

2013 IL Cts Com 001

(No. 12-CC-1 Respondent suspended.)

In re ASSOCIATE JUDGE JOSEPH C. POLITO,
of the Circuit Court of the Twelfth Judicial Circuit, Respondent

Order entered February 1, 2013.

SYLLABUS

On July 13, 2012, the Judicial Inquiry Board filed a complaint with the Courts Commission, charging respondent with conduct that brought the judicial office into disrepute in violation of the Code of Judicial Conduct, Illinois Supreme Court Rules 61 and 62. In summary form, the complaint alleged that beginning in 2010 and periodically until August 2011, respondent frequently used his Will County issued work computer to access pornographic websites during work hours in his chambers. The complaint further alleged that Will County's policies prohibited its employees from using Will County's electronic communication systems for accessing sexually explicit material.

Held: Respondent suspended.

Sidley Austin LLP, of Chicago, for Judicial Inquiry Board.
William J. Martin, of Oak Park, for Respondent.

Before the COURTS COMMISSION: GARMAN, Chair, APPLETON, FRANKS, McBRIDE, SPENCE¹, WEBBER, and WOLFF, commissioners, ALL CONCUR.

ORDER

In a complaint filed on July 13, 2012, the Illinois Judicial Inquiry Board (Board) charged Joseph C. Polito, an associate judge in the Twelfth Judicial Circuit, with "conduct that brought the judicial office into disrepute" in violation of the Code of Judicial Conduct, Illinois Supreme Court Rules 61, Canon 1, and 62, Canon 2, which provide as follows:

"An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

(A) A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

¹At the time of the hearing and consideration of this case, Commissioner Robert B. Spence was an alternate member of the Commission appointed to serve on this case.

In support of the charge, the complaint stated that beginning in 2010 and periodically until August 2011, respondent used his Will County issued work computer to access pornographic websites during work hours in his chambers. During the relevant time period, respondent usually accessed pornographic websites multiple times a week.

Will County uses an internet blocking system, which prevents employees and users of the Will County computer network from accessing certain restricted websites. The internet blocking system used software that, when triggered, caused a blocking message to appear on the computer screen. When respondent was blocked from viewing a pornographic website and encountered these blocking screens, he typically returned to internet search engines and clicked on search results until he succeeded in bypassing the computer blocking software and, ultimately, accessed a pornographic website in violation of Will County's written policies that prohibit employees from using the computers provided to them to access sexually explicit material. Respondent admitted that he was aware of this prohibition. It is also noted that respondent's Chief Judge Stephen White specifically told him that such work computer usage was prohibited.

Respondent has further admitted the alleged conduct and his knowledge of the computer usage policy of Will County.

The Illinois Courts Commission (Commission) has heard not only the testimony presented before it but also has had the benefit of the report of proceedings before the Board.

It is uncontroverted that respondent suffers from an addiction to pornography and following a meeting with Chief Judge Gerald Kinney, who apparently had been alerted to respondent's misuse of his computer, respondent entered into a program for treatment of his addiction to pornography. The treatment providers have filed statements concerning respondent's progress in treatment, which disclose he is not only compliant with his treatment regimen but has made progress in his recovery.

The Commission recognizes that persons may become addicted to pornography as well as to alcohol or drugs. Such addictive behavior may manifest itself both during and outside of work hours, taking advantage of the temporal opportunity to do so.

In *In re Associate Judge Francis P. Butler* (2-CC-62), respondent was charged with consuming alcohol during working hours in the State's Attorney's Office. That behavior was compounded by respondent's interference with a young female complainant and her family who had come to the prosecutor's office to seek to have charges filed against another individual. There was no evidence concerning Judge Butler's addiction to alcohol but his behavior directly interfered with the operation of the prosecutor's office and the treatment of the alleged victim. He was suspended without pay for 30 days.

Here, there is no evidence that Judge Polito's behavior in court or his association with his coworkers was directly impacted by his addictive behavior. To the contrary, Judge Carla Alessio Policandriotes testified that he was a valued mentor to both judges and lawyers and treated all

litigants with all the respect due them. However, his highly inappropriate behavior and the violation of the Will County regulations regarding computer usage did cause disrespect to his office as Associate Judge.

While there is no evidence that Judge Polito's conduct affected his ability to perform his judicial duties, the Commission considers it to be an aggravating factor that Judge Polito used his work computer, during normal working hours at the courthouse, to access pornographic websites. Not only was this known by him to be in violation of the County's regulation, but also in an era of declining judicial resources, many judges carry heavy caseloads, and Judge Polito's conduct was an inexcusable waste of judicial time that should have been spent on available judicial duties.

SANCTION

The parties have brought to the Commission's attention several decisions from sister jurisdictions where judicial officers were disciplined for behavior similar to that engaged in by Judge Polito. The Commission can find no common pattern of discipline from these cases by which to guide us in the imposition of an appropriate level of discipline here.

Turning to the judicial discipline jurisprudence of Illinois, we note *In re Spurlock*, 4 Ill. Cts. Com. 74 (2001) describes similar but albeit more egregious conduct by that respondent. Judge Spurlock was removed from the bench because of his treatment of female staff of both the court system and ancillary offices. In *Spurlock*, the Commission referenced with approval several factors used to determine an appropriate sanction for judicial misconduct: (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts or misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his position to satisfy his personal desires. *In re Deming*, 736 P.2d 639, 659 (1987).

In this case, the Commission finds that Judge Polito's conduct relates to these factors: (a) the misconduct was not an isolated instance; (b) it was frequent; (c) the acts occurred out of the courtroom but, importantly, used court resources; (d) it occurred in his personal capacity; (e) the judge has acknowledged the misconduct; (f) the judge is receiving treatment; (g) the judge has served for six years; (h) there were no prior complaints of which the Commission is aware; (i) the judge acknowledges that his conduct has brought the office into disrepute; and (j) the judge did not use his official position, other than access to official computers against regulations, to satisfy his personal desires.

We note as well that Judge Polito has testified under oath that he will not apply for reappointment as an associate judge at the expiration of his current term, a circumstance which

ameliorates the necessity for the imposition of a more onerous sanction here.

It is the order of the Commission that respondent, Joseph C. Polito, be suspended without pay from his judicial duties for a period of 60 days.

Respondent suspended for 60 days commencing on February 16, 2013.