

2012 IL Cts Com 001

(No. 10-CC-1 Respondent suspended.)

In re CIRCUIT JUDGE KENNETH L. POPEJOY,
of the Circuit Court of the Eighteenth Judicial Circuit, Respondent

Order entered May 9, 2012.

SYLLABUS

On September 24, 2010, 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 on June 29, 2010, respondent, while operating his vehicle, struck an unattended parked car and then, with wilful and wanton disregard for the safety of persons and property, drove his damaged car from the scene at a high rate of speed, disobeyed multiple stop signs, and caused a 13-year -old girl to move away from the road quickly to avoid being struck by his car.

Held: Responded suspended.

Sidley Austin LLP, of Chicago, for Judicial Inquiry Board.
George B. Collins and Theresa M. Gronkiewicz, of Chicago, for Respondent.

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

ORDER

In a complaint filed on September 24, 2010, the Illinois Judicial Inquiry Board (Board) charged Kenneth L. Popejoy, a circuit judge in the Eighteenth 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."

In support of the charge, the complaint stated that on June 29, 2010, respondent, while operating his vehicle, struck an unattended parked car and then, with wilful and wanton disregard

for the safety of persons and property, drove his damaged car from the scene at a high rate of speed, disobeyed multiple stop signs, and caused a 13-year-old girl to move away from the road quickly to avoid being struck by his car.

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. The following facts come from Judge Popejoy's testimony before the Commission and the Board as well as from the undisputed allegations in the Judicial Inquiry Board's Complaint against respondent.

Respondent left the DuPage County courthouse in the late afternoon of June 29, 2010, and, by prearrangement, met Chief Judge Stephen Culliton at a restaurant named The Bank in Wheaton, Illinois. Respondent consumed some portion of a martini at that establishment, leaving at about 4:00 p.m. He drove to Judge Culliton's home in Glen Ellyn, Illinois, where Judge Culliton had driven his car, and then drove with Judge Culliton to the Itasca Country Club to meet several other people. Judge Popejoy testified that while at the Itasca Country Club, he had two draft beers, drinking only half of each of them. Judges Popejoy and Culliton then left the country club to drive to a restaurant named Amalfi's (located in Bloomingdale) for dinner where, in addition to appetizers, Judge Popejoy consumed a portion of a glass of red wine.

At approximately 8:00 p.m., Judges Popejoy and Culliton left the restaurant with Judge Popejoy driving Judge Culliton home. Upon leaving the Culliton home, Judge Popejoy proceeded to drive to his home. As he was driving from the Culliton house, he was passing a parked car on his right when his car suddenly veered to the right, striking the parked car. Respondent implied the cause of the accident was that a tie rod on his vehicle had broken.

Respondent did not stop but continued driving 2.8 miles to his home. During the course of that distance, Judge Popejoy testified he had to keep fighting the steering wheel to stay on the road, and, at one point, he veered again to the right almost striking a 13-year-old pedestrian. Yet, he continued to operate the vehicle. Respondent also failed to come to a stop at more than one stop sign on his route home.

Upon reaching his home, Judge Popejoy went upstairs to place his cell phone in the charger as his battery had died prior to his arrival at the country club. He then telephoned Judge Culliton to get the telephone number of his attorney whom he then called, keeping the police, who had arrived at his home, waiting for approximately ten minutes before hanging up and answering the door.

Judge Popejoy ultimately pleaded guilty to reckless driving and independently wrote a letter of apology to the 13-year-old girl, who was nearly hit by him.

Before the Commission, Judge Popejoy testified that he had received a service recall notice for his Jeep automobile but had not responded to the recall notice prior to this incident. Evidence before the Board showed that the damage to his car and the defective steering were repaired by the dealer. However, neither the recall notice nor evidence of the nature or extent of either the

malfunction or repairs were offered into evidence by respondent.

It is also noteworthy that before the Commission and in response to Commissioner Hooks' direct question to respondent concerning his consumption of alcohol, respondent testified he consumed approximately a half glass of red wine. While the question was framed with regard to respondent's presence at Amalfi's, the general question that preceded the specific question was "where were you before this incident?" Respondent did not disclose in his testimony before the Commission that he had consumed a martini at The Bank and two partial beers at the Itasca Country Club.

The Commission is less than satisfied with respondent's responses to questions posed before it. While respondent certainly bears no burden of proof in this proceeding, the fact that information concerning the safety recall of his vehicle and the diagnosis of the averred malfunction of his steering mechanism were all within his control and ability to produce, such production could have resulted in no charges being brought by the Board or no discipline imposed by the Commission.

Respondent has no sound explanation for (1) leaving the scene of an accident involving property damage, (2) failing to stop at stop signs along his route home, or (3) failing to promptly answer the door to the police. It is such conduct that brings the judiciary into disrepute in violation of the canons and the Commission so finds.

SANCTION

We recognize that the offending conduct by him was extra judicial in nature and that at no time did he assert his position as a judge with regard to his resolution of either the ticketed offenses or the subsequent information filed by the state's attorney. While respondent's conduct on the night of June 29, 2010, was extra judicial in nature, it was unacceptable and an ordinary member of the public likely would have faced a much more severe punishment than respondent received. Moreover, respondent was less than candid in his testimony before the Commission, implying, without introducing readily available proof, that his erratic driving was due to a malfunction of his automobile.

Respondent's self-described state of mind and rationale for not stopping and informing the police following the accident are completely unbelievable and contrary to what one might expect from the average citizen, not to mention a judge and former experienced attorney. Any person who is so surprised, shocked, and panicked by an accident caused by a mechanical defect and who continues to drive a defective car in that state of mind, without getting out of the car to at least look at the damage, and then drives faster rather than slower than the posted speed limit, deserves to be sanctioned. Additionally, to keep the police authorities waiting at respondent's door for ten minutes so that respondent can charge a cell phone and place telephone calls is behavior uncharacteristic of an officer of the court. The public expects and deserves even more responsible behavior from a member of the judiciary. We find that respondent violated Rule 61 by clear and convincing evidence and has admitted violating Rule 62.

We are not persuaded that respondent's statement in mitigation offers any redemption for his misconduct. Respondent's bar poll rating and athletic achievements have nothing to do with his conduct on June 29, 2010. His misleading and obfuscating statements before the Commission are the more appropriate measure of what his punishment should be.

Respondent suspended without compensation for 60 days commencing on May 14, 2012.