(No. 89 CC 1.—Respondent suspended.)

In re CIRCUIT JUDGE JAMES E. MURPHY of the Circuit Court of Cook County, Respondent.

Order entered February 9, 1990.

SYLLABUS

On June 22, 1989, the Judicial Inquiry Board filed with the Courts Commission a four-count complaint, 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 complaint alleged that the respondent improperly accepted gifts in the form of free use of rental cars.

Count I stated that, during his service as a judge, the respondent made the acquaintance of Oscar D'Angelo, an attorney and partner in a law firm, who had as a client a car rental company (Avis); that, while the respondent presided in housing cases during 1969-71, D'Angelo appeared in the respondent's courtroom, not as an attorney but as a courtroom observer on behalf of a community group involved in urban renewal; and that, while the respondent was assigned to the circuit court's Law Division during 1975 to the present, D'Angelo's law firm represented litigants in pending matters in that division, although D'Angelo himself did not appear as counsel or litigant before the respondent, and further D'Angelo's law firm made from time to time informal inquiries to the respondent concerning compliance with jury summonses. (These allegations were repeated in the remaining counts of the complaint.) During 1977 or 1978, the respondent contacted D'Angelo about the rental of two cars from Avis in New York City and in January 1978, with D'Angelo's assistance, the respondent obtained the use of the rental cars; the respondent never paid for the use of the rental cars but rather accepted their use as a gift, gratuity, bequest or favor from D'Angelo. The count alleged that the respondent's conduct violated Supreme Court Rules 61(c)(4) (judge's conduct should be free of impropriety and the appearance thereof), (c)(22) (judge should not accept gifts or favors from litigants, lawyers practicing before him, or others whose causes are likely to come before him), (c)(23) (judge's action should not give appearance that his social or business relations or friendships influence his judicial conduct), and 65 (judge cannot accept loans, gifts, or gratuities except as provided by law). 87 Ill. 2d Rules 61(c)(4), (c)(22), (c)(23), 65.

Count II alleged that during 1980 the respondent contacted D'Angelo to arrange for use of a rental car for a trip to Ireland in May 1980; that D'Angelo arranged for the respondent to receive priority treatment in obtaining a rental car from Avis while in Ireland and the respondent did obtain the use of an Avis rental car; that the cost of the rental car's use was paid by D'Angelo's law firm and ultimately charged to D'Angelo's personal account at his firm; and that the respondent never reimbursed D'Angelo or his firm for the cost of the rental car's use but rather accepted the rental car's use as a gift, gratuity, bequest or favor. The count alleged that the respondent's conduct violated Supreme Court Rules 61(c)(4), (c)(22), (c)(23), and 65. 87 Ill. 2d Rules 61(c)(4), (c)(22), (c)(23), 65.

Count III charged that in 1981 the respondent contacted D'Angelo about, and D'Angelo arranged, the use of an Avis rental car in Florida; that the cost of the rental car's use was paid by D'Angelo's law firm and later charged to D'Angelo's personal account at the firm; and that the respondent never reimbursed D'Angelo or his law firm for the cost of the rental car's use but rather accepted the rental car's use as a gift, gratuity, bequest or favor. The count alleged that the respondent's conduct violated Supreme Court Rules 61(c)(4), (c)(22), (c)(23), and 65. (87 Ill. 2d Rules 61(c)(4), (c)(22), (c)(23), and 65.) Count IV alleged virtually the same conduct and violation of rules as in Count III, except that the conduct occurred in 1982 rather than 1981.

On October 11, 1989, the Judicial Inquiry Board and the respondent filed a joint stipulation of facts, and, pursuant to order of the Courts Commission, the Judicial Inquiry Board, on November 8, 1989, and the respondent, on November 9, 1989, each filed a written offer of proof concerning the testimony witnesses would give about the issue of the jury summonses.

Held: Respondent suspended for two months without pay.

Winston & Strawn, of Chicago, for Judicial Inquiry Board.

William J. Harte, Ltd., of Chicago, for respondent.

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

ORDER

On June 22, 1989, the Illinois Judicial Inquiry Board (Board) filed a four-count Complaint with the Illinois

Courts Commission (Commission) against the respondent, Judge James E. Murphy, of the circuit court of Cook County. The Complaint charged the respondent with improperly accepting gifts in the form of free use of rental cars in violation of the applicable Standards of Judicial Conduct, which at the time of the alleged improper conduct were set forth in Illinois Supreme Court Rules 61(c)(4), 61(c)(22), 61(c)(23) and 65. 87 Ill. 2d Rules 61(c)(4), (c)(22), (c)(23), 65.

The facts stipulated to by the Board and the respondent reveal the following: The respondent has been a judge of the circuit court of Cook County since 1964. During this period the respondent became a close personal friend of Oscar D'Angelo, an attorney who, until recently, had been licensed to practice in the State of Illinois. From 1969 to 1971, the respondent sat in the circuit court's housing section. From time to time D'Angelo was present in the respondent's courtroom as an observer on behalf of the Near West Side Conservation Community Council. However, D'Angelo did not appear as an attorney before the respondent.

D'Angelo joined the law firm of Friedman & Koven as a partner in 1973 or 1974. He practiced with Friedman & Koven until the firm's dissolution in approximately 1987. One of D'Angelo's clients was Avis Rent-A-Car Systems, Inc.

From 1975 to the present, the respondent has sat in the Law Division of the circuit court of Cook County. Neither Friedman & Koven nor D'Angelo appeared as a litigant or as counsel before the respondent, although the firm of Friedman & Koven did represent litigants in matters pending in the Law Division during this time period. From time to time the firm of Friedman & Koven made informal inquiries to the respondent concerning compliance with jury summonses.

In 1977, the respondent contacted D'Angelo concerning the proposed rental of two cars from Avis in

New York City. With D'Angelo's assistance, the respondent obtained the use of the two rental vehicles, and it is agreed that the respondent never made any payments to Avis for the use of these vehicles. Rather, he accepted the use of the rental cars as a "gift, gratuity, bequest, or favor" from D'Angelo.

During 1980, the respondent contacted D'Angelo to arrange for the use of a rental car in Ireland. D'Angelo was able to obtain priority treatment for the respondent through an "Avis Company Travel Order." The bill for the use of the rental car in Ireland was paid by Friedman & Koven and ultimately charged to D'Angelo's personal account at the firm. The respondent never reimbursed Friedman & Koven or D'Angelo, but accepted the use of the rental car as a "gift, gratuity, bequest or favor."

It was agreed in the stipulation of facts that under similar circumstances the respondent obtained the free use of rental cars in Florida in 1981 and again in 1982. The record shows the total value of the use of the rental cars exceeded $700.

Following a hearing before this Commission on October 19, 1989, we requested the parties to submit written offers of proof regarding what witnesses would testify to concerning the issue of the jury summonses. The Board offered the affidavit of Pauline Peculis. Peculis was employed at Friedman & Koven from 1975 until the firm's dissolution. During that time she served as D'Angelo's personal secretary. From the time she began working at Friedman & Koven until the summer of 1985, Peculis maintained contact with the respondent concerning jury summonses received by Friedman & Koven employees and clients.

Peculis would receive jury summonses from employees and attorneys at the firm along with a request that the person to whom the summons was directed be excused from jury duty. She would forward the

summonses to the respondent, initially at the direction of D'Angelo. It was her understanding that after the respondent received the summonses "something would be done so that the person whose name appeared on the summons would be excused from jury duty * * *." In some instances, Peculis would receive jury summonses which called for the recipient of the summons to serve as a juror within a day or two of the date on which Peculis received the summons. In these cases, Peculis would contact the respondent by telephone and "inform him that we needed to expedite the process * * *." She would send the summons to the respondent by messenger. It was her understanding that the person would then be excused from jury duty. During the first year or two of this practice, Peculis sent approximately eight to 10 summonses per year to the respondent. By 1985, she was sending approximately 25 jury summonses per year to the respondent.

Also submitted was a handwritten note from Peculis to D'Angelo dated December 8. In her affidavit, Peculis stated that she wrote the note in 1980 and that she had received the bill mentioned in the note in a letter from the respondent. The note read as follows:

"Mr. D'Angelo,

Just a reminder—this bill is for Judge James Murphy—the judge who takes care of our numerous jury summonses for Maybrook and California. I called the First National Bank today and had the [pounds] converted to $.

P."

In the respondent's offer of proof, he stated that over the previous 25 years he had received numerous inquiries from persons who had received, or whose friends, relatives or clients had received summonses to serve as jurors in the various branches of the circuit court of Cook County. These inquiries came by way of

telephone calls, oral conversations, mail or by delivery. The respondent had no specific recollection of any individual inquiries regarding jury summonses from Friedman & Koven, although he was aware that there were such inquiries. However, his recollection regarding the number of such inquiries differed from Peculis'. He did not believe that there were more than 10 or 12 inquiries in any given year.

It was the respondent's practice on receiving the summonses (and any accompanying statement of excuse) to forward the documents to the jury commissioners' office or the presiding judge of the particular court. If the request was oral, the respondent would "tell the individual that if there was a reason why he or she should not be called to jury duty, he or she should explain that to the Presiding Judge or the Jury Commissioners and ask what needed to be done to be excused from jury duty."

Each of the four counts in the Board's Complaint states that the respondent's receipt of the use of the rental cars violated Supreme Court Rules 61(c)(4), 61(c)(22), 61(c)(23) and 65. 87 Ill. 2d Rules 61(c)(4), (c)(22), (c)(23), 65.

We conclude the respondent violated the Standards of Judicial Conduct by accepting the free use of rental cars on four separate occasions. Supreme Court Rule 61(c)(22) provided: "A judge should not accept gifts or favors from litigants, lawyers practicing before him, or others whose causes are likely to be submitted to him for judgment." The successor to Supreme Court Rule 61(c)(22) is now Rule 65(C)(4). (107 Ill. 2d R. 65(C)(4).) The supreme court stated in *In re Corboy* (1988), 124 Ill. 2d 29, that the committee commentary to Rule 65(C)(4) made clear that the new rule retained the "requirements" of former Rule 61(c)(22). In discussing Rule 65(C)(4) in the context of attorney Disciplinary Rule 7—110(a) (107

Ill. 2d 7—110(a) (giving or loaning a thing of value to a judge)) the supreme court stated:

"° ° ° If the nature of an attorney's practice is such that a matter in which he is involved is likely to be involved in a court proceeding, then that attorney should be prohibited from making a gift to any judge who sits on the court where the case may be heard—circuit, appellate, or supreme. The same prohibition must apply if the lawyer, though he, himself, may not be likely to have a case involved in a court proceeding, is associated in the practice of law with another who is likely to have matters that will be so involved.

It is also not proper to rationalize a judicial gift to a judge who may sit in probate or traffic, or in the criminal division, simply because the donor only tries cases in another division of the court. Under our rules, a judge is not a permanent fixture of any division, but is subject to reassignment by the chief judge." *In re Corboy* (1988), 124 Ill. 2d 29, 43-44.

Although neither D'Angelo nor Friedman & Koven appeared before the respondent, Friedman & Koven did represent litigants in matters pending in the Law Division. Under these circumstances it was improper for the respondent to accept these favors. It is of little consequence that the respondent states that he would have recused himself from any matter concerning or involving D'Angelo or Friedman & Koven which came before him. Rule 61(c)(22) was broadly written to include "others whose causes are likely to be submitted to him for judgment." The respondent was sitting in the Law Division of the circuit court. Friedman & Koven represented litigants who had matters pending before that division. At the same time, the respondent was accepting the free use of rental cars, paid for by Friedman & Koven. Such activity seriously calls into question the independence of the judiciary. The rule

forbids the acceptance of these types of gifts and favors for this very reason. The acceptance of the free use of rental vehicles violated the high standards of judicial conduct required of members of the judiciary.

In addition, the respondent was also required by Rule 61(c)(4) to avoid improper conduct and the appearance of impropriety in his official conduct. (87 Ill. 2d R. 61(c)(4).) As the court stated in *Corboy*: "Canon 2 of the Code of Judicial Conduct now requires that a judge should avoid impropriety or the appearance of impropriety. Former Rule 61(c)(4) [citation] contained a similar requirement. The general public would certainly consider it an appearance of impropriety if a judge were to accept a gift from a lawyer who has matters in the court on which that judge sits. Even if the matter were not to be heard by the judge to whom the gift is given, the public's perception would be one of suspicion, enhanced, no doubt, by the potential subliminal influence on the favored judge's colleagues." (*In re Corboy* (1988), 124 Ill. 2d 29, 44.) The acceptance of free use of rental cars by a sitting judge which is paid for by a large law firm would certainly appear improper to the general public. Judges are required to avoid conduct which could give rise to the appearance of impropriety.

We also note the appearance of impropriety in the repeated instances where the respondent served as a conduit for the handling of jury summonses. Rule 61(c)(23) stated: "A judge should be particularly careful to avoid any action that tends reasonably to arouse the suspicion that his social or business relations or friendships influence his judicial conduct." (87 Ill. 2d R. 61(c)(23).) The respondent stated that when he received the requests he would forward them to the jury commissioners' office or the presiding judge of the particular court. If this was all he did, then why would Friedman & Koven repeatedly send them to the respon-

dent? Why not send them directly to the appropriate entity? We find the respondent's explanation of his activity in the matter of the jury summonses to be less than frank. The fact the respondent was receiving "gifts or favors" from D'Angelo and Friedman & Koven, while at the same time he was facilitating the speedy release from jury obligations for Friedman & Koven employees and clients, at the very least gives rise to an appearance of a *quid pro quo*.

We find the respondent violated the Standards of Judicial Conduct, and that such violations were of such substance and significance that the sanction of suspension from office is required. Based on the foregoing set of considerations, it is hereby ordered that the respondent, Judge James E. Murphy, be suspended and relieved of his duties as a judge of the circuit court of Cook County for a period of two months without pay, commencing April 1, 1990.

Respondent suspended for two months without pay.