on two occasions at conferences of the judges in the Seventh Circuit. He basically agreed with the position that Mr. Shaikewitz stated, but said that Greene County is a rural county and he, the respondent, is the only resident judge in the county. Therefore, when a motion for a substitution of judge is filed, it requires calling in another judge from another county, causing additional delay, expense and administrative problems. He stated that he had been inquiring why members of the Wiseman firm felt he was prejudiced, hoping to learn what was wrong so that he could have an opportunity to correct whatever the problem might be, but he had received no response. The judge then stated that he would like to feel that the Wiseman firm was not just filing the motions "to clutter up the record and to create delay. But if you aren't, just man to man, I think it is time that someone said for the record what their [sic] feelings are." Mr. Shaikewitz declined to elaborate on the motion.

The contention that the respondent judge was requiring the Wiseman firm to appear and argue its motions and not requiring other attorneys to do so or that other attorneys were treated differently from the members of the Wiseman firm is contrary to the evidence. Several attorneys appeared and testified that the motions they had filed had been handled in the same manner as that described above. When they were asked the basis for their motions, they were candid enough to explain their reasons to the judge. The respondent followed the usual policy of denying their motions and then on his own motion allowing the change.

It is conceded that in every case, the relief sought by the members of the Wiseman firm, that is, a change of venue or substitution of judge, was obtained. There was no objection to the procedure followed by the respondent until he initiated the policy of setting motions for hearing and requiring the attorney to appear. This, the attorneys from the firm testified, required them to drive from their office in Alton to the courthouse in Carrollton, a distance of some 35-40 miles, and to return, which was time consuming and expensive. No authority has been cited to us that holds that a court should not require an attorney to present his motion for a change of venue or substitution of judge to the court. In fact, there may well be some very good reasons not to permit such motions to be routinely handled through the mail. The clerk is the clerk of the court, and should not be expected to act as an agent for an attorney in presenting motions to the court. The fact that the respondent judge, in establishing the administrative procedure for his court, preferred to have the motions presented to the court by the attorney does not constitute the basis for discipline.

The Judicial Inquiry Board contends that when a motion for a change of venue or substitution of judge alleging prejudice of the judge is timely, in proper form and is in compliance with the statute, the right to the change is absolute. The trial judge, it is contended, has no discretion as to whether or not the change will be granted and cannot inquire as to the truthfulness of the allegations of prejudice. This has been the holding of the Supreme Court of this State in numerous cases. (See *Rosewood Corp. v. Trans-America Ins. Co.* (1974), 57 Ill. 2d 247; *Hoffman v. Hoffman* (1968), 40 Ill. 2d 344.) In *People v. Shiffman* (1932), 350 Ill. 243, 246, the court said that it was not for the judge to determine whether or not he entertains prejudice against the defendant. He cannot question the truthfulness of the charge of prejudice. However, the Supreme Court has held that a court may

"look to see if the defendant is really seeking to have his trial before a judge who is not prejudiced against him, or merely seeking to avoid a trial." (*People v. Stewart* (1960), 20 Ill. 2d 387, 391-92.) In *People v. Beamon* (1962), 24 Ill. 2d 562, the court, after stating the general rule as to the right to a change of venue when a petition alleging the prejudice of the judge is filed, stated:

> "But it has also been held, both in criminal and civil cases, that when it is apparent that the request is made only to delay or avoid a trial, its denial does not constitute error." *People v. Beamon*, 24 Ill.2d 562, 564.

In *Hoffman v. Hoffman* (1967), 86 Ill. App. 2d 374, the trial court had questioned the attorney concerning the allegations of prejudice. The attorney's client, who had signed the petition for change of venue, was then interrogated and it became apparent that the petition was filed to delay the proceedings and not because of any belief that the judge was in fact prejudiced. The appellate court held that the right to a change of venue upon the filing of a proper petition was absolute and the judge erred in inquiring into the reason for filing it. Although the appellate court found that the petition was filed solely for the purpose of delay, the trial court, nonetheless, erred in not granting it. The Supreme Court, however, in *Hoffman v. Hoffman* (1968), 40 Ill. 2d 344, reversed the appellate court, holding that in such cases the court may inquire into the good faith of the petitioner's motion, stating at page 348: "If it becomes apparent that the request is made only to delay or avoid trial, the denial of the petition for change of venue does not constitute error."

It does not appear that the respondent judge's inquiries of counsel upon presentation of the motions were made to determine the truthfulness of the allegations of prejudice. It appears that the respondent,

who was the only resident judge in the county, was concerned about the problems that would be caused in court administration if a large number of these motions were granted. As the judge stated to Mr. Shaikewitz, he was interested in learning what was wrong so that he could attempt to correct the problem.

The general attitude manifested by the Wiseman firm could reasonably cause one to believe the allegations of prejudice in the motion were not in fact made in good faith and that the reason for the motions was not to avoid having the case heard before a judge who was prejudiced against them, but to have it heard by a judge who was favorably disposed toward their position; that is, one could reasonably believe that they were, in fact, "judge shopping." Such a belief finds support in the fact that the first day the respondent judge held court, a blanket motion was filed to have all that firm's cases handled by another judge. This was followed by individual motions filed in every one of their cases thereafter regardless of who their client was, and regardless of the client's wishes. In addition, each attorney from that firm steadfastly refused to answer any questions and relied strictly on the motion that had been filed.

The Judicial Inquiry Board contends it is only in cases where the motion is filed for the purpose of delay that a court may inquire into the good faith of the allegations of prejudice. It is true that all of the cases where the inquiry and denial have been upheld involved attempts to delay or to avoid trial. This is not to say that the Supreme Court would not approve an inquiry to determine the good faith of the allegations of prejudice when some purpose other than delay is clearly apparent such as a flagrant case of "judge shopping." Our courts of review have not said that a judge may inquire as to the

good faith of the allegations *only* in cases where the purpose of the motion is clearly one of delay or to avoid trial.

We cannot say that the inquiry made by the respondent judge of the attorneys constituted a gross abuse of judicial authority or a failure to abide by or follow established law. It is plain that the inquiry did not attempt to challenge the truthfulness of the allegations of prejudice. Furthermore, it does appear that the inquiries, in part at least, were prompted by the desire of the respondent to correct any problems that might adversely affect court administration in the county.

Since we have decided the issues on the merits, all motions of the respondent, which have heretofore been filed and are now undecided, are denied. The Complaint of the Judicial Inquiry Board charging the respondent judge with judicial misconduct is dismissed.

Complaint dismissed.