

2011 IL Cts Com 002

(No. 11-CC-1 Respondent censured.)

In re ASSOCIATE JUDGE DOUGLAS J. SIMPSON,
of the Circuit Court of Cook County, Respondent

Order entered November 7, 2011.

SYLLABUS

On February 18, 2011, the Judicial Inquiry Board filed a complaint with the Courts Commission, charging respondent with wilful misconduct and other conduct that was prejudicial to the administration of justice and which brought the judicial office into disrepute in violation of the Code of Judicial Conduct, Illinois Supreme Court Rules 61, 62 and 63. In summary form, the complaint alleged that on September 23, 2010, respondent engaged in *ex parte* communications, and then sought to convince the judge not to report the matter to the Judicial Inquiry Board.

Held: Respondent censured.

Sidley Austin LLP, of Chicago, for Judicial Inquiry Board.
William J. Harte and Erik D. Gruber, of Chicago, for Respondent.

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

ORDER

On February 18, 2011, the Illinois Judicial Inquiry Board (Board) filed a complaint with the Illinois Courts Commission against respondent, Judge Douglas J. Simpson. The complaint alleges wilful misconduct and other conduct that was prejudicial to the administration of justice and which brought the judicial office into disrepute. The complaint charges a violation of the Code of Judicial Conduct, Supreme Court Rules 61, 62(A), 62(B), and 63(A)(4) and alleges impropriety as a result of conduct occurring on September 23, 2010, by engaging in *ex parte* communications on September 23, 2010, and by seeking to convince the reporting judge not to make a report to the Judicial Inquiry Board.

The complaint in this case arises from the following facts, which were admitted by respondent in his amended answer to the complaint.

Respondent, on the dates in question, was an associate circuit judge in the Sixth Municipal District of the Circuit Court of Cook County, Markham, Illinois. On the morning of September 23, 2010, respondent stopped at a car detail shop on his way to work. He spoke with the owner of the shop regarding having his car detailed. In the course of that conversation, the shop owner volunteered to respondent that he had a case pending at the Markham courthouse and that a hearing on that case was scheduled for 9:00 a.m. that day. He showed respondent the notice of hearing

received by him. During this conversation, respondent indicated to the shop owner that he worked at the Markham courthouse. Respondent testified that the shop owner gave him a copy of the notice of hearing. (The shop owner could not recall doing so.) The shop owner testified that the judge told him: "Let me see what I can do." This statement was denied by respondent. Respondent did indicate to the shop owner that the judge before whom the matter was to be heard (Judge A) was a fair judge. At no time did respondent tell the shop owner he was a judge.

After arriving at work, respondent sat in Judge A's courtroom during Judge A's *pro se* call. Judge A noticed respondent, asked if respondent wanted to see him, then adjourned his call to meet with respondent in his chambers. With a copy of the shop owner's notice of hearing in hand, respondent told Judge A that the shop owner was a "good guy." Respondent quickly noted that he was not asking Judge A to "do anything wrong." Judge A returned to his call, which included the case involving the shop owner.

Following completion of Judge A's call, he telephoned the chief judge of the district to report respondent's communication. Thereafter, respondent was at Wal-Mart, shopping for refreshment supplies for one of his specialty court calls, when it dawned on him that he had behaved inappropriately by contacting Judge A with regard to the shop owner's case. He then telephoned Judge A and left a message on his voice mail to express remorse for what he had done, admitting that his conversation with Judge A had been inappropriate.

After further conversation with the chief judge, Judge A agreed he had a duty to make a report of respondent to the Judicial Inquiry Board. On September 27, 2010, respondent again spoke to Judge A in Judge A's office and asked if he could talk Judge A out of making a report.

In his amended answer, respondent admitted violating the Code of Judicial Conduct as provided in Supreme Court Rule 61:

"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."

In his amended answer, respondent admitted violating the Code of Judicial Conduct as provided in Supreme Court Rule 62(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."

In his amended answer, respondent admitted violating the Code of Judicial Conduct as

provided in Supreme Court Rule 62(B):

"A judge should not allow the judge's family, social, or other relationships to influence the judge's judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interest of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge."

In his amended answer, respondent admitted violating the Code of Judicial Conduct as provided in Supreme Court Rule 63(A(4):

"A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding."

The Board has recommended that respondent be suspended from his duties as a judge for a period of time as the sanction for his alleged breach of the Judicial Code of Conduct and, ultimately, admitted by respondent. This recommendation was based according to the Board's finding of three factors: (1) that the evidence showed respondent had a personal commercial relationship with the shop owner; (2) that there existed no reasonable explanation for respondent's conduct, which excludes the implication that respondent personally hoped to benefit from his actions in approaching Judge A; and (3) that the *ex parte* communication was secretive in nature. As to the first asserted aggravating factor, we find that no personal commercial relationship was established. Judge Simpson stopped at the shop owner's place of business to inquire about the cost of an automobile detailing. There is no evidence that the car in question was ever brought back to the shop owner's place of business or that any other commercial agreement was consummated with the shop owner by respondent.

With regard to the second suggested aggravating factor, there is no evidence that respondent expected to personally benefit from his conduct. The shop owner stated that the cost of detailing respondent's car was \$150, but he was running a special sale on detailing services for \$99. The shop owner did give respondent a flyer entitling respondent to that discount, but the shop owner also testified he had placed the same discount flyers at various businesses in the area for anyone to pick up and use. Moreover, respondent's testimony and character witnesses portrayed him as a person with a disposition of helpfulness. This observation is buttressed by his service as a judge in the various specialty courts established in the Markham courthouse.

Finally, the Board asserts respondent's *ex parte* conversation was secretive in nature. The Commission agrees but questions how it could be otherwise. Respondent could not volunteer to be a character witness in open court, as such testimony would be inadmissible in a small claims proceeding in a commercial case. The Commission gives little weight to that aggravating factor.

In mitigation, the Commission heard character testimony from three witnesses and received ten letters that were admitted into evidence by the Commission, all attesting to respondent's work ethic, fairness, and good character. Of substantial import, the Commission received an affidavit from Judge Camille E. Willis, a colleague of respondent's in the Sixth Municipal District, stating in part: "I believe that said conduct was an isolated incident and is not reflective of his conduct normally." (Exhibit G). This opinion is buttressed by respondent's prompt apology to Judge A.

SANCTION

While we commend Judge Simpson for admitting his conduct and the violations of the Code of Judicial Conduct alleged in the complaint, his attempt to deter Judge A from making a complaint after the fact is an aggravating factor in the determination of the sanctions to be imposed. It is therefore ordered that Judge Douglas J. Simpson be censured.

Respondent censured.