

(No. 82 CC 1.—Respondent suspended.)

In re ASSOCIATE JUDGE THOMAS M. DALEY
of the Twentieth Judicial Circuit, Respondent.

Order entered August 3, 1983.

SYLLABUS^o

On February 1, 1982, the Judicial Inquiry Board filed a complaint with the Courts Commission, charging the respondent with conduct that is prejudicial to the administration of justice and which brings the judicial office into disrepute. On August 18, 1982, the Courts Commission entered an order holding the proceedings in this cause in abeyance at the request of the Judicial Inquiry Board and on February 22, 1983, entered an order taking the proceedings out of abeyance and granting the Board leave to file an amended complaint. The amended complaint separated the charges made in the original complaint into three counts and added a new charge contained in Count IV. Count I alleged that the respondent violated article VI, section 13(b), of the Illinois Constitution and Rules 61(b), 61(c)(5) and 61(c)(21) of the Illinois Supreme Court (Ill. Rev. Stat., ch. 110A, pars. 61(b), 61(c)(5) and 61(c)(21)) inasmuch as he failed to devote full time to his judicial duties and received nonjudicial compensation. It was alleged that from on or about November 13, 1979, to on or about December 11, 1979, the respondent was employed as a laborer for M. H. Wolfe & Company Contractors ("Wolfe"), an entity doing business in Sauget, Illinois.

Count I alleged that the respondent was required to devote full time to his judicial duties but ceased to perform his judicial duties in the afternoon in order to arrive at his nonjudicial employment in time for the 3 p.m. to 11 p.m. shift. It was alleged that the respondent was prohibited from accepting any duties or obligations which would interfere or reasonably appear to interfere with the proper performance of his duties. The respondent was also, it was alleged, prohibited pursuant to Supreme Court Rule 65 (Ill. Rev. Stat., ch. 110A, par. 65) from accepting compensation for the performance of any nonjudicial services, except reasonable compensation for lecturing, teaching, writing, or similar activities. The respondent was alleged to have falsely represented in written reports prepared by him

^o The Syllabus in this case has been prepared by the Illinois Courts Commission.

and submitted to the Administrative Office of the Illinois Courts that he was devoting either three or four hours in the afternoon to his judicial duties. The respondent also filed a verified statement of economic interests, which he was required by law to file with the Illinois Secretary of State, for the year 1979. In response to paragraph 6 of the statement of economic interests, the respondent falsely stated that in 1979 there were no entities doing business in the State of Illinois from which the respondent derived income in excess of \$1,200 when in fact the respondent received income in the amount of \$3,359.60 in 1979 from Wolfe. In Count II of the complaint, it was alleged that the respondent violated Supreme Court Rules 61(b) and 61(c)(4) (Ill. Rev. Stat., ch. 110A, pars. 61(b) and 61(c)(4)), by preparing and submitting the misleading and false reports of his daily judicial activity with the Administrative Office of the Illinois Courts. In Count III, it was alleged that the respondent violated Supreme Court Rules 61(b) and 61(c)(4) (Ill. Rev. Stat., ch. 110A, pars. 61(b) and 61(c)(4)), when he submitted a false verified statement of economic interests for the year 1979 to the Secretary of State. Count IV of the complaint alleged that the respondent, in violation of Rule 61(c)(4) of the Illinois Supreme Court (Ill. Rev. Stat., ch. 110A, par. 61(c)(4)), willfully failed to comply with a valid court order requiring him to make child support payments for his four children (\$300 per month per child) and alimony payments to his former wife (\$250 per month) plus pay medical and tuition expenses of his minor children, and was therefore held in willful contempt of court for such failure by the circuit court of St. Clair County. The court entered an order finding the respondent in contempt and also entered judgment against the respondent in the amount of \$4,075 in unpaid support and maintenance payments, \$228.14 in unpaid medical expenses, and \$950 in unpaid tuition and fee expenses. The respondent's subsequent compliance with the dissolution of marriage order, Count IV alleges, in no way obviates the respondent's violation of Supreme Court Rule 61(c)(4) for his willful contempt of court.

In response to the allegations contained in Count I, the respondent admits that he was required to devote "full time" to his judicial duties. However, the respondent denies that by accepting a job as a laborer from on or about November 13, 1979, to December 11, 1979, he failed to devote full time to his judicial duties. The respondent testified that during the period in question, he always had a morning and afternoon call as required by Supreme Court Rule 61(c)(5) (Ill. Rev. Stat., ch. 110A, par. 61(c)(5)), which requires that a judge "shall devote full time to his judicial duties and shall normally conduct morning and

afternoon sessions of court for hearing and deciding matters regularly assigned to him." Several witnesses testified that the respondent always disposed of the cases that were assigned to his docket. In fact, there was testimony to the effect that the respondent was always available to perform any task required of him as an associate judge, and that he was called on emergency matters in the middle of the night and acted in a receptive, conscientious manner when called. The respondent admits, as Count II alleges, that he was required to prepare reports of his daily judicial service and submit those reports to the Administrative Office of the Illinois Courts. The respondent denies, however, preparing or submitting false and misleading reports as the complaint alleges in Count II. The respondent denies that he falsely represented that he performed either three or four hours of judicial service at the St. Clair County Courthouse. The respondent admits that he was required by law to prepare and submit a verified statement of economic interests for the year 1979 to the Secretary of State. The respondent admits, as Count III alleges, that paragraph 6 of the statement of economic interests required him to list the names of any entity doing business in the State of Illinois from which income in excess of \$1,200 was derived in 1979. But the respondent contends that he did not intentionally submit a false report. The respondent testified that inadvertently he responded incorrectly to paragraph 6. He mistakenly assumed that the statement of economic interests form was identical to a form he filed with the county clerk. His response to paragraph 5 on the county form, which he thought corresponded with paragraph 6 on the State form, was answered correctly according to the respondent. The incorrect response to paragraph 6 was simply a mistake. The respondent denies the allegations set forth in Count IV relating to his failure to comply with a court order requiring him to make child support and maintenance payments to his former wife. The respondent admits that he was held in contempt of court for his failure to pay \$1,450 per month. However, the respondent testified that he thought he had an agreement with his wife to pay less than the sum required in the court order. The respondent testified that he never failed to pay his wife in any given month but admitted that he did not pay her \$1,450 every month as the order had directed. There was evidence that the respondent had already paid his former wife \$58,000 in payments at the time of the contempt proceeding but that he was \$4,075 in arrears in support and maintenance payments, \$228.14 in unpaid medical expenses, and \$950 in unpaid tuition and fee expenses. During the period of time that the petition for contempt

was pending for failure to pay the arrearage, there was also a petition by the respondent requesting a reduction in the amount of the payments he was to make to his former wife. It appears that a reduction of \$50 per month was granted.

Held: Respondent suspended for two months without pay.

Pierce, Lydon, Griffin & Montana, and Sidley & Austin, both of Chicago, for Judicial Inquiry Board.

Lance Callis, of Granite City, for respondent.

Before the COURTS COMMISSION: CLARK, J., chairman, and LORENZ, JONES, MURRAY and SCOTT, JJ., commissioners. ALL CONCUR.

ORDER

This matter coming on to be heard on the pleadings filed in this cause, the evidence of witnesses produced, examined and heard in open court, the stipulations and exhibits identified and received into evidence, the arguments of counsel and the authorities, and the Illinois Courts Commission being fully advised in the premises, on consideration finds:

1. That this Commission has been duly and properly convened;

2. That it has jurisdiction of the parties and the subject matter of this proceeding;

3. That the allegations contained in Counts I, II, and III of the amended Complaint have been sustained by clear and convincing evidence; and

4. That the allegations contained in Count IV have been sustained by clear and convincing evidence. However, the Commission wants to make it clear that simply because the respondent in this case was held in contempt of court does not in and of itself necessarily require discipline be imposed. While being held in contempt is certainly a very serious charge, in this particular case the

reasons for the failure to comply with the court order do not demonstrate a purposeful defiance of the judge or disrespect for the judicial system. The respondent, who was not represented in his divorce proceedings, had agreed to a sum which he later concluded he could not afford. The respondent contends that the reason he took the job as a laborer was to alleviate his financial situation, comply with the dissolution of marriage order, and obtain enough money to be able to buy his children Christmas presents.

In this cause, imposition of discipline is necessary because of all of the factors taken together; namely, the fact that the respondent violated Supreme Court Rule 65 (Ill. Rev. Stat., ch. 110A, par. 65) by accepting compensation for nonjudicial services other than those authorized, filed a false statement of economic interests with the Secretary of State, prepared and submitted false reports of his daily judicial activity with the Administrative Office of the Illinois Courts, and was held in contempt of court for failing to comply with a valid court order.

It is hereby ordered that the respondent be suspended without pay for a period of two months, effective this date.

Respondent suspended for two months without pay.