(No. 93 CC 1. — Respondent removed.)

In re ASSOCIATE JUDGE JOHN R. KEITH of the Circuit Court of Sangamon County, Respondent.

Order entered January 21, 1994.
Motion to reconsider denied February 18, 1994.

SYLLABUS

On July 10, 1993, the Judicial Inquiry Board filed a three-count complaint, later amended, with the Courts Commission, charging the respondent with willful misconduct, conduct that is prejudicial to the administration of justice, and conduct that brings the judicial office into disrepute. In summary form, the complaint alleged that the respondent took specific actions against several traffic offenders who appeared before him including imprisoning for default certain defendants because they were unable to pay the previously imposed fines, without inquiring into the willfulness of their defaults and without advising them they were entitled to an opportunity to prove their defaults were not willful; repeatedly imprisoning unrepresented persons for contempt for, according to the respondent's post-hoc justification, violating one of the respondent's courtroom rules; and that the respondent repeatedly failed to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary; failed to be patient, dignified, and courteous to litigants; and failed to accord every person legally interested in the proceedings a full right to be heard according to the law, and that by such conduct the respondent violated Supreme Court Rules 61, 62A, 63A(1), 63A(3), 63A(4), and 63A(7).
Held: Respondent removed.

Sachnoff & Weaver, Ltd., of Chicago, for Judicial Inquiry Board.

Huntley & Giganti, Springfield, for respondent.

Before the COURTS COMMISSION: HEIPLE, J. chairman, EGAN, RARICK, MURRAY and DREW, JJ., commissioners. ALL CONCUR.

ORDER

The Judicial Inquiry Board (Board) has brought the instant three-count complaint against Judge John R. Keith, charging him with willful misconduct in office, conduct that is prejudicial to the administration of justice, and conduct which brings the judicial office into disrepute.

The three counts state specific actions taken against several traffic offenders who appeared before him. These actions are discussed in great detail below. All three counts allege that these actions are violations of Supreme Court Rules 61, 62A, and 63A(1), 63A(3), 63A(4) and 63A(7). These rules state:

> 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 himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.
>
> Rule 62A: A judge should respect and comply with the law and conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.
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> Rule 63A:
>
> (1) A judge should be faithful to the law and maintain professional competence in it. ***
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> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers,

and others with whom he deals in his official capacity, and should require similar conduct of lawyers and of his staff, court officials, and others subject to his direction and control. ***

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law. ***

(7) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction.

MOTIONS

There are several motions pending, either because they were taken with the case or because they were made at a time, in a manner, or their subject matter is such that their disposition was not possible until this time.

In the respondent's answer to paragraph 3(c) of the complaint, filed on July 26, 1993, the respondent moved to strike the allegation that Edgette Byrd is disabled and in a wheelchair, since the allegation is immaterial and irrelevant to the issues before the Commission. That motion is GRANTED, and the relevant portion of the complaint is stricken.

In the respondent's answer to paragraph 10(c) of the complaint, the respondent moved to strike the allegation that Gertrude Pursley was fingerprinted and photographed after being taken into custody, since the allegation is immaterial and irrelevant to the issues before the Commission. That motion is GRANTED, and the relevant portion of the complaint is stricken.

In the respondent's answer to paragraph 17(b) of the complaint, the respondent moved to strike the allegation that the daughter of Wajeedah Rahim was six months pregnant on August 27, 1992, claiming that the allegation is irrelevant and immaterial to the issues before the Commission. However, this fact is relevant to indicate the reason why Rahim was

present in the courtroom on July 16, 1992. Consequently, this motion is DENIED.

The respondent moved to dismiss the complaint on October 19, 1993. That motion was taken with the case. That motion is DENIED.

In its summary of the evidence filed on December 17, 1993, the Board moved to strike paragraphs 3(a), 3(b) and 10(b) of its complaint. Those motions are GRANTED, and those paragraphs are stricken.

On January 14, 1994, we orally ordered the respondent's dismissal. On January 18, 1994, the respondent filed a motion to stay the enforcement of that order until a written order is issued. That motion is DENIED.

EXHIBITS

Both parties filed numerous objections to exhibits offered into evidence. The rulings on these objections are as follows.

The Board's exhibit number 5 is a Criminal Charge Verification dated March 23, 1992, relating to Timothy Keltner. The Board's exhibit number 6 is a Criminal Charge Verification dated July 20, 1992, relating to Warren Anderson. The respondent objected to both of these exhibits on the same grounds: that they are irrelevant and immaterial, since they relate to incidents not alleged in the complaint. Both objections are SUSTAINED.

Respondent's exhibit number 3 is the Smith Misdemeanor File in case number 86-CM-1377. The Board objected to this file as irrelevant, since Lillie Smith admitted to her conviction in that case during the instant trial. While the Board conceded that Smith's guilty plea might possibly be relevant, the objection is SUSTAINED in full, including the guilty plea.

Respondent's exhibit number 5 is the Horton Felony File in case number 91-CF-170. The Board

objected to everything in the file as irrelevant and immaterial except for Maurice Horton's Affidavit of Assets and Liabilities. Since there was no indication of a plea or a finding of guilt at trial, this objection is SUSTAINED.

Respondent's exhibit number 6 is the Horton Misdemeanor File in case number 92-CM-20. The respondent offered this file for the ostensible purposes of impeaching Maurice Horton. The Board notes that Horton admitted his conviction in this case, and therefore objects to the file as irrelevant. This objection is SUSTAINED except for the financial affidavit on page 1.

Respondent's exhibit number 9 is the Byrd Felony File in case number 90-CF-679. The respondent offered this file for the ostensible purposes of impeaching Edgette Byrd. The Board, noting that Mr. Byrd admitted to the conviction at trial, objects to this file as irrelevant. This objection is SUSTAINED.

Respondent's exhibit number 10 is the Cota Traffic File in case number 92-TR-24883. The respondent offered this file to show that John Cota appeared before the respondent, without incident, two months after the respondent held him in contempt. The Board objects to this file as irrelevant and immaterial, since the incident is not charged in the complaint and occurred subsequent to all of the events charged. This objection is SUSTAINED. We refer the respondent to our disposition of the Board's motion *in limine*, where we ruled that specific instances of good conduct cannot be admitted into evidence.

Respondent's exhibit number 14 is the Saunders Traffic File in case number 91-TR-36642. The respondent offered this file to show that Dr. Mary Saunders had been in traffic court before, and should have been aware that she might be delayed in her traffic case. The Board objects to this file as irrelevant since the incident was not charged in the

complaint. Since Dr. Saunders did not dispute that she had been in court on the two days set forth in the file, this objection is SUSTAINED.

Respondent's exhibit number 15 is the Bradford Traffic File in case number 90-TR-22118. Respondent's exhibit number 16 is the Bradford Traffic File in case number 90-TR-26038. The respondent offered both exhibits to impeach Larry Quinn's testimony that his step-son had never been in traffic court before. The Board objects to both files as irrelevant, since they relate to incidents not charged in the complaint. However, both files are valid impeachment in light of Mr. Quinn's testimony, and therefore the objection is OVERRULED.

Finally, respondent's exhibit 19 is correspondence of January 14, 1993, from Judge Jeanne E. Scott to Shawn M. Collins of the Board, with attached petitions. This was offered in lieu of calling those who signed the petitions as character witnesses. The Board objects to this correspondence as hearsay, and notes that the stated purpose of its admission, (as character evidence) was never identified at trial. Also, it notes that not all of the witnesses were identified on the witness list. This objection is SUSTAINED.

PRELIMINARY STATEMENT

The Board alleges several instances of failure to properly create a record of contempt. However, resolution of such an allegation is not the province of the Courts Commission. To the extent a record is not adequately preserved, courts of review will reverse a finding of contempt. The Courts Commission is empaneled to review allegations of the misuse of judicial office, not procedural errors of the trial court.

FINDINGS

1. The respondent has been an Associate Judge of the Seventh Judicial Circuit of the State of Illinois since his appointment to the bench in 1990.

2. The respondent presided over traffic and misdemeanor cases in the Traffic and Misdemeanor Division of the Circuit Court of the Seventh Judicial Circuit, in Sangamon County, Illinois.

3. On April 6, 1992, Edgette Byrd appeared before the respondent as a defendant. He had previously been convicted of driving while his license was suspended, and a fine of $500 had been imposed. He had initially been ordered to pay that fine on or before February 24, 1992. The respondent found Byrd in contempt of court on April 6. The next day, Byrd posted $550 bond and was discharged from jail. He was given a hearing date of May 5, 1992.

Byrd testified that he appeared before the respondent on April 6 to ask for an extension of time to pay his fine. He had other bills which were necessary to pay to be able to live, such as rent and food. The respondent asked Byrd about the earring in his ear, and whether Byrd could sell it. Byrd responded that the earring had been a gift and that he could not sell it.

Byrd testified that the respondent denied the extension, and said that if Byrd did not pay he would go to jail. In jail he would purge his fine at a rate of $5 per day. Byrd asked his friends to raise the money.

Byrd testified that he reported to the respondent's courtroom again on May 5. After the respondent assumed the bench, he gave opening remarks concerning courtroom decorum. He told the people in the courtroom that if they could not pay their fines they would go to jail. The respondent then turned to Byrd and asked, "Isn't that right, Mr. Byrd?". Byrd stated

that being singled out in this fashion was "a little embarrassing."

On cross-examination, Byrd admitted that he had been convicted in the past.

Patty Jordan testified on the respondent's behalf. She is a deputy clerk with Sangamon County. She testified that Byrd used to come into the court building every day or every other day and say that he had a ticket, but did not know what it was for. The clerks would investigate, and most of the time they would find that this was not true, although he did have many tickets.

To put this to a halt, on a day (prior to the contempt finding) when Byrd was before the respondent, Jordan looked through the computer and took every open ticket against Byrd up to the respondent. The respondent and Byrd talked, and Byrd agreed to pay $50 towards these tickets. Jordan took Byrd to the place where fines are paid, and Byrd took out a wad of money, peeled off a $50 bill, and gave it to Jordan. Byrd stated that he had told the respondent that $50 was all he had. Jordan testified that the wad of money was much more than $50. Jordan was not there either on the day that the respondent held Byrd in contempt or on the day that the respondent asked, "Isn't that right, Mr. Byrd?".

The respondent testified that on May 5, he asked Byrd if Byrd wished the bond to be applied to the fine. Byrd answered affirmatively. The respondent then assessed the $50 balance as a fine for the contempt charge.

The respondent never specifically denied that he made the "Isn't that right Mr. Byrd?" inquiry. However, the respondent testified as to the events of the May 5 hearing, and did not mention any such statement. We take this omission as a denial.

We find that the respondent did not exceed his authority when he inquired of Byrd's ability to pay his fine. Further, we find that, due to an insufficient

record, we cannot determine whether the respondent exceeded his authority when finding Byrd in contempt for failure to pay that fine. We find that the respondent did not sufficiently create a record to support that contempt finding. As noted in our preliminary statement, however, this procedural error is for courts of review to correct, not the Courts Commission.

We find, however, that the respondent did in fact single Byrd out at the May 5 hearing, and that he made the inquiry, "Isn't that right, Mr. Byrd?". In making this inquiry, we find that the respondent failed to observe high standards of conduct to preserve the integrity of the judiciary; that the respondent failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary; that the respondent was neither dignified nor courteous to Mr. Byrd; and that the respondent failed to conduct the proceedings in his courtroom with dignity. Consequently, we find that, in making this statement, the respondent violated Rules 61, 62A, 63A(3), and 63A(7).

We note that the gravamen of paragraph 4 of the Board's complaint is that the respondent failed to take the appropriate procedural steps for imposing an order of direct contempt. Thus, as stated, the complaint alleges error that is the province of a reviewing court, not this Commission. The Board is directed to file an amended complaint to conform to our findings within 7 days.

We also note that the Board's complaint does not allege a rules violation as to the respondent's May 5 conduct. We instruct the Board, in their amended complaint, to allege this violation so as to conform to the evidence.

4. On July 27, 1992, Lillie Smith appeared before the respondent on a charge of operating a motor vehicle without insurance. Before this Commission, Smith testified that she was represented by counsel

and pled not guilty. She could not remember the nature of the charges. The court file shows that she appeared *pro se*.

After pleading guilty, Smith asked the respondent how long it would take before she "could get waited on." The respondent responded that if she talked, he would lock her up. She told him that she had to pick up her children, and he then ordered her locked up. She still does not know why she was locked up, but surmised before this Commission that it was because she asked how long it would take. Smith testified that she was confined in jail 92 hours. When she reappeared on the traffic ticket, she was so scared of the respondent that she pled guilty.

Smith admitted on cross-examination that she had pled guilty to a prior charge of retail theft, and that she had been in court on about two other occasions besides the theft and the insurance ticket.

John Schmidt testified on the respondent's behalf. He is an Assistant State's Attorney in Sangamon County, and had represented the State in the Smith ticket at issue. He testified that Smith did not show her proof of insurance to the proper person or at the proper time. She also asked questions of the respondent and himself. These questions created a disturbance because of the large number of cases. Courtroom procedure provided that a defendant could only plead guilty or not guilty at the time in question. Questions could only be asked later.

Schmidt testified that Smith was told to sit down several times, but she kept approaching the bench with questions. After several times, the respondent warned Smith that he would find her in contempt of court if she did not sit down and, when she approached him yet another time, he found her in contempt.

The contempt order filed by the respondent merely states "Lillie Smith, contempt, four days, 96 hours."

The respondent did not tell Smith that she had a right to an attorney or a hearing on the contempt charge.

We are unpersuaded that a layman's failure to ask questions at the right time or of the right person is sufficient to support a finding of contempt, let alone a sentence of 92 or 96 hours. While we find that Smith asked questions out of turn, we also find that the respondent failed to take the steps necessary to apprise her of the courtroom's procedure.

We find that the order of contempt was not supported. We also find that the sentence was arbitrary and vindictive. The respondent's actions shock the collective conscience of the members of this commission.

We find that, in finding Smith in contempt and jailing her for four days, the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that he failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary; that he failed to be faithful to the law; that he was neither patient, dignified, nor courteous to Lillie Smith; that he failed to accord Smith full right to be heard according to law; and that he failed to conduct proceedings in his courtroom with dignity. Thus, we find that the respondent violated Rules 61, 62A, 63A(1), 63A(3), 63A(4), and 63A(7).

5. On July 16, 1992, Gertrude Pursley appeared before the respondent on a speeding charge. Mrs. Pursley testified that when her case was called, she pled not guilty. The respondent stated that the trial would be held later in the day, and Pursley requested a continuance. She had witnesses to the occurrence who were not present.

The respondent denied her motion. Pursley indicated that she had to get home and asked to change her plea to guilty, which the respondent denied. Upset, Pursley swung the courtroom gates on

her way back to the seating area. Later, she was held in contempt and jailed for 24 hours.

When her case was recalled for trial, she attempted to put on a defense, apparently the testimony of her minister. Nothing the minister would say could survive the State's objections. She testified that the respondent and "the four officers" in the courtroom laughed at her at the trial's conclusion, which she described as humiliating. Pursley testified that she was never informed of why she was found in contempt and that she never raised her voice or used swear words in court.

Deborah Bandy, who also testified to allegedly improper conduct by the respondent towards herself, testified that when Pursley swung the gates they made a noise. The respondent then yelled at her that she better sit down or he would hold her in contempt and send her to jail. Pursley threw her arms up and responded, "Take me right now." She was not taken away at that time. Patricia Meyer, another witness who testified to improper conduct of the respondent towards herself, testified similarly.

Illinois State Trooper William A. Adkins testified on the respondent's behalf. He testified that Pursley became loud and argumentative after she was told that her trial would be delayed. He could not recall if she subsequently requested a continuance (although he admitted it was possible), or whether that request was denied. He could not recall when she was held in contempt.

The respondent testified that Pursley pled not guilty and that she wanted an immediate bench trial. When he informed her that her trial would have to wait, she requested a continuance because her minister (a witness) could not stay. The respondent denied this request. She then exited the well of the courtroom, banging the gate on the way out. The respondent told her that her conduct was improper and cause for contempt, to which she responded that

he should take her away now. The respondent denied that he held her in contempt at that time or for that conduct.

Her bench trial was held, after which the respondent found Pursley guilty and fined her $75. Pursley began leaving the courtroom and started screaming that there was no justice and that the courtroom was a railroad. It was at that time that the respondent held Pursley in contempt. The contempt order states only "Gertrude Pursley, contempt, 24 hours." He denied laughing at Pursley.

During cross-examination, the respondent admitted that he had appeared before the Board on a prior occasion and had told it that he held Pursley in contempt before her trial. The respondent has since filed an affidavit indicating that this prior testimony was incorrect.

We find that Gertrude Pursley was overly persistent, demanding and impatient in the respondent's courtroom prior to her trial. We find that she received a warning that her conduct could be the basis for contempt of court. However, we find that the 24 hour jail sentence for contempt was, under the circumstances, not warranted. Further, its severity was such as to terrorize not only Mrs. Pursley, but any citizen waiting for trial in that courtroom as well.

We further find, in light of this completely excessive conduct, that the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that he failed to conduct himself in a manner that promotes the public confidence in the judiciary; and that he failed to be faithful to the law. Thus, we find that the respondent violated Rules 61, 62A, and 63A(1).

Again, we note that the gravamen of paragraph 11 of the Board's complaint is that the respondent failed to take the appropriate procedural steps for imposing an order of direct contempt. Thus, as stated, the complaint alleges error that is the province of a

reviewing court, not this Commission. Again, the Board is directed to file an amended complaint to conform to our findings within 7 days.

6. On July 27, 1992, John and Donna Cota were in the respondent's courtroom. Donna Cota had received a ticket for driving a motor vehicle without insurance after she was in an accident in their new car. The insurance papers had not yet arrived on the day of the accident, but had since arrived. Ultimately, that ticket was dismissed.

John Cota (Cota) had no reason to be in the courtroom other than to support his wife at her request. However, when the respondent assumed the bench, he informed the people in the courtroom that everyone without a ticket (except parents of minors) had to leave the room. The respondent also stated that there would be no talking. Failure to obey these rules would result in contempt charges and jailing.

Cota delayed for a short period of time. He then leaned over to his wife and whispered that he would be outside. Sheila Crays, called by the Board in rebuttal, testified that she was sitting five to ten feet from Cota when he whispered to his wife. She did not hear what he said.

The respondent saw Cota whisper to his wife, pointed to Cota and ordered him to stand. He asked Cota if he had heard his instructions regarding talking in the courtroom, as well as leaving the room if one had no ticket. Cota responded affirmatively.

The respondent then ordered the bailiff to bring Cota before him. At this point, Cota muttered something, the content of which is in dispute. Cota and Patricia Meyer testified that Cota said, "This is a joke." Mary Ann Brownlow, the courtroom security officer, testified that Cota said, "This is a bunch of bullshit." The respondent testified that he could not remember what Cota said. Both Cota and Meyer denied that Cota had used the word "bullshit." Sheila

Crays also testified that Cota did not use the word "bullshit."

Cota testified that the respondent said, "I'll show you what a joke is." The respondent then demanded an apology, which Cota gave, and then ordered Cota in a holding cell. The bailiff told him at that time that he was lucky he had apologized, or he might be spending the night.

Cota testified that he was held in the cell for approximately four hours, and was then brought before the respondent again. He again apologized and was released. Cota walked back to his place of business, feeling "utterly humiliated, frustrated, angered with the justice system."

Scott Kains, who was an Assistant State's Attorney at the time of the Cota incident, testified on the respondent's behalf. He testified that the respondent informed Cota that he had to make an example out of Cota because of the crowded nature of the courtroom as well as the potential that some of the misdemeanor defendants might get unruly if the respondent allowed talking to go on in the courtroom. He testified that Cota was confined for a little over an hour, not four hours as Cota had testified.

The respondent's version of the Cota incident was basically the same, except that he could not remember what Cota muttered after being ordered to stand up. As had Kains, the respondent testified that Cota had been held for a little over an hour, and not four hours. The respondent stressed the crowded nature of the courtroom in his defense. He also stated that he could have handled the situation differently, such as by having the courtroom security officer escort Cota out of the courtroom. The respondent never wrote a contempt order concerning this incident.

We find that John Cota whispered something to his wife which was inaudible to the respondent. We find that when John Cota was brought before the

respondent by the bailiff, he said "This is a joke." The basis for this finding is Cota's affirmative testimony that this is what he said, plus our disbelief that a judge would forget an incident where a person in his courtroom used the word "bullshit" as described by Mrs. Brownlow. We specifically find that John Cota did not use the word "bullshit."

We note that the respondent's failure to write a contempt order is not a matter for the Courts Commission, for the reasons stated earlier. We find that John Cota was in a holding cell for over an hour. We further find that jailing a man for whispering inaudibly to his wife is outrageous and a gross abuse of a judge's power of contempt. We find that the contempt order was wholly without basis.

We find that, in his actions concerning John Cota, the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that he failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary; that he failed to be patient, dignified, or courteous to John Cota; that he failed to accord John Cota a full right to be heard according to the law; and that he failed to conduct the proceedings in his courtroom with dignity. Thus, we find that the respondent's actions concerning John Cota violated Rules 61, 62A, 63A(3), 63A(4), and 63A(7).

Again, we note that the gravamen of paragraph 11 of the Board's complaint is that the respondent failed to take the appropriate procedural steps for imposing an order of direct contempt. Thus, as stated, the complaint alleges error that is the province of a reviewing court, not this Commission. Again, the Board is directed to file an amended complaint to conform to our findings within 7 days.

7. On February 18, 1992, Maurice Horton appeared before the respondent at a time-to-pay hearing. Horton testified to this Commission that he had paid half of his $80 fine, and asked for more time

to pay the balance. He testified that the respondent suggested that Horton sell his watch or his car. Mentioning the car was in response to Horton's affidavit of assets, on which he listed only the car. He did not indicate that it was his mother's car on the affidavit. Horton replied that the car was his mother's, and without a watch he could not tell time. The respondent asked whether Horton's mother knew where Springfield was, apparently suggesting that she come up to authorize the sale of the car. Horton testified that the respondent was very rude and that he felt "very violated, very humiliated."

The respondent gave Horton until the next morning to pay the fine. Horton testified that he was given until 9:00 a.m., but could not pay until 11:00 a.m. After paying the fine, Horton reported to the respondent's courtroom. When Horton was called before the respondent, he was found in contempt of court for paying late. He was held in jail for three hours. On cross-examination, Horton conceded that the fine was actually $50, and that he had not paid any of it. He also admitted to a prior conviction of theft.

Dan Parrish testified on the respondent's behalf. Parrish is a corporal in the Sangamon County Sheriff's Office in the court security unit, and was present on both February 18 and 19. Parrish testified that Horton arrived in the courtroom on February 19, three hours after he had been ordered to arrive, with a receipt indicating that he had paid the fine late. Parrish testified that Horton became somewhat belligerent at this second hearing and was held in contempt. He believed that Horton was belligerent over the denial of his request for an extension of time to pay. He did not know why Horton was held in contempt.

The respondent testified that Horton's fine had originally been due on January 13, and that Horton had already been given one extension. The respondent did not impose the fine. The respondent

discussed with Horton his ability to pay the fine, including selling his only listed asset of the car, and the respondent concluded that Horton was able to pay the fine. He ordered Horton to pay the fine and appear before him at 9:00 the next morning. However, Horton did not appear until 1:30. The respondent held Horton in contempt for this delay. The respondent never claimed that Horton became belligerent or asserted that belligerence was the basis for the contempt finding. Rather, he affirmatively stated that the sole basis for the finding of contempt was the late payment. The respondent never wrote a contempt order.

The respondent admitted on cross-examination that he asked Horton whether his mother knew where Springfield was, and that he told Horton that he should sell his car or his watch.

We find that Maurice Horton appeared before the respondent after one extension, having not paid anything on a $50 fine. We find that the respondent made an appropriate inquiry into Horton's ability to pay. We find it was not inappropriate to suggest that Horton sell assets in order to pay his fine.

However, we find that the respondent's order of contempt for Horton's being a few hours late for court is not supported by the record, in light of the respondent's failure to inquire of any reason for being late. Further, it appears that the finding and sentence were unwarranted, arbitrary, and mean-spirited.

We find, in imposing this excessive order of contempt, that the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that he failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary; and that he failed to be faithful to the law. We, therefore, find that his actions violated Rules 61, 62A, and 63A(1).

Again, we note that the gravamen of paragraph 11 of the Board's complaint is that the respondent failed

to take the appropriate procedural steps for imposing an order of direct contempt. Thus, as stated, the complaint alleges error that is the province of a reviewing court, not this Commission. Again, the Board is directed to file an amended complaint to conform to our findings within 7 days.

8. On April 27, 1992, Dr. Mary Saunders appeared before the respondent to contest a stop sign violation for which she had received a citation. Saunders testified to this Commission that when she was called before the respondent she pled not guilty and requested a bench trial. She was told to have a seat, and she asked how long it would take. The respondent answered that it could take all day.

Saunders then asked the respondent for a continuance, since she had an office full of patients. The respondent replied that everyone had things to do, and that he recalled being delayed by his own doctor. He then turned to the courtroom and asked the people for a show of hands of how many had had to wait for their doctors. People raised their hands. He then suggested that Saunders could plead guilty if she wanted to leave.

The respondent excused Saunders so that she could call her nurse to tell her to make other arrangements for the patients. Ultimately, the ticket was dismissed because the officer failed to appear.

On cross-examination, Saunders admitted that she had been in traffic court twice before. Apparently, the respondent's counsel asked this to show that Saunders should have known that there could be a delay. However, Saunders testified that both previous occasions had been quick. She also indicated that the two appearances were related, and that on the first occasion she had no difficulty getting a continuance to the second occasion.

When asked by the Commission what her general impression of the judicial system was after her experience with the respondent, Saunders answered

that she did not allow the respondent's conduct to taint her opinion of the entire judicial system. She believed his conduct was an aberration.

As noted before, Assistant State's Attorney John Schmidt testified on the respondent's behalf. He testified that he witnessed the Saunders incident, including the show of hands, but did not elaborate. On cross-examination, he agreed that had he been Dr. Saunders, he would have been embarrassed when the respondent asked for a show of hands.

Cynthia Laudeman testified on the respondent's behalf. Laudeman is an Assistant State's Attorney, and was present in the courtroom at the time of the Saunders incident. She testified that Saunders indicated three or four times that she could not wait for her trial, and that she wanted a continuance. The respondent responded to each request that Saunders should sit down, but Saunders remained at the bench. On the fourth time, Saunders announced that she was a doctor and that she had patients waiting. At this time, the respondent asked for the show of hands, and with this action was able to get Saunders to sit down.

When asked by the Commission what her reaction was to the request for a show of hands, Laudeman testified that she would hope that she would not exhibit that type of behavior. She answered likewise to similar questions posed by the Board.

As previously stated, deputy clerk Patty Jordan also testified on the respondent's behalf. She was present for the Saunders incident, and confirmed Laudeman's testimony that Saunders repeatedly asked for a continuance despite the respondent's requests that she be seated.

The respondent's testimony as to the Saunders incident was basically consistent with the previous testimony. He denied her request for a continuance without further explanation, relying on his opening remarks. He agreed that he told Saunders it could

take all day for her trial. He admitted that, "regrettably," he had asked for the show of hands. He further stated that "If I had an eraser, I would erase it. It was, in retrospect, something that should not have been done." He stated that it may have been her attitude about being a doctor that caused him to act so poorly.

When pressed by the Commission whether being a doctor with a roomful of patients was a legitimate basis to ask for a continuance, the respondent agreed that it could be. However, he said, he felt that if a judge showed up in the room a trial could ensue quickly. He admitted that he did not share any of this with Dr. Saunders, but denied that he had been keeping her in the dark. He admitted that he told Dr. Saunders that her trial could take all day despite his knowledge that it would most likely be completed before noon.

We find that Dr. Saunders pled not guilty and requested a bench trial. We further find that she repeatedly asked for a continuance despite the respondent's denial of that request and his subsequent request that she sit down.

We find that the respondent engaged in the degrading exercise of requesting a show of hands from courtroom observers of those who had been delayed by their doctors. We find that the respondent willfully refused to give Dr. Saunders information concerning when her trial might be any more specific than on that day, despite his knowledge that it would probably occur before noon.

We find, in taking these actions, that the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that he failed to conduct himself in a manner that promotes the public confidence in the integrity of the judiciary; that he failed to be dignified or courteous to Dr. Saunders; and that he failed to conduct the proceedings in his courtroom with dignity,

decorum, or without distraction. Thus, we find that these actions violated Rules 61, 62A, 63A(3), and 63A(7).

9. On July 16, 1992, Wajeedah Rahim (Wajeedah) appeared before the respondent. Her daughter Khy had received a ticket for driving an uninsured motor vehicle. The car in question was Wajeedah's and had been insured, but the proof of insurance had been locked in the glove compartment at the time the citation was issued and Khy had not had the key.

On the date in question, Wajeedah appeared because Khy was in the hospital with a troubled pregnancy. When Khy's case was called, Wajeedah approached the bench. She tried to tell the respondent that the car was hers and to show the respondent the proof of insurance. However, the respondent told her to "shut up," and continued the case. He told Wajeedah that Khy better be there in August. Both Wajeedah and Khy appeared in August, at which time the ticket was dismissed upon proof that the car had been insured. On the August appearance, the respondent at one point again told Wajeedah to "shut up." These transactions made Wajeedah feel "mad" and "like dirt."

As previously indicated, then-Assistant State's Attorney Scott Kains testified in the respondent's behalf. Concerning the Wajeedah Rahim incident, he was present for the August appearance. He testified that the respondent explained to Wajeedah that she could not appear for her daughter because she was not an attorney. He also testified that the respondent did not tell Wajeedah to "shut up" on that date. He testified on cross-examination that he had never heard the respondent say "shut up" to anyone.

The respondent testified that Wajeedah could not appear for her daughter because she was not an attorney, and pointed out that operating an uninsured motor vehicle is a "must appear in court" offense. He

did not believe that he told Wajeedah to shut up, but admitted that he uses that sort of language in his courtroom.

We find that the respondent's disbelief that he did not tell Wajeedah to "shut up", combined with his admission that he used that sort of language in his courtroom, is insufficient to contradict Wajeedah's testimony that he told her to "shut up" on July 16. We also find that he told her to "shut up" on August 27. In failing to accommodate in any reasonable way the mother's attempt to assist her daughter, and in using this language to people in his courtroom, the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved. He failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary. He failed to be dignified or courteous to Wajeedah Rahim, and failed to conduct proceedings in his courtroom with dignity. Thus, we find that his actions violated Rule 61, 62A, 63A(3), and 63A(7).

10. On April 1, 1992, 18-year-old Mark Bradford and his stepfather, Larry Quinn, appeared before the respondent. Bradford had received two tickets, one for failure to have a driver's license and one for running a red light. Mr. Bradford had a valid driver's license on the day he was given a ticket, but had been unable to locate it when he had been stopped.

Mr. Quinn testified that he accompanied his stepson to court because his stepson was nervous. He testified that, prior to entering the courtroom, the two men had met with a State's Attorney. There they reached an agreement where the driver's license charge would be dropped, Mr. Bradford would plead guilty to running the red light, he would receive supervision and would pay a $50 fine.

When Mr. Bradford's case was called, Quinn and Bradford approached the bench. The respondent asked Quinn who he was, and Quinn replied that he

was Bradford's stepfather. The respondent told Quinn to sit down, because Bradford was 18 years old.

Apparently somebody said something that made the respondent believe that the two sides were negotiating in front of him, because he declared that there were no deals cut in his courtroom. He turned to Bradford and asked him whether he was innocent or guilty. Bradford turned to Quinn in confusion, and the respondent yelled at him to face the bench and answer the question.

Bradford responded, "I guess I'm guilty." The respondent stated that there would be no guessing in his courtroom and pressed him for a definitive plea. Bradford pled guilty. The respondent then fined him $75 per ticket. When Mr. Quinn asked to leave to get $150 from a cash machine, the respondent threatened him with contempt. Quinn described the entire experience as "degrading."

Under cross-examination, Quinn testified that Bradford had never been in traffic court before. The respondent's counsel then produced traffic files for two tickets Bradford had received before the incident at issue, both of which were dismissed. Quinn said that he did not believe Bradford went into court on either occasion.

Presiding Judge Jeanne Scott testified on the respondent's behalf. Concerning the Quinn incident, she testified that Quinn spoke with her on the phone and related to her that day's events. She urged him to file a motion to reconsider the guilty verdict.

As previously mentioned, Assistant State's Attorney John Schmidt testified on defendant's behalf. He testified that the respondent had asked Quinn if he was an attorney, to which Quinn replied no. The respondent then told Quinn to sit down. Schmidt testified that Quinn proceeded to explain that he was the stepfather, which the respondent said was fine but that he could not stand at the bench. He agreed that a deal had been made before court, but clarified that

the deal was only with Bradford, not with Quinn. Schmidt did not make that deal.

The respondent testified that he did not allow negotiation to go on in front of the bench because he did not think it was proper. He testified that he had never accepted a guilty plea when he knew the defendant was not guilty of the offense charged. He accepted Bradford's guilty plea because he believed defendant was guilty of both offenses.

We find that the respondent's actions of yelling at Bradford to induce him to plead tantamount to railroading him into a guilty plea. We find that the State's Attorney indicated to the respondent that it wished to drop the driver's license violation. We find that this action alerted, or should have alerted, the respondent that Bradford was not guilty of that violation. We therefore find that by accepting the plea of guilty, the respondent willfully accepted a plea of guilty which he knew, or should have known, was from a party who was in fact not guilty.

In so acting, we find that the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that the respondent failed to conduct himself at all times in a manner that promotes public confidence in the integrity of the judiciary; that the respondent failed to be faithful to the law; that the respondent was not patient, dignified or courteous to Mr. Bradford or Mr. Quinn; that the respondent failed to accord Mr. Bradford a full right to be heard; and that the respondent failed to conduct the proceedings in his courtroom with dignity or decorum. Thus, we find that the respondent's actions violated Rules 61, 62A, 63A(1), 63A(3), 63A(4), and 63A(7) .

11. On June 18, 1992, Virginia Gibson appeared before the respondent. She testified that a month prior to that date, her husband had been stopped at a roadblock in their new truck, with herself as a passenger. They had not yet received their insurance

card, so he was ticketed for failure to have proof of insurance.

Mr. Gibson took steps to determine whether he could avoid appearing in court on that date because he was a hearing examiner for the tax appeal board and had a hearing elsewhere. He was told by some source that his wife could go to court for him to provide proof that the truck had been insured.

When Mr. Gibson's case was called, Mrs. Gibson approached the bench. She testified that she tried to tell the respondent that her husband was a hearing officer with the tax appeal board, but the respondent interrupted her and asked what would happen if someone did not show up at her husband's hearings.

She tried to inform the respondent that someone had told her husband that she could present the proof of insurance. He interrupted again and asked whether she thought someone who failed to show at her husband's hearings would lose. She told him that she did not know the procedures at her husband's hearings.

Mrs. Gibson testified that the respondent informed her that her husband better show up in court that day or the respondent would put a warrant out for his arrest. Mrs. Gibson called her husband, who told her to call Mrs. Gibson's boss, Kurt Freedlund, who was also a family friend.

She did so, and Freedlund walked over from the Illinois Commerce Commission to the respondent's courthouse. Freedlund filed an appearance for Mr. Gibson, and eventually the case was called again.

Mrs. Gibson testified that Freedlund had a hard time getting a full sentence out without being rudely interrupted. Finally, the respondent stood up and said that he did not "have time for this" and that he was leaving.

Ten or fifteen minutes later, the respondent returned and heard every other case in the courtroom. When only Mr. Gibson's case remained, it was called.

Freedlund approached the bench with the proof of insurance. The case was then dismissed.

Mr. Freedlund testified to receiving Mrs. Gibson's phone call, walking over to the courthouse, and filing an appearance for Mr. Gibson.

When Gibson's case was called for the first time, the respondent asked Freedlund who he was. Freedlund explained, and the respondent asked whether Phil Gonet (the executive director of the Illinois Commerce Commission) would be interested to know that Freedlund was there on State time. Freedlund informed the respondent that he had made the appropriate arrangements to get the time off. The respondent said he was going to call and find out if this was so, and left the courtroom.

When the respondent came back, he heard every case in the courtroom but Mr. Gibson's. When there was only Mr. Gibson's case remaining, the respondent called that case. The ticket was dismissed. Mr. Freedlund testified that the respondent made him feel "a little embarrassed as to my profession."

The respondent testified that he would not allow Mrs. Gibson to appear for her husband because it was a "must appear in court" ticket. He claimed Mrs. Gibson never asked for a continuance, but rather insisted that Mr. Gibson was told he did not have to come to court. The respondent thought he only said it was "possible" that a warrant could be issued for Mr. Gibson's arrest. He agreed that he could have waived Mr. Gibson's appearance, and offered no reason why he did not. He claimed that his questions concerning Freedlund's presence in court on State time were meant to be complimentary. He generally agreed with Freedlund's versions of the day's events, except he did not think he left the courtroom. He could not remember whether he said he would call Phil Gonet.

We find that the respondent asked irrelevant questions of Mrs. Gibson concerning the procedures at her husband's hearings following a person's failure

to show. We find that he threatened to issue a warrant for Mr. Gibson's arrest if Mr. Gibson failed to show on that day. We find that the respondent harassed Mr. Freedlund concerning his job and threatened to call his boss. We find that the respondent left the courtroom, returned in 10 - 15 minutes, and intentionally made Mr. Freedlund and Mrs. Gibson wait until all other cases were heard before he would hear their case.

We further find that, by these actions, the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that he failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary; that he was neither patient, dignified, nor courteous to either Mr. Freedlund or Mrs. Gibson; and that he failed to conduct proceedings in his courtroom with dignity. Thus, we find that the respondent's actions violated Rules 61, 62A, 63A(3), and 63A(7) .

12. Patricia Meyer appeared before the respondent on July 27, 1992, for a speeding violation. She had been arrested for driving 62 miles per hour in a 30 mile per hour posted speed zone. She testified that the officer who had issued the ticket said that she could get supervision. The State's Attorney recommended $75 on the ticket, but when Meyer asked about supervision the respondent replied, "You don't like 75? How about 150?" She replied that she thought she could get supervision, to which he said, "If you don't like 150, we can go for 300." Meyer replied that 150 was fine. On cross-examination, she agreed that the respondent gave her 30 days to pay the fine. On redirect, Meyer testified that she felt "very intimidated, very frustrated. In fact, I left the courtroom and cried the whole way home and continued for two hours after."

The respondent testified that he would not have accepted a negotiated plea of $75 for driving more

than 30 miles per hour over the speed limit. Without a sentencing hearing, he would accept no less than a $150 fine in such a case. He could not recall whether the State's Attorney was willing to accept $75, but opined that if that were the case, the attorney probably had not looked at the amount of the speeding. He denied stating that if Meyer did not like 150, they could go for 300.

Determining the content of the colloquy between Meyer and the respondent necessarily requires a credibility determination. We find that the more believable witness in this regard is Meyer. We therefore find that the respondent doubled her fine from $75 to $150 when she asked him a question. We further find that, in an act of gross intimidation, the respondent threatened to double Meyer's fine again if she spoke further. We find, in acting in this manner, the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that he failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary; that he failed to be faithful to the law; that he failed to be patient, dignified, or courteous to Meyer; that he failed to accord Meyer a full right to be heard; and that he failed to conduct proceedings in his courtroom with dignity. We therefore find that the respondent violated Rules 61, 62A, 63A(1), 63A(3), 63A(4), and 63A(7).

13. The Board also alleges that "[s]everal young people were convicted of speeding by the respondent [on July 27, 1992]. When they did not have money sufficient to pay the fine imposed, the respondent referred to jewelry that the young people were wearing and suggested that they pawn it to pay the fine. Patricia Meyer testified to some extent regarding this allegation, and the respondent admitted that he inquired of defendants' ability to pay fines imposed. We do not believe that the Board has proven a violation of any rules with this allegation and minimal

testimony in support. We also note that judges may properly inquire into defendants' ability to pay fines.

14. On July 16, 1992, Deborah Bandy appeared before the respondent for an alleged stop sign violation. She testified that she had arrived about five minutes late. When she was called to the bench, the respondent asked her why she had been late. Bandy explained that she had had a business lunch that had run late and that she had had trouble finding parking.

The State recommended a $75 fine and 30 days' suspension. The respondent declined to accept that recommendation, stating that if Bandy pled guilty she would receive a $100 fine and 60 days' suspension. Bandy pled not guilty and asked if a bench trial would occur on that day. The respondent said "maybe." She asked why he could not tell her if it would be on that day and the respondent replied, "I said maybe, didn't I?" Bandy requested a trial by jury. Bandy returned with an attorney on August 16, but decided to plead guilty. She was fined $75 and given 30 days' suspension. She testified that the respondent, who again presided, was "a much different person. *** He said please and thank you. And his tone of voice was much nicer. He treated me like I was a human being that day."

The respondent testified that he replied "maybe" to Mrs. Bandy's question of whether a bench trial would be that day because he did not know whether the complaining witness was still present. Since Bandy was late, he would not dismiss the case if the complaining witness was late.

We find that the respondent intended to increase Mrs. Bandy's fine by $25 and double her period of suspension for being five minutes late to court. We find that this was a gross abuse of power.

We further find that, in answering "maybe" to Mrs. Bandy's question whether a bench trial would occur on the same day, the respondent willfully acted with gross disrespect to a litigant in his official capacity as

judge. When his position as judge was in jeopardy, the respondent was able to give to this Commission a reasonable and succinct basis for his answer of "maybe." His failure to likewise give such an answer to Mrs. Bandy demonstrates lack of judicial temperament.

We find, in his actions towards Mrs. Bandy, that the respondent failed to observe high standards of conduct so that the integrity of the judiciary may be preserved; that he failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary; that he failed to be faithful to the law; that he failed to be patient, dignified, or courteous to Mrs. Bandy, and that he failed to conduct proceedings in his courtroom with dignity. Thus, we find that the respondent violated Rules 61, 62A, and 63A(1), 63A(3), and 63A(7).

15. The following witnesses testified to the respondent's general good character: Cynthia Laudeman, Thomas Roberts, Cathy Rubinowski, Marge Sklenka, Judge Thomas R. Appleton, and John Sharp. We have taken their testimony into account in reaching our decision in this case.

16. Presiding Judge Jeanne Scott testified to the general crowded nature of traffic court, and numerous witnesses testified to the crowded nature of the respondent's courtroom on July 27, 1992. She also testified that she had five separate communications with the respondent concerning complaints that he had been rude or discourteous. We find that the traffic court was in general a high volume courtroom and was particularly crowded on July 27, 1992. We also find that on five separate occasions the respondent was called by the presiding judge to discuss his behavior on the bench.

CONCLUSION AND ORDER

To err is human. In recognition of this truism, litigants are provided with an elaborate, thorough, and extensive system for appeal and review. Final decisions of trial courts are appealable of right to the Appellate Court. Thereafter, they are subject to a discretionary appeal process in the Supreme Court. Mere error, to be corrected, must be brought to the attention of a higher court through the appeal process.

Apart from mere error, however, and collateral to it, is the subject of judicial misconduct. While judicial misconduct may be addressed in the appeal process, it is also properly within the jurisdictional domain of the Illinois Judicial Inquiry Board and the Illinois Courts Commission. Ill. Const. 1970, art. VI, sec. 15(e); Supreme Court Rule 71.

However, judicial misconduct, such as to warrant disciplinary proceedings and sanctions, is something more than mere judicial error. It is conduct that violates the Code of Judicial Conduct. Mere error can never be the subject of judicial discipline. If such were the case, all judges would be the subject of judicial discipline for the very reason that all judges, from time to time, commit error. It is a daily commonplace for litigants to complain, often justly so, that their constitutional, statutory, or common law rights have been violated by a judicial ruling. The appeal process is designed to furnish both a process and a remedy.

Thus, it is not judicial misconduct merely because a judge may have erroneously held a person to be in contempt of court. Neither is it judicial misconduct merely because a judge imposed an overly severe sentence based on a finding of contempt. Neither is it judicial misconduct merely because the judge was ignorant of procedural requirements in memorializing his findings and orders of contempt. All of the above

are mere errors which are remediable through the appellate process.

The judicial sanction of contempt is an indispensable tool of the court and a necessary power to maintain control of the courtroom and its environs, to keep conduct pertaining to litigation within proper bounds, and, on occasion, to compel compliance with judicial orders. A judge himself should not be subjected to judicial disciplinary proceedings merely because he was in error in regard to a matter of judicial contempt, and regardless of whether that error be substantive or procedural. Those questions are for the appellate process exclusively.

Where, however, the conduct of a judge in matters before him, whether they be contempt proceedings or other judicial matters demonstrate that going beyond mere error, the judge is consistently, brazenly, and outrageously demonstrating a pattern of violation of the canons of judicial conduct, a case has been presented which demands the imposition of sanctions against the judge. Such is the case before us.

Considering the evidence in its totality as hereinabove summarized, Judge John R. Keith has demonstrated a consistent pattern of conduct evincing a complete lack of judicial temperament and demeanor, a disrespect for judicial process and procedures, and a deep seated personal contempt and disrespect for citizens appearing in his courtroom. In short, he has conducted himself as a mean-spirited judicial tyrant.

One or two of the matters brought to our attention might have been overlooked or disregarded as a bad day for the judge, or an aberration or temporary lapse. Given the nature of high-volume courtrooms, we acknowledge that latitude is necessary to a judge who is attempting to maintain order and decorum. We are well aware of the challenges to maintaining order in such courtrooms and wish to emphasize that

reasonable steps taken by judges will not result in sanctions. There are situations where speaking to a litigant in plain language that the litigant understands would be called for, and would not demean the integrity of the judiciary even though such words might be considered rough. However, it is essential that judges not become, in the words of Justice Frankfurter, "martinets upon the bench" in the name of judicial order. (*Bridges v. California*, 314 U.S. 252, 289 (1941) (Frankfurter, J., dissenting).) Judge Keith failed to heed this imperative.

Considered in isolation, specific instances of the respondent's misconduct might have warranted only reprimand or censure. Considered as a whole, however, the judge's misconduct indicates both a penchant and a pattern of improper behavior. John R. Keith has proven himself to be a person who should not occupy the position of a judge.

It is the unanimous opinion of the Illinois Courts Commission that the respondent, John R. Keith, for his pattern of violation of Rules 61, 62A and 63A, is guilty of willful misconduct in office, conduct that is prejudicial to the administration of justice, and conduct which brings the judicial office into disrepute. Accordingly, he should be forthwith removed and dismissed from the office of Associate Judge, and it is so ordered.

This order entered and filed this twenty-first day of January, 1994, *nunc pro tunc* January 14, 1994.