(No. 76 CC 2.—Respondent suspended.)

In re CIRCUIT JUDGE DAVID CERDA of the Circuit Court of Cook County, Respondent.

Order entered September 13, 1976.

SYLLABUS

On May 27, 1976, the Judicial Inquiry Board filed a multi-paragraph complaint with the Courts Commission, charging the respondent with willful misconduct in office, conduct that is prejudicial to the administration of justice and conduct that brings the judicial office into disrepute. In summary form, the allegations were: that during the period from April, 1973 until January 6, 1975, the respondent presided in Branch 40 ("Women's Court") of the circuit court of Cook County; that during said period, the respondent conducted hearings on charges of alleged violations of section 192.6 of the Municipal Code of the City of Chicago which prohibited certain classes of persons from congregating in public places or loitering where intoxicating liquors were sold; that the respondent, in setting bail in cases charging violations of section 192.6, fixed bail in amounts in excess of the amount allowed by law and that when the defendants

moved for a bond reduction, the respondent set hearings on the motion to reduce for the same date as the trial on the merits. The complaint further alleged that the respondent ordered an attorney never to appear in his courtroom under penalty of contempt, without explaining the grounds for his order; and that the respondent issued and enforced orders prohibiting all males, who were not parties to the litigation, from appearing on the floor where his courtroom was located.

Held: Respondent suspended for one month without pay.

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

George P. Lynch, of Chicago, for respondent.

Before the COURTS COMMISSION: SCHAEFER, J., chairman, and EBERSPACHER, STAMOS, HUNT and MURRAY, JJ., commissioners. ALL CONCUR.

ORDER

On May 27, 1976, the Judicial Inquiry Board filed a Complaint against the respondent, David Cerda, a judge of the circuit court of Cook County. The Complaint deals with conduct of the respondent during the period from April 1973 until January 6, 1975, during which he presided over Branch 40 of the circuit court of Cook County, commonly known as "Women's Court." The Complaint alleges that during that period the respondent, among his other duties, conducted hearings on charges of alleged violations of section 192.6 of the Municipal Code of Chicago and determined bail for defendants so charged.

Section 192.6 of the Municipal Code of Chicago provided:

"It shall be unlawful for any habitual drunkard, any person known to be a narcotic addict, any person known to be a prostitute, or any person who aids or abets prostitution, or for any person previously convicted of a felony, of prostitution, or of aiding and

abetting prostitution, to assemble or congregate with other persons of any of the foregoing classes in or upon the public ways or other public places in the city, or to loaf or loiter in or about or frequent the premises of any place where intoxicating liquors are sold."

Subsequent to the respondent's service in the Women's Court, section 192.6 was held unconstitutional by the United States District Court for the Northern District of Illinois in *Farber v. Rochford* (N.D. Ill. 1975), 407 F. Supp. 529. No appeal was taken from this judgment.

It is charged that the respondent, during the period that he was the presiding judge in Branch 40, was guilty of willful misconduct in office, and conduct that was prejudicial to the administration of justice and brought the judicial office into disrepute. The operative paragraphs of the Complaint, followed by the answer of the respondent to the allegations of each of those paragraphs, are as follows:

"COMPLAINT:

4. Respondent's conduct in hearings involving alleged violations of Section 192.6 of the Municipal Code of Chicago displayed an improper employment of the bail system as a means of punishing defendants charged with such violations, rather than as a means of assuring their presence in court for the trial of their charges, and a prejudiced attitude toward the defendants charged with such violations and towards their attorneys, all as evidenced by the conduct described in the succeeding paragraphs.

ANSWER:

4. The Respondent denies each and every allegation of Paragraph 4 of the Complaint.

COMPLAINT:

5. In his initial settings of bail amounts in cases charging violations of Section 192.6, Respondent from time to time established such amounts in excess of the

maximum allowable limits under law. From time to time when defendants charged with violating Section 192.6 moved the court for bond reduction, Respondent set hearings on said motions for the same date as the trial on the merits, thereby in effect denying bail to the defendants.

ANSWER:

5. The Respondent denies he set bail in excess of maximum allowable limits under law. The Respondent admits that some Defendants moved for bond reduction but does not admit the legality of the procedures employed. Respondent admits setting hearings on some bail reduction motions on a date previously set for trial of the cause because of the conduct of defense counsel and defendant. Respondent denies that he directly or indirectly took any steps to deny defendants bail as alleged in Paragraph 5.

COMPLAINT:

6. Respondent failed and refused to extend judicious and fair treatment to certain attorneys representing defendants charged with such violations. As illustration of such conduct, Respondent from time to time refused to reply to arguments made by said attorneys regarding the legal basis for Respondent's actions in determining bail amounts and in ordering the continuance of cases. As further illustration of such conduct, on July 24, 1974, Respondent ordered Attorney James H. Schwartz never again to appear in Respondent's courtroom under penalty of contempt of court. In spite of Attorney Schwartz' request for an explanation, Respondent refused to explain the grounds for his order. Upon direction from Chief Judge John Boyle, Respondent later permitted Attorney Schwartz to appear in Respondent's courtroom.

ANSWER:

6. The Respondent denies that he ever failed to give judicious and fair treatment to attorneys representing defendants before him. Respondent admits refusing to reply to argument of attorneys on occasions but states such refusal was according to law. Respondent admits he ordered Attorney James H. Schwartz to leave his courtroom on July 24, 1974. Respondent denies he was ordered by Chief Judge John Boyle to allow Attorney Schwartz to appear in Respondent's courtroom as alleged in Paragraph 6.

COMPLAINT:

7. Respondent issued and enforced orders that all males who were not parties to litigation in Women's Court and who appeared on the same floor on which Women's Court held session were to be ejected from the floor. In enforcing this order and in the course of presiding over Women's Court, Respondent publicly called such males 'pimps.' Pursuant to this order, Respondent on occasion ordered ejected from the floor males who appeared before him to explain why a defendant charged with violating Section 192.6 of the Municipal Code of Chicago was absent from court when her case was called.

ANSWER:

7. The Respondent denies he issued and enforced the order alleged in Paragraph 7. The Respondent denies he called males 'pimps'. Respondent again denies issuing and enforcing the order alleged in Paragraph 7 but admits he ordered persons removed from the court and from the 8th Floor who were not lawfully present in those areas."

The Courts Commission heard evidence with respect to these charges on August 16, 17 and 18, and after hearing the arguments of counsel for the Judicial

Inquiry Board and for the respondent on August 19, the Commission took the matter under advisement.

The parties have stipulated, and there was also evidence, as to the physical conditions that prevailed in the Women's Court during the time the respondent presided there. In the opinion of the Commission, these conditions are relevant to an appraisal of the conduct of the respondent. The stipulation and the evidence show that the courtroom over which the respondent presided is located in the Central Police Station at 11th and State Streets in Chicago. The building is old and so are the courtroom facilities. The room will seat about 125 people. The average daily court call brings over 200 people into the courtroom early in the morning. The courtroom is not air-conditioned, and it is not equipped to provide seats for all of those who are brought there by the court call. The overcrowded condition of the courtroom also causes odors. There are windows along the east side of the courtroom which are adjacent to the elevated railway tracks. Trains which are visible from the windows run by approximately every 3 to 5 minutes. Although the trains are noisy, the windows must be kept open both in summer and in winter which causes severe acoustical difficulties in the courtroom.

In the mornings the courtroom was used to hear the cases assigned to Branch 40. In that branch approximately 90 cases were handled during each morning. They would be prostitution cases which would include both the cases involving charges under section 192.6 of the Municipal Code of Chicago and cases involving violation of the State statute relating to prostitution. In the afternoons the courtroom was designated as Branch 65. The respondent also presided over that branch of the court, to which were assigned all shoplifting cases in the city of Chicago. The average daily volume was approximately 90 cases on the court call of Branch 65.

The large volume of cases made necessary a large number of court personnel. There were two assistant State's Attorneys, a public defender, rarely an assistant corporation counsel, and at least four deputy clerks. In addition there were 8 to 10 bailiffs required in the courtroom to maintain order. The evidence strongly suggests that these conditions existed prior to the time when the respondent presided over Branch 40 and Branch 65. The respondent did not complain of these conditions, either to the presiding judge of the First Municipal District of the circuit court or to the chief judge of the circuit court of Cook County.

The evidence established that during the period that the respondent presided over Branch 40, the following procedure was followed with respect to alleged violations of section 192.6 of the Municipal Code of the city of Chicago:

> Court regularly convened at 9:30 a.m. Upon the convening of court those women who had been arrested the previous night upon charges of violation of section 192.6 of the Municipal Code were brought from the lockup into the courtroom and seated in the first three or four rows of the courtroom. In the normal course, there would be somewhere between 30 and 50 or 60 such women. In none of these cases would the officer who had made the arrest or signed the complaint against the defendant be present, nor would anyone ordinarily be present to represent the city of Chicago. When the case of each defendant was called, the respondent would at once announce the amount at which bond was set. The defendant was not asked whether she wished to plead guilty or not guilty.
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> Bond was ordinarily fixed in the amount of $1,000, although in some instances it was set at higher or lower amounts. On any occasion in which a lawyer appeared to represent one of the defendants bond was reduced

to the sum of $400, in accordance with section 110—5(b) of the Code of Criminal Procedure (Ill. Rev. Stat., ch. 38, par. 110—5(b)). Defendants were admitted to bail upon deposit of cash in the amount of 10% of the amount fixed by the judge.

In the event that a defendant was unable to make bond, she was remitted to custody and the case was set for trial—normally, one week from the date of the initial appearance in court. The reason advanced for this delay was that one week was the amount of time necessary to enable the police department and the clerk's office to process the file with respect to the defendant and to produce in court what was referred to as the "BI" sheets, meaning the Bureau of Investigation file concerning that defendant. That delay was also said to be necessary in order to notify the arresting officer to appear in court. The record is clear, however, that the arresting officer almost never appeared on the date to which the case was continued.

Only a minute percentage of the cases in which arrests were made for violation of section 192.6 were ever brought to trial. The respondent's own estimate was that during his entire tenure as presiding judge of the Women's Court, there had been only 65 to 90 convictions in section 192.6 cases, and about half of those were on pleas of guilty. The maximum fine of $200 was uniformly assessed. Those cases that did not result in convictions were disposed of by the entry of an order—"Leave to File Denied," or were never formally disposed of.

The maximum punishment for a violation of section 192.6 of the Municipal Code of Chicago was a fine of not more than $200. Imprisonment was not a permissible punishment for violation of that provision, yet any defendant brought before the respondent on a section 192.6 charge, who could not furnish the bail set by the

respondent, spent at least a week in jail—ostensibly awaiting trial, but there were almost no trials—on the respondent's estimate, less than two per 100 cases.

The practice followed by the respondent differed from that employed by judges who had preceded him in Branch 40. Those judges had apparently dismissed the charges against the women brought before them on section 192.6 immediately upon their initial appearance in court. The respondent testified that he regarded this procedure as a "revolving door" and that he instituted the procedure which he employed in order to eliminate that feature and to provide the arrested person with a trial.

Accepting the respondent's testimony as to his initial motive for instituting the procedure he followed with respect to section 192.6 cases, it is nevertheless the opinion of the Commission that it must have become clear to him very shortly after that procedure was commenced that the objective he sought was not being accomplished. Those cases were not being tried but were still being disposed of by the respondent with the same notation, "Leave to File Denied." The net result was that defendants had been held in jail for at least a week under excessive bond. Moreover there were instances in which the respondent caused a warrant to be issued for the arrest of a defendant for bond forfeiture, although the respondent had been advised that the defendant was in jail pursuant to the respondent's order in another case.

The assistant State's Attorney who was regularly assigned to Branch 40 told the respondent that in his opinion the bonds in section 192.6 cases were being set at an improperly high amount. An assistant public defender assigned to that courtroom made the same criticism of the respondent's bail practice and requested that he be appointed to represent some defendants so that appeals might be taken and the legality of that practice be determined upon appeal. The respondent refused to appoint the assistant public defender on the ground that

he was employed full time to represent defendants with respect to State charges.

The respondent was of the opinion that his practice with respect to setting bond in section 192.6 cases was proper, and his defense before this Commission is that he did not knowingly set a bond in excess of maximum legal limits. While the Commission is satisfied from its examination of the statutes and the rules of the Supreme Court that the legal situation was not crystal clear, it is also satisfied that at least as early as September 1, 1973, the respondent should have known that he was setting bail in illegally high amounts.

A motion to reduce bail was made in one of the respondent's cases in the appellate court, First Judicial District, and that court entered the following memorandum order on August 29, 1973:

"This cause is before the Court on motion of defendant-appellant Janice Brown to reduce bail.

It appears to the Court that defendant-appellant is charged with violation of chapter 192, section 6 of the Municipal Code of Chicago. The maximum fine for which defendant is liable is $200.00. Ill. Rev. Stat. 1973, ch. 38, par. 110—5(b) provides that '[w]hen a person is charged with an offense punishable by fine only, the amount of bail shall not exceed double the amount of the maximum penalty.' It appears to this court that the trial court set defendant-appellant's bail at $3,000.00 and on August 10, 1973 reduced the bail to $2,000.00. Under Illinois law, statutory and constitutional, this bail is not only excessive; it is illegal. See *People ex rel. Sammons v. Snow*, 340 Ill. 464, 173 N.E. 8. Therefore, bail for defendant-appellant pending trial is reduced by order of this Court to the sum of $400.00."

After the appellate court had ruled on August 29, 1973, the respondent continued to fix bail in amounts in excess of the maximum amount by any construction of

the statute and Supreme Court rules. Insofar as relief under the administrative system is concerned, Judge Wachowski, presiding judge of the First Municipal District, told the respondent of reports he had received that the respondent was fixing bail in excessively high amounts. Respondent testified that he told Judge Wachowski that he thought he was right, and he testified that Judge Wachowski said "If you believe you're right, then go ahead." The respondent testified that this conversation took place after the decision of the appellate court had been rendered on August 29, 1973.

On some unspecified date duting 1973, the police department ceased to furnish "BI" reports with respect to defendants charged with violations of section 192.6. On February 4, 1974, the following memorandum was addressed to all assistant State's Attorneys:

> "This memorandum is intended primarily for Assistants assigned to Branch 40 of the First Municipal District. It may also have application to Assistants handling holiday court.
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> No Assistant State's Attorney shall take part in prosecuting anybody under the loitering prostitution provision of the City of Chicago Ordinance 192-6. This means not only that our office shall not put on any evidence in any such case, but also that we shall not participate in setting a bond, granting continuances for any purpose, nor in the decision of a trial judge to deny leave to file the charge. As a matter of comity we shall continue to prosecute other City of Chicago ordinance violations where we have done so in the past. The Corporation Counsel of Chicago has been notified that he alone will have responsibility in the loitering prostitute cases."

The respondent acknowledged that whenever an attorney appeared on a motion to reduce bail in a section 192.6 case, it was his practice to reduce the amount of

bail to $400. He testified that he did so because he felt that when an attorney had filed his appearance, the attorney would then be responsible for reminding the defendant to be in court and would assist the court in getting the attendance of that particular defendant. "It meant it would be something like a family tie, something that would help the Court in being reassured somewhat that the defendant would appear." The respondent acknowledged, however, that very few of these defendants did appear, and the Commission is not satisfied with the respondent's explanation.

Paragraph 6 of the Complaint charges that the "Respondent failed and refused to extend judicious and fair treatment to certain attorneys representing defendants" charged with violations of section 192.6. As illustrative, the Complaint alleges that the respondent "from time to time refused to reply to arguments made by said attorneys regarding the legal basis for Respondent's actions in determining the amounts of bail and in ordering the continuance of cases." It appears from the record before us that all of the attorneys involved appeared regularly before the respondent in Branch 40 and there is no suggestion in the record that they were not fully aware of the respondent's views with respect to the legal basis for the proper amount of bail.

Insofar as the incident of July 24, 1976 is concerned, at which time the respondent ordered James H. Schwartz not to appear again in his courtroom under penalty of contempt of court, the record establishes that the attorney in question was engaging and had previously engaged in conduct that caused the respondent and the court attachés to believe that the attorney was soliciting cases in the courtroom and in the corridors, and it was to that end and for that reason that the respondent ordered him removed from the courtroom. Schwartz testified that he appeared regularly in Branch 40 in connection with section 192.6 cases, and that he

obtained from 1/3 to 1/2 of those cases from pimps or in the actual courtroom. On the occasion in question, after Schwartz had appeared for two defendants, the respondent asked Schwartz to tell him the names of the other section 192.6 defendants that he represented so that their cases could be called. When Schwartz refused to do so, the respondent ordered him removed and forbad him to appear in the respondent's courtroom. The respondent testified that a short time thereafter, upon examining the authorities, he determined that he was in error and rescinded his order. It also appears, however, that on August 9, 1974 the respondent refused to rescind the order upon the motion of an attorney who was representing Mr. Schwartz. The respondent also refused to read the six-page transcript of the proceedings before him on July 24, which accompanied the motion to vacate and continued that motion until October 7. The order was not rescinded until after an original *mandamus* action had been commenced in the Supreme Court of Illinois to compel the respondent to do so. Leave to file the original *mandamus* action was denied, but in the course of administrative procedures the office of the chief judge of the circuit court of Cook County communicated with the respondent with respect to that matter.

With respect to the allegations of paragraph 7 of the Complaint, the respondent acknowledged that he had issued and enforced orders that all males who had no business before the court should be excluded from the floor of the building on which the Women's Court was conducted. The respondent does not deny that in enforcing that order he used the term "pimps" in describing some of the males who were ordered to be ejected from the courtroom and from the floor upon which the courtroom was located. The evidence established that under the respondent's orders only those

males who had in their possession what are referred to as "bail bond slips" were to be admitted to the 8th floor. The bail bond slip indicated that the person possessing it was appearing in connection with a defendant who was charged with an offense that was pending in the Women's Court.

The respondent justifies the issuance and enforcement of his orders in part upon the unusually difficult physical conditions that existed in the Women's Court and in part upon the provisions of Rule 0.7 of the rules of the circuit court of Cook County. That rule provides in relevant part:

"a) Solicitation of business relating to bail bonds or to employment as counsel in the court houses is prohibited.

b) Loitering in or about the rooms or corridors of the court houses is prohibited. ° ° °

c) The State's Attorney of Cook County may require any person who violates this rule to appear forthwith before a Judge of this court to answer to a charge of contempt.

d) The Sheriff of Cook County ° ° °, deputies, and the Custodian of the court houses shall enforce this rule, either by ejecting violators from the court houses or by causing them to appear before one of the Judges of this court for a hearing and for imposition of such punishment as the court may deem proper."

In our opinion the charge that the respondent publicly referred to some males in the courtroom as "pimps" is not a matter of significance in this case. It is established in this record that males who were permitted to loiter on the 8th floor sometimes attempted to carry on conversations with the defendants charged with violations of section 192.6 in an effort to recruit them for their "stables" by furnishing bond or legal counsel or otherwise assisting them. The record also establishes that

on several occasions the respondent refused to listen to explanations tendered by a non-lawyer made as to the whereabouts of a defendant against whom a charge under section 192.6 was pending.

The record also shows that on one occasion attorney James H. Schwartz brought to the courtroom a young man who was neither a pimp nor associated with prostitution. The young man attended and accompanied Schwartz at his request, and it is a fair inference from the record that Schwartz brought him there in order to create an incident. A deputy sheriff brought Schwartz and the young man before the respondent, who ordered the young man to leave the courtroom and to leave the 8th floor. We do not believe that this incident warrants the imposition of any discipline.

The determination of an appropriate sanction, always difficult, has been particularly troublesome in this case because of the unsatisfactory physical conditions under which the respondent was required to perform his duties, and the excessively heavy caseload assigned to him. These conditions have particular weight in connection with the allegations of paragraph 6 of the Complaint which relate to the treatment accorded to attorneys who appeared before the respondent in Branch 40. Although the respondent was unduly abrupt and discourteous while hearing some cases in Branch 40, there is convincing testimony in the record from attorneys who appeared before him in that court as well as from attorneys who appeared before him in other judicial assignments, that he was ordinarily courteous and considerate. In our opinion the incidents of discourtesy established in the record would not, standing alone, warrant discipline.

Similarly, we believe that the respondent's order excluding males who appeared to have no business before the court from the Branch 40 courtroom and the

corridor leading to it must be appraised in terms of the conditions that prevailed there. When the order is so appraised, it would not, standing alone, warrant discipline.

The respondent has acknowledged during the course of these proceedings that his order forbidding attorney Schwartz to appear on behalf of defendants in his courtroom was wrong. His conduct in refusing to vacate that order was arbitrary and deserving of discipline. His action in continuing the motion to vacate that order for more than a month and a half appears to have been designed to impede or prevent appellate review.

The most serious charges against the respondent are those which relate to his handling of section 192.6 cases. The net effect of his practice with respect to bail was to cause the incarceration for at least a week of defendants who were charged with a violation which carried a maximum penalty of a fine. Whatever uncertainty may have existed with respect to the proper amount of bail in those cases was removed by the memorandum order of the appellate court on August 19, 1973, which stated that any bail in excess of $400 was "not only excessive; it is illegal." Despite that determination by the appellate court, the respondent continued to require bail in amounts in excess of $400, reducing to $400 in cases in which attorneys appeared. His practice of continuing motions to reduce bail until the day the case was set for trial was also improper and similarly tended to prevent appellate review.

On the whole record, the Commission finds that the charges have been proved by clear and convincing evidence. It is therefore ordered that the respondent, David Cerda, is suspended for a period of one month commencing October 1, 1976.

Respondent suspended for one month without pay.