(No. 84 CC 4.—Respondent reprimanded.)

In re ASSOCIATE JUDGE DUANE G. WALTER of the Eighteenth Judicial Circuit, Respondent.

Order entered June 25, 1985.

SYLLABUS

On August 20, 1984, the Judicial Inquiry Board filed a multi-paragraph complaint with the Courts Commission, charging the respondent with willful misconduct in office and with conduct that is prejudicial to the administration of justice and that brings the judicial office into disrepute. The complaint alleged that, during 1982 and 1983, the respondent solemnized more than 200 marriages outside of the circuit court's marriage division; that, with respect to 68 of these marriages, the respondent received $2,685 in fees, and stated in his Federal income tax return for 1983 that he received $2,050 as other income for "contracted services"; that the respondent was one of a number of judges in the Eighteenth Judicial Circuit who regularly officiated at weddings outside of the circuit court's marriage division's regular session, to whom court personnel would refer persons seeking to have their marriages solemnized other than at the times specified for the marriage division; and that such judges, including the respondent, or their representatives would arrange for the judge to perform the marriage at a specific place and time, and the judges would charge a fee of generally from $50 to $100.

The complaint further alleged that judges and retired judges are authorized by law (Ill. Rev. Stat., ch. 40, par. 209) to solemnize

marriages; that Supreme Court Rule 40 (Ill. Rev. Stat., ch. 110A, par. 40) authorizes creation of a marriage division within a circuit court, the setting of times and places of marriages in the division, and the setting of a fee for such marriages not to exceed $10 and to be collected by the court clerk but no "additional fee or gratuity will be solicited or accepted"; that no other fee for the performance of marriages by a judge is authorized by law; that the Illinois Constitution provides that judges shall receive salaries provided by law and there shall be no fee officers in the judicial system (Ill. Const., art. VI, sec. 14) and that judges shall not hold positions of profit apart from their judicial positions (Ill. Const., art. VI, sec. 13(b)); and that the respondent's conduct was in derogation of Supreme Court Rule 40 and article VI, sections 13(b) and 14, of the Illinois Constitution, and violated Supreme Court Rule 65 (Ill. Rev. Stat., ch. 110A, par. 65), which prohibits a judge from accepting "compensation of any kind * * * except as provided by law for the performance of his judicial duties or as provided by the Illinois Constitution * * *", by accepting fees for solemnizing marriages.

Held: Respondent reprimanded.

Sidley & Austin, of Chicago, for Judicial Inquiry Board.

George P. Lynch, Ltd., of Chicago, for respondent.

William J. Harte, Ltd., of Chicago, for *amicus curiae* the Illinois Judges Association.

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

ORDER

The Judicial Inquiry Board (Board) filed a Complaint with the Illinois Courts Commission (Commission) on August 20, 1984, charging the respondent, Duane G. Walter, an associate judge of the Eighteenth Judicial Circuit, with wilful misconduct in office and with conduct prejudicial to the administration of justice, tending to bring the judicial office into disrepute. The Complaint alleges that the respondent solemnized

weddings outside the regular sessions of the established marriage division of the circuit court, and that the respondent accepted and personally retained at least $2,685 in fees and gratuities, in violation of article VI, sections 13(b) and 14, of the Illinois Constitution of 1970, and Illinois Supreme Court Rules 40 and 65.

The case was heard upon a stipulation of facts entered into by the Judicial Inquiry Board and the respondent. In addition to the stipulation of facts, the respondent submitted evidence from witnesses, including himself. The Courts Commission granted the petition of the Illinois Judges Association for leave to file a brief as *amicus curiae*. Such brief was filed and considered along with the briefs submitted by the parties. The respondent's motion to dismiss was taken with the case, and we now deny said motion.

The respondent testified that, for 7½ years, since he became an associate judge, he has performed marriages at and away from the courthouse, following a long-established practice in Du Page County, and his acceptance of fees or gratuities was in keeping with that practice. According to the respondent, this custom was followed by at least six other judges in the circuit. In accepting those gifts, he also took into consideration the holding in *Cummings v. Smith* (1937), 368 Ill. 94, and the provisions of Supreme Court Rule 65. The respondent also testified that the parties would contact him after the chief judge's secretary gave them his name and phone number.

The marriages were usually performed on weekends or holidays and each took two to three hours of his time, "portal to portal." Each ceremony was different and he took into consideration the social, economic, religious, and racial backgrounds of the parties. In his view, he "lectured" the parties, and he stressed their

responsibilities in order to "make the marriages go." The respondent acknowledged that the marriage ceremony would vary from 10 to 15 minutes in the courthouse and half an hour to 45 minutes away from the courthouse, the longer time being occasioned by the parties having music played, songs sung and a prayer said.

He never required the parties to pay an honorarium and would not accept one if offered by senior citizens, friends of his, or those people who could not afford it. When he accepted gifts they ran anywhere from $20 to $50. It was stipulated that in 1982, the respondent received $4,075, and in 1983, $2,050, for performing between 150 and 200 marriages away from the courthouse, and that he reported them on his tax returns. Although he never required a fee, some people would ask and he would respond, "If you want to give me something, all right, fine. If you don't, that's fine, too. But they rarely asked. The parties would offer it at the ceremony and I would take it."

We must decide whether the Board has proved by clear and convincing evidence its charges that the respondent's conduct amounts to wilful misconduct in office or that the respondent's conduct was prejudicial to the administration of justice and brought the judicial office into disrepute. (See Ill. Const. 1970, art. VI, sec. 15(c)(1).) The Illinois Constitution of 1970, legislative enactments governing marriage ceremonies, and the rules of our supreme court all bear upon the standards of judicial conduct which are at issue in the Board's charges. The Judicial Article of the Illinois Constitution provides in pertinent part:

"**§ 13. Prohibited Activities**

(a) The Supreme Court shall adopt rules of conduct for Judges and Associate Judges.

(b) Judges and Associate Judges shall devote full time to judicial duties. They shall not practice law, hold a

position of profit, hold office under the United States or this State or unit of local government or school district or in a political party. * * *

§ 14. Judicial Salaries and Expenses—Fee Officers Eliminated

Judges shall receive salaries provided by law which shall not be diminished to take effect during their terms of office. All salaries and such expenses as may be provided by law shall be paid by the State, except that Appellate, Circuit and Associate Judges shall receive such additional compensation from counties within their district or circuit as may be provided by law. There shall be no fee officers in the judicial system." (Ill. Const. 1970, art. VI, secs. 13, 14.)

The General Assembly has provided with respect to solemnization of marriage:

"**§ 209. Solemnization and Registration.** (a) A marriage may be solemnized by a judge of a court of record, or a retired judge of a court of record, * * * by a public official whose powers include solemnization of marriages, or in accordance with the prescriptions of any religious denomination, Indian Nation or Tribe or Native Group * * *." (Ill. Rev. Stat. 1983, ch. 40, par. 209.)

The Illinois Supreme Court has provided by rule:

"**Rule 40. Marriage Divisions**

(a) **Creation.** The chief judge of any judicial circuit may, by administrative order, establish a marriage division in any county in the circuit and specify the times and places at which those judges willing to perform marriages will normally be available to do so.

(b) **Clerk—Fee.** The chief judge may provide that the clerk of the circuit court or someone designated by him shall attend each regular session of

each marriage division to assist the judge assigned thereto. The chief judge may set a fee to be collected by the clerk in an amount not to exceed $10 for each marriage performed. No additional fee or gratuity will be solicited or accepted.

(c) **Trust Account.** The fees received shall be deposited in a bank account in the name of the 'Marriage Fund of the Circuit Court of _____County.' * * * Money in a marriage fund may be spent in furtherance of the administration of justice. * * *

(d) **Audit—Excess Funds to County Treasurer.** In December of each year, all marriage funds will be audited and a copy of the audit report will be filed with the chief judge of the circuit and with the Administrative Director of the Illinois Courts. On December 31 of each year, the trustees shall pay into the county General Fund such amounts as in their judgment may be appropriate." (87 Ill. 2d R.40.)

"**Rule 65. Compensation for Nonjudicial Service**

A judge shall not accept compensation of any kind, whether in the form of loans, gifts, gratuities, or otherwise for service hereafter performed or to be performed by him except as provided by law for the performance of his judicial duties or as provided by the Illinois constitution; however, a judge may accept reasonable compensation for lecturing, teaching, writing or similar activities." 87 Ill. 2d R. 65.

The respondent maintains that performing marriages is a nonjudicial function which he is authorized but not required to do, and he relies upon *Cummings v. Smith* (1937), 368 Ill. 94, for the proposition that he need not account for gratuities received in connection with his voluntary services. The respondent further argues that

his participation in solemnizing marriages included lecturing the parties on the importance of their obligations, and so his conduct was within the bounds of Rule 65, which permits fees for lecturing and similar activities. The Board takes the position that, regardless of the judicial or nonjudicial character of the activity and regardless of the time and place of performance, the acceptance of any compensation for such services, except as provided by law, is proscribed by the aforementioned provisions.

On these facts, we cannot say that the Board has sustained its burden to prove that the respondent engaged in wilful misconduct. We believe that the respondent acted in good faith reliance upon the holding in the *Cummings* case and upon longstanding custom and practice in Du Page County. In addition, the referral of requests by the chief judge's office gave the impression that this practice was condoned. Although the respondent's good faith reliance is sufficient to avoid the charge of wilful misconduct, we find that his reliance was misplaced, and we agree with the Board that the respondent's conduct was prejudicial to the administration of justice and tended to bring the judicial office into disrepute.

Cummings v. Smith (1937), 368 Ill. 94, was decided in a different legal framework. When *Cummings* was decided, the law made no provision for fees in connection with marriage ceremonies performed by judges, and the marriage fund was a private trust consisting of voluntary contributions from the gratuities of judges who performed such ceremonies. (368 Ill. 94, 104-05.) By contrast, the law now provides for fees in connection with weddings performed by judges (see Ill. Rev. Stat. 1983, ch. 25, par. 27.1; 87 Ill.2d R. 40), and the

marriage fund is a public trust (see 87 Ill.2d R. 40). The acceptance of gratuities for the performance of marriages, at one time permitted, is now prohibited.

The Illinois Constitution of 1970 empowers the supreme court to prescribe rules of conduct governing the judiciary, and the Illinois Supreme Court has exercised that power by its adoption of Rules 40 and 65. According to the plain meaning of Rule 40, once a marriage division was established and a fee set, the respondent was required to see that no fee or gratuity in excess of the amount authorized by the chief judge was accepted, and to see that such fee or gratuity was turned over to the clerk for deposit in the marriage fund. Rule 65 prohibits a judge from accepting any form of compensation for services except as provided by law.

It is uncontested here that a marriage division was established in Du Page County and a fee was set for marriages performed by judges. The respondent, according to stipulation, retained fees or gratuities amounting to more than $6,100, and thereby deprived the trust fund of fees it was entitled to receive pursuant to Rule 40. In so doing, the respondent also accepted compensation for services, compensation in addition to his judicial salary but not provided by law. Whether the services so compensated were judicial or nonjudicial is of no consequence under Rule 65. We reject the respondent's theory that his conduct came within the exception for lecturing and similar activities. We find that the respondent's acceptance of fees or gratuities violated the letter and spirit of Supreme Court Rules 40 and 65, prejudiced the administration of justice and tended to bring the judicial office into disrepute.

Nothing in our opinion should be interpreted as disapproving the practice of judges who perform marriages outside the courtroom or the marriage

division. The legislature expressly authorizes judges and retired judges to perform marriages (see Ill. Rev. Stat. 1983, ch. 40, par. 209), and limiting this power to the courtroom would harm the public welfare, particularly as to the handicapped and indigent. A judge who solemnizes a marriage in wholesome surroundings, either *gratis* or for the authorized fee (assuming the fee is placed in the marriage fund of the appropriate county) adds to the public's respect for the judicial system of our State.

The Commission considers the nature and circumstances of the respondent's misconduct as well as the need to maintain public confidence in the judiciary in determining an appropriate sanction. In view of the nature of the respondent's conduct here, his reliance upon long-established custom in Du Page County, and his belief that he was satisfying a community need with his services, we conclude that the appropriate sanction in this case is a reprimand.

It is so ordered.

Respondent reprimanded.