(No. 02 CC 1. - Respondent removed.)

In re CIRCUIT JUDGE FRANCIS X. GOLNIEWICZ
of the Circuit Court of Cook County, Respondent.

Order entered November 15, 2004

SYLLABUS

On May 15, 2002, the Judicial Inquiry Board filed a complaint, later amended, with the Courts Commission, charging 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 violation of the Code of Judicial Conduct, Illinois Supreme Court Rules 61, 62, 63 and 67. In summary form, the complaint alleged that, at various times in 2000 and 2001, respondent in his official capacity and while on the bench engaged in rude, inappropriate, undignified, prejudicial, and biased behavior, including addressing an African-American criminal defendant as "boy;" and showing his dissatisfaction with a jury verdict by tearing up juror appreciation certificates while uttering words to the effect of "They don't deserve these." The amended complaint further alleged that respondent knowingly misrepresented facts about his residency in his campaign literature; knowingly violated state constitutional residency requirements; knowingly registered to vote and voted in the wrong election district; and knowingly filed a false statement regarding his residency with the Illinois Secretary of State. The residency counts of the amended complaint arose from allegations that respondent represented that he resided on the Northwest Side of Chicago when, in fact, he resided in the Chicago suburb of Riverside.

Held: Respondent removed.

Sidley Austin Brown & Wood, of Chicago, for Judicial Inquiry Board.
William J. Harte, Ltd., of Chicago, for respondent.

Before the COURTS COMMISSION: THOMAS, Chairperson, BEATTY, BURKE, FRANKS, SLATER, and WOLFF, commissioners, ALL CONCUR. CUETO, commissioner, did not participate in the final disposition of this matter.

ORDER

The Judicial Inquiry Board (the Board) filed an eight-count amended complaint with the Illinois Courts Commission (the Commission) against Judge Francis X. Golniewicz of the Circuit Court of Cook County (respondent), charging him with violating the Code of Judicial Conduct (155 Ill. 2d Rs. 61, 62(A), 67(A)(3)(a), (d)(ii); 188 Ill. 2d R. 63(A)(2),(3),(7),(8)). The first three counts alleged inappropriate demeanor on the bench. Counts IV through VIII arose out of respondent's use of his parents' address when running for judge and when voting. Respondent answered the complaint and moved to dismiss counts IV through VIII, arguing that the Commission did not have jurisdiction to decide those counts. We denied respondent's motion to dismiss counts IV through VIII. The parties entered into a partial stipulation of facts, and a hearing was held on August 23, 2004.

FACTS

Respondent has been a Cook County Circuit Court Judge since his appointment on January 11, 1991. Respondent's initial term in office expired on December 6, 1992. However, three times between November 1992 and November 1993, the Illinois Supreme Court ordered that respondent be recalled to his position. Respondent's term under the final recall order expired on December 5, 1994. On March 15, 1994, respondent won the democratic primary election for the office of Judge of the Circuit Court of Cook County for the Tenth Subcircuit, additional judgeship C. On November 8, 1994, respondent won the general election. In 2000, respondent won a county-wide retention election. From December 1999 until May 2002, respondent was assigned to Courtroom 105 of the Fourth Municipal District of the Circuit Court of Cook County in Maywood.

Demeanor Counts

Count I of the amended complaint dealt with respondent's behavior in the case *People v. Ricardo Crocker*, No. 00 C4 41595. The Board alleged that on or about February 9, 2001, Crocker, who is African-American, appeared in court and asked respondent to move his next court date. Respondent replied, "Once again in English." English is Crocker's first language, and he was speaking it at the time. On or about March 12, 2001, Crocker, who was represented by assistant Public Defender Michael Halloran, again appeared and asked the court to appoint a new public defender. The following exchange occurred:

> "THE COURT: Why would that be, sir?
>
> DEFENDANT: When he came to see me, I asked him did he care about my case. He said he doesn't care, and I walked out.
>
> THE COURT: If you're not careful, you'll get Mr. Murphy as the Public Defender.[1]
>
> DEFENDANT: I know a little bit about Mr. Murphy, but I'm trying to get me a lawyer.
>
> THE COURT: You're not trying hard enough. You're still a prisoner. If you can't even make money for bond, you can't have money for a lawyer, but if you get yourself some money for a lawyer, certainly the Public Defender will withdraw."

Later in the proceeding, Crocker indicated that he wanted a jury trial, and respondent replied, "I love jury trials. This will be a quickie, in three hours."

On or about April 5, 2001, Crocker again appeared before respondent. Respondent was informed that, in a previous court proceeding held before another judge, Crocker had yelled at the complaining witness in an excited voice. Respondent asked to hear what exactly Crocker had said to the witness, and the assistant State's Attorney read a transcript from the earlier hearing. After the transcript was read, the following colloquy took place:

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[1]James Murphy was the public defender assigned to respondent's courtroom.

"THE COURT: Mr. Crocker, it sounds like you're one of them real tough guys; and you're going to go ahead and start intimidating witnesses, Mr. Crocker. Is that what you're going to do in my courtroom? You're going to start intimidating witnesses? Is that it, Mr. Crocker?

DEFENDANT: No, your Honor. I'm not that type of guy.

THE COURT: And you're going to show me what a tough and real bad person you are? Is that it? And you're going to sit there and eyeball me to death? Is that it, Mr. Crocker.

DEFENDANT: No, your Honor, I'm not.

THE COURT: You know what. We've got a very busy schedule here. And now that you've caused the delay by not giving over evidence that the State was nice enough to give you, we're going to have to give you an extremely long date because we're so very busy here, Mr. Crocker. And that no bail is–When I'm talking to you, boy, you look at me. That long date is going to be, oh, why don't you try October 11th on for size. Now, take mister tough guy back.

DEFENDANT: Well –

THE COURT: Come on. Come on, Mr. Crocker, say something to me. Go ahead, tough guy. Come on, Mr. Crocker, I want to hear what you have to say.

DEFENDANT: He know it ain't me, Judge. He know it ain't me.

THE COURT: And, Mr. Halloran, I want that fingerprint exemplars back by 2:00 o'clock, or the State's Attorney is ordered to draw up a rule to show cause against Michael Halloran. Do you understand that? Motion defendant, October 11th, with/for jury. So much for gamesmanship. Court's adjourned."

The Board alleged that respondent's language was inappropriate, disrespectful, intimidating, and racially inflammatory.

Respondent stipulated to the factual allegations of this count and agreed that his conduct in the *Crocker* case violated the canons, was inappropriate, undignified, and demeaned the integrity of the judiciary. At the hearing, respondent agreed that the term "boy" was offensive, but testified that he did not say it with any racial intent to demean the defendant. He agreed that he was "out of control" at the time. Respondent presented as exhibits over 100 character witness letters from people who know him in his professional capacity and who have never heard him make a racially biased remark.

Count II involved respondent's conduct in the case *People v. Buford Williams*, No. 00 C4 40614, a bench trial over which respondent presided. Respondent concluded that the State had not met its burden of proof and thus found Williams not guilty. The Board alleged that, after so finding, respondent said to Williams, "Be careful. Be real fucking careful." The parties stipulated that, if called to testify, the court reporter present at the time would say that she heard respondent make this comment. At the hearing, respondent admitted making the comment. He agreed that it was

undignified, inappropriate, and a vile thing to say in court. He further conceded that it violated the canons.

Count III involved respondent's conduct in the case *People v. Malcolm Phillips*, No. 99 CR 16463, a jury trial. The jury found the defendant not guilty. The Board alleged that, in the presence of the jury, respondent reviewed the verdict before reading it aloud and displayed his personal dissatisfaction with it by grimacing, shaking his head, sighing audibly, and slamming the verdict form on the bench. The Board further alleged that when respondent announced the verdict, his tone of voice, facial expressions, and body language displayed his personal dissatisfaction with the verdict. Respondent dismissed the jurors without thanking them for their service. Respondent has a habit of giving jurors a certificate to commemorate their contribution to the justice system and, in this case, the certificates had been prepared. However, he did not give the certificates to the jurors. According to the Board, respondent tore them up and threw them into a garbage can, saying, loud enough for others to hear, "They don't deserve these." The Board alleged that this was done in view of those in the courtroom, including the jury, which was filing out of the courtroom. Respondent stipulated to the fact that he did not thank the jurors for their service. At the hearing, respondent admitted that he did not act impartially when he read the verdict, and that his behavior violated the canons. He further agreed that he tore up the juror certificates because of his dissatisfaction with the verdict.

The Board called Russell Baker to testify. Baker was involved in the *Phillips* case as an assistant State's Attorney. He was standing at the State's Attorney's table when the verdict was read. Baker testified that respondent read the verdict to himself, showed an obvious reaction, and threw it down on the bench. He then picked it up and read it out loud. He showed obvious signs of anger, and he read the verdict in such a way to show that he was upset with it. He merely told the jury, "you are dismissed." Respondent had a short conversation with the attorneys that lasted approximately 30 to 45 seconds. The jurors were in the process of filing out at this time. Baker began to approach the bench, and he observed the bailiff ask respondent what to do about the juror certificates. Respondent said, "they didn't deserve these," tore them up, and threw them in the garbage can. Respondent then walked back to his chambers. Baker testified that the jurors were still in the process of filing out when the incident occurred. Baker did not know if all 12 jurors were still in the courtroom at the time, but he testified that some of them were still there. Baker was shown the transcript of the proceeding, which stated "whereupon the jury exited the courtroom" in brackets after the jury was dismissed but before the conversation with the attorneys took place. Baker said that the transcript was accurate in that the jury was dismissed before the conversation with the attorneys, but not accurate to the extent that it suggested that the jurors were actually out of the courtroom before the conversation took place. Baker's recollection was that the conversation with the judge took place after the jury was dismissed but while the jurors were still in the process of leaving. On cross-examination, Baker acknowledged that respondent was fair to both sides in the trial of this case and had conducted himself appropriately in all the other jury trials Baker had before him. Baker further acknowledged that he himself was surprised by the verdict. It was a rape case, and Baker thought that the evidence was compelling. Baker agreed that the court reporter would have been closer to the incident in question than he was, but said that her back was to the jury.

The Board also called the juror foreperson from the *Phillips* case, Charles Klimkiewicz, to testify. Klimkiewicz remembered that the case was a two-day trial and that he had to take time off of work to serve on the jury. Klimkiewicz testified that the jurors deliberated approximately five hours before reaching a verdict. When respondent saw the verdict, he collapsed onto the bench and then glared at the jurors. Respondent's behavior made Klimkiewicz feel like the jury had reached

the wrong verdict. Klimkiewicz testified that the jurors had carefully deliberated over all the evidence and believed that they could not convict the defendant because there were too many holes in the evidence. In the verdict room, Klimkiewicz initially felt good about his jury experience, but after the verdict was read he felt disappointed because of respondent's actions.

Connie James, the court reporter for the relevant day of the *Phillips* case, was called as a witness for respondent. James agreed that respondent seemed displeased with the verdict, but she did not hear him say anything to indicate his displeasure. She further testified that she correctly reported in the transcript that the jurors exited the courtroom before other proceedings took place. James did not recall respondent tearing up jury certificates. She testified that to have thrown the certificates in the garbage can, respondent would have had to have walked by her, but he did not do so.

Residency Counts

Counts IV through VIII of the amended complaint all dealt in some fashion with respondent's use of his parents' address when voting and running for election. The Board alleged that respondent lived with his wife and children in suburban Riverside, but used his parents' address in the city to run for judge and to vote. Count IV alleged that he sent out misleading campaign literature suggesting that the voters of Chicago's Tenth Subcircuit were his residential neighbors; Count V alleged that he violated constitutional residency requirements; Count VI alleged that he registered to vote in an improper election precinct; Count VII alleged that he voted in an improper election precinct; and Count VIII alleged that he made a false statement of residency on his Judicial Declaration of Candidacy Form. With regard to these allegations, respondent has stipulated to the following facts.

Stipulated Facts

Respondent was born in 1952. He was raised on the Northwest Side of Chicago, where he lived with his parents, Francis X. Golniewicz, Sr., and Kathryn Golniewicz, at 3620 N. Harding. Respondent's parents have owned 3620 N. Harding since 1952, and respondent has no ownership interest in the property. Respondent continued to reside with his parents part of the time while he attended college at Loyola University Chicago and the University of Chicago, but he also lived at other addresses. When he attended John Marshall Law School, from 1976 to 1979, he lived with his parents part of the time, but he also resided at an apartment owned by his parents on Cullom Avenue. From 1979 to December 1986, respondent worked as a Cook County Assistant Public Defender. During that time, he resided at a minimum of two Chicago addresses other than 3620 N. Harding: an apartment at 1355 Hoyne Avenue and an apartment in the 3900 block of Springfield. Respondent married his first wife in or about 1985, and they were married for approximately six months. They resided first at 1355 Hoyne and then on the 3900 block of Springfield. From in or about 1986 until in or about 1991, respondent worked as a Cook County Assistant State's Attorney. During that time, respondent resided first at an apartment owned by his parents on Cullom Avenue in Chicago, and then in or about 1989 moved to a home in Riverside, Illinois. Riverside is a suburb of Chicago, located in west suburban Cook County.

On or about May 18, 1989, respondent and Kimberly A. Bruneau executed a trust agreement with LaSalle National Bank, establishing a land trust ("Trust No. 114381") with themselves as beneficiaries. In the blank on the trust agreement form calling for "Address," respondent wrote

"3805 W. Cullom Chgo 60618." The trust agreement indicates that all bills, written inquiries, and legal notices should be mailed to "Francis X. Golniewicz, Jr. 341 Kent Rd., Riverside, Ill. 60546." Also on or about May 18, 1989, LaSalle National Bank Trust No. 114381 purchased the home at 341 Kent Road, Riverside, Illinois, 60546. Between in or about May 1989 until in or about April 1995, Trust No. 114381 received mail from LaSalle Bank at 341 Kent Road.

Respondent married Kimberly A. Bruneau on or about November 4, 1989. During the time they resided at 341 Kent Road, they had two children. Kimberly Golniewicz (formerly Bruneau) was a registered voter at 341 Kent Road until October 8, 1993, when she switched her registration to 3620 N. Harding. Kimberly Golniewicz has never resided at 3620 N. Harding; she resided at 341 Kent Road from in or about 1989 until in or about April 1995. Respondent's two children resided at 341 Kent Road from the time they were born until in or about April 1995. Between 1989 and 1995, respondent spent more of his time at 341 Kent Road than at 3620 N. Harding.

In or about April 1995, LaSalle National Bank Trust No. 114381 sold the home at 341 Kent Road. Also in or about April 1995, respondent prepared an Illinois Department of Revenue Real Estate Transfer Declaration and filed it with the Cook County Recorder's Office. The purpose of the form was to calculate the real estate transfer tax for 341 Kent Road. The form indicated that the "sellers" of 341 Kent Road were "Francis X. and Kimberly A. Golniewicz 341 Kent Rd., Riverside, Il. 60546." The "preparer" is listed as "Francis Golniewicz" of "341 Kent Riverside IL." On or about April 19, 1995, St. Paul Federal Bank for Savings executed a document titled "Release of Mortgage by Corporation," which indicated that the mortgage on 341 Kent Road had been repaid, and that St. Paul's interest in 341 Kent Road was being released to LaSalle National Bank Trust No. 114381. The Release of Mortgage by Corporation form further indicated that it was to be mailed to "F. Golniewicz & K. Bruneau, 341 Kent Rd., Riverside, IL, 60546."

In 1994, respondent was both an incumbent judge and a candidate for the office of Judge of the Circuit Court of Cook County for the Tenth Subcircuit, additional Judgeship C. The Tenth Subcircuit is comprised of neighborhoods on the North and Northwest Sides of Chicago as well as parts of north suburban Cook County. Riverside is not located within the Tenth Subcircuit. In or about January or February 1994, as part of respondent's campaign for the Tenth Subcircuit judgeship, respondent's campaign committee caused a campaign circular to be mailed to potential voters in the Tenth Subcircuit. Included in the circular was a letter written by respondent. The letter began: "Dear Neighbors: As a lifelong resident of St. Viators [*sic*] Parish on the Northwest Side of Chicago, I realize and share the same problems you have. Crime is an increasing and constant concern to us and our families. Drugs, gangs, and guns pose a direct threat to all of us. Violent crime in this country has increased 500% since 1960." St. Viator Parish is a Roman Catholic Parish on the Northwest Side of Chicago. St. Viator Church is located within the Tenth Subcircuit, and no part of St. Viator Parish is in Riverside. Respondent's parents' residence, 3620 N. Harding, is located on the Northwest side of Chicago, within the boundaries of both St. Viator Parish and the Tenth Subcircuit. Respondent's residence at 341 Kent Road, Riverside, in 1994 was not located on the Northwest Side of Chicago, nor was it within the boundaries of either St. Viator Parish or the Tenth Subcircuit. Respondent intended that voters who read that campaign circular would think of him as their residential neighbor.

In or about April 1995, LaSalle National Bank Trust No. 114381 purchased a home at 177 Longcommon Road, Riverside, Illinois 60546 ("177 Longcommon Road"). In or about April 1995, respondent, his wife, and their two sons moved from 341 Kent Road to 177 Longcommon Road. Respondent and his wife executed a mortgage and a promissory note with Northern Trust Bank to finance the purchase of 177 Longcommon Road. On the Uniform Residential Loan Application that

respondent filled out to receive the mortgage, respondent listed his "Present Address" as "341 Kent Road." On or about April 17, 1998, LaSalle National Bank Trust, No. 114381, executed an agreement for a home-equity revolving line of credit with Citizens Bank–Illinois, N.A. Respondent and his wife guaranteed the promissory note relating to the line of credit. The line of credit was secured by a junior mortgage on 177 Longcommon Road, which LaSalle National Bank, Trust No. 114381, also executed. On or about the same day, respondent and his wife signed a "Direction to Execute and Deliver Documents," authorizing LaSalle National Trust, N.A., as Trustee under Trust Agreement No. 114381, to execute the home equity agreement and junior mortgage.

In or about October 1998, respondent and his wife refinanced 177 Longcommon Road. On or about October 9, 1998, LaSalle National Bank, Trust No. 114381, executed a mortgage and promissory note for 177 Longcommon with Citizens Bank-Illinois. The water-account transaction record from the village of Riverside for 177 Longcommon Road reflects that the property changed hands in April 1995 and that the customer has been misspelled as "Galniewicz, F." from April 1995 until the present. The Nicor Gas account record reflects a "turn on" date of April 28, 1995, for gas service to 177 Longcommon Road in the name of Kimberly Golniewicz.

While he resided in Riverside, respondent attended church at St. Mary's Church, 126 Herrick Road, Riverside, Illinois, 60546. St. Mary's Church is approximately one-third of a mile from 177 Longcommon Road and more than twelve miles from 3620 N. Harding. From in or about 1996 until the present, respondent's children have attended school at St. Mary's School, 97 Herrick Road, Riverside, Illinois, 60546. St. Mary's School is approximately one-third of a mile from 177 Longcommon Road and more than twelve miles from 3620 N. Harding. Respondent and his family have a dog named "Janie." Respondent took Janie to see a veterinarian at the VCA Berwyn Animal Hospital, 2845 South Harlem Avenue, Berwyn, Illinois, 60402. The animal hospital lists Janie's owner as "Golniewicz, Francis" of "177 Longcommon Road, Riverside, IL 60546." The animal hospital is approximately one mile from 177 Longcommon Road and more than eleven miles from 3620 N. Harding.

Each year between 1995 and 2001, respondent and his wife had their income tax returns prepared by Pesavento & Pesavento, Ltd., 3401 South Harlem, Suite 200, Berwyn, Illinois, 60402. Pesavento & Pesavento is approximately one mile from 177 Longcommon Road and more than twelve miles from 3620 N. Harding. Respondent had his automobiles serviced on multiple occasions at Riverside, Firestone, Martin Auto Service, Inc., 315 East Burlington Street, Riverside, Illinois, 60546. Martin Auto Service is approximately three-quarters of a mile from 177 Longcommon Road and more than twelve miles from 3620 N. Harding. In early June 2002, Respondent was driving when his car broke down not far from the North Riverside Police Station. When a police officer from the station offered to drive respondent home, respondent directed him to 177 Longcommon Road.

Respondent has a Visa with First USA Bank, and a Discover card. Between in or about April 1995 and April 2003, he received mail regarding each of these credit cards at 177 Longcommon Road. LaSalle National Bank Trust No. 114381, the land trust of which respondent and his wife are joint beneficiaries, has received mail at 177 Longcommon Road from in or about April 1995 until the present. Respondent has received mail from ABN AMRO (regarding his mortgage with Citizens Bank–Illinois) at 177 Longcommon Road from in or about October 1998 until the present. When the Northern Trust Company held the mortgage on 177 Longcommon Road, it too sent mail to respondent and his wife at 177 Longcommon Road. Between in or about 1995 and the present, respondent has received *The New Yorker, Sound & Vision*, and the *Chicago Tribune* at 177 Longcommon Road.

Respondent has paid for homeowner's insurance on 177 Longcommon Road through Allstate

Insurance Company. Respondent has received mail form Allstate regarding his homeowner's insurance at 177 Longcommon Road. Respondent has not paid for homeowner's insurance for 3620 N. Harding. From in or about April 2002 until May 2003, respondent and his wife insured his 1988 Chevrolet Celebrity through Allstate Insurance Company. The "Proof of Auto Insurance Card" issued by Allstate for the car for the period August 1, 2002, to February 1, 2003, shows an address for respondent and his wife of "177 Longcommon Road, Riverside, IL 60546-2065." From in or about June 1998 until in or about late 2002, respondent and his wife insured respondent's former car, a 1985 Cadillac El Dorado, with Allstate Insurance Company. The "Proof of Auto Insurance Card" issued by Allstate for the car for the period August 1, 2002, to February 1, 2003, shows an address for respondent and his wife of "177 Longcommon Road, Riverside IL 60546-2065." Kimberly A. Golniewicz has owned a white 1997 BMW from in or about May 2000 until October 2003. During that time, the BMW has been registered to 177 Longcommon Road.

Between 1998 and 2001, respondent's wife had a checking account at First National Bank of Chicago (later Bank One, N.A.). During that time, respondent's wife received her bank statements at 177 Longcommon Road. The address on the Illinois drivers's license of Kimberly Bruneau Golniewicz is 177 Longcommon Road. The address on the Illinois driver's license of respondent is 3620 N. Harding. Each year between 1995 and 2001, respondent and his wife filed joint federal and state income tax returns (for tax years 1994 through 2000, respectively). In each of those years, 177 Longcommon was provided as the "Home address" on the federal tax form 1040 and as the "Mailing address" on the Illinois tax form IL-1040. Each year between 1995 and 2001, Kimberly Bruneau Golniewicz received her W-2 forms (for tax years 1994 through 2000, respectively) at either 341 Kent Road or 177 Longcommon Road. During each of those same years, respondent received his W-2 forms at 3620 N. Harding. The 2001 property tax bill for 177 Longcommon Road was addressed to "LaSalle Nat Bnk 114381 or Current Owner." LaSalle National Bank Trust No. 114381 is the land trust that owns 177 Longcommon Road and of which respondent and his wife are the beneficiaries.

At all times relevant to the amended complaint, Illinois law provided for a property tax exemption for "Homestead property," defined in relevant part by statute as "residential property that is occupied by its owner or owners as his or their principal dwelling place." 35 ILCS 200/15–175 (West 2002). In 1998, 2000, and 2001, respondent applied for such a homeowner exemption from the Cook County Assessor to obtain a reduction on the property taxes for 177 Longcommon Road. As part of signing the applications, respondent signed an affidavit that stated in relevant part that "this property was occupied by its current or previous owner as a principal residence" on the first day of January of the given year. Respondent did not seek such an exemption for 3620 N. Harding.

At all times material to this action: (1) Article VI, section 11 of the Constitution of the State of Illinois has provided in part that "No person shall be eligible to be a Judge *** unless he is *** a resident of the unit which selects him" (Ill. Const. 1970, Art. VI, §11); (2) Circuit Judges in Cook County could be elected either "at large," *i.e.*, on a county-wide basis (see 705 ILCS 35/2 (West 2002)), or as "resident judges," *i.e.*, elected from one of the fifteen units within Cook County known as "subcircuits" (see 705 ILCS 40/2(a)(4) (West 2002); 705 ILCS 35/2f(a) (West 2002); 705 ILCS 40/2.1 (West 2002); 705 ILCS 50/2 (West 2002)); (3) Section 2f(e) of the Circuit Courts Act (705 ILCS 35/2f(e) (West 2002)) mandated that a "resident judge" elected from a subcircuit is required to continue to reside in that subcircuit as long as he holds office; (4) Section 5–2 of the Election Code (10 ILCS 5/5-2 (West 2002)) provided in pertinent part: "No person shall be entitled to be registered in and from any precinct unless such person shall by the date of the election next following have resided in the State and within the precinct 30 days and be otherwise qualified to vote at such election ***. To constitute residence under this Article 5 [of Act 5 of Chapter 10] Article 3 is

controlling;" (5) Article 3 of Chapter 10 of the Illinois Complied Statutes provided in pertinent part that, "[a] permanent abode is necessary to constitute a residence" 10 ILCS 5/3–2(a) (West 2002); (6) Section 3–1 of the Election Code (10 ILCS 5/3–1 (West 2002)) provided in pertinent part: "Every person (I) who has resided in this State and in the election district 30 days next preceding any election therein *** and who is a citizen of the United States, of the age of 18 or more years is entitled to vote at such election for all offices and on all propositions;" and (7) Section 7A–1 of the Election Code (10 ILCS 5/7A–1 (West 2002)) required a Circuit Judge who was elected and who sought to be retained in that office to file with the Secretary of State a declaration of candidacy to succeed himself.

On November 18, 1991, respondent registered to vote in Illinois. He indicated on his application for voter registration that his permanent abode was 3620 N. Harding. As part of the application for voter registration, respondent signed an affidavit that stated, "I hereby swear (or affirm) that I am a citizen of the United States; that on the date of the next election I shall have resided in the State of Illinois and in the election precinct in which I reside 30 days and that I intend that this location shall be my permanent residence; that I am fully qualified to vote, and that the above statements are true." The "above statements" included respondent's statement that he intended that 3620 N. Harding would be his "permanent residence." The election district that includes 3620 N. Harding does not include either 341 Kent Road or 177 Longcommon Road. The Tenth Subcircuit is the unit that elected respondent in the Democratic primary election held March 15, 1994, and in the general election held November 8, 1994. Neither of respondent's Riverside addresses (341 Kent Road and 177 Longcommon Road) is within the Tenth Subcircuit. On June 21 1999, respondent filed a Judicial Declaration of Candidacy form with the Secretary of State, declaring himself a candidate to succeed himself in the election to be held on November 7, 2000. Respondent indicated on the form that he resided at 3620 N. Harding.

Respondent's Testimony in the Board's Case

At the hearing, the Board called respondent as its principal witness. Respondent denied any impropriety in using the 3620 N. Harding address for election and voting purposes. When questioned about where he lived at various times, respondent maintained that he always maintained dual residencies at 3620 N. Harding and elsewhere. He conceded that he became emancipated from his parents at age 19 or 20. When asked if he lived on Springfield Avenue when he was married to his first wife, respondent replied: "This is the heart of the question, this is what this whole hearing is about, sir, is the word, live, reside, permanent abode. Yes, I lived at Springfield; yes, I lived at Harding Avenue. It depends what your subjective meaning of the word live is." The attorney for the Board then asked respondent if that was the answer he would give when someone would ask him where he lived. Respondent replied: "When people would ask me where I live, they would do it in a vernacular sense, not in the strict legal sense that brings us all here today." Respondent then conceded that he lived with his first wife on Springfield in the vernacular sense, but that he also maintained a residence at 3620 N. Harding. Respondent claimed that he had two homes and two home addresses during this period. Although he spent most of his time at the apartment on Springfield Avenue, he went to Harding on almost a daily basis, ate meals there, and did chores there. He ate the majority of his meals there after his wife left him. Respondent testified that for the six months he was married to his first wife, they had different permanent abodes. His was at 3620 N. Harding and, as far as he could tell, his wife's was at the apartment on Springfield Avenue.

When respondent became an assistant State's Attorney, he moved into an apartment on

Cullom Avenue. However, he testified that he still had two home addresses during this period: one on Cullom, and one at 3620 N. Harding. He claimed that 3620 N. Harding was his permanent abode at this time. In November 1989, respondent married Kim Bruneau, an obstetrician. In the summer of 1989, Bruneau had accepted a position at an office in Downers Grove, and she had privileges at Hinsdale Hospital. Respondent testified that the reason he and his wife looked for homes in Riverside was that his wife needed to be close to Hinsdale Hospital. When they bought the first house in Riverside, respondent moved there from Cullom Avenue. However, he testified that, although he gave up his home address on Cullom Avenue, he did not give up his home address at 3620 N. Harding. In response to the question where respondent lived after he moved to Riverside, respondent said, "You keep coming back to this word lived. There is no agreement as to what that word means because it's a vernacular subjective word. I lived on Kent Road and I lived on Harding Avenue. I spent most of my time on Kent Road with my new wife certainly." Respondent maintained that, even after he and his wife moved into their new home in Riverside, his permanent abode was still at 3620 N. Harding. He said that he could only speculate as to where his wife's permanent abode was, because that is a question of intent. His "good guess" was that her permanent abode was at Kent Road. Respondent agreed that he had no plans to leave his wife at that time. When asked why he and his wife had different permanent abodes, respondent explained that his wife was not from the area, but was from New York state. By contrast, respondent would still have dinner at 3620 N. Harding once a week. Moreover, he would stay there when his wife and children went on vacation, and he would also stop by several times a week to pick up the mail that he was having sent there. He also mentioned that he had the keys to the house and knew the code for the burglar alarm.

Respondent acknowledged that he had wanted to be a judge at least from the time that he had been a public defender. Respondent denied that his chance of becoming a judge was better residing in Chicago than it was in Riverside. Nevertheless, he agreed that he is a Democrat and that Riverside is a Republican stronghold. He further agreed that his father had served as a judge in a very distinguished capacity beginning in 1979, that his father was a Democrat, and that his father was fairly well known in the Harding neighborhood. Moreover, if he needed help getting elected, he would expect to get that help in Chicago. He agreed that no Republican has been elected as a judge from the Tenth Subcircuit.

Respondent was shown as an exhibit a Cook County State's Attorney payroll record. On this card, respondent's address was typed in as 3805 W. Cullom. However, at some time, 3620 N. Harding was handwritten in next to it. Respondent conceded that, during the time he was an assistant State's Attorney (1987 to 1991), his relationship to Harding Avenue never changed. The parties stipulated that, if called to testify, an assistant Cook County State's Attorney named Gerald Nora would identify the exhibit as a record, kept in the regular course of business, identifying respondent's home address. Nora would further testify that the practice in the office at the time was to type in the information when the employee started. If that information changed, the practice was to write in the new information by hand rather than re-typing the whole card. Respondent did not recall giving the Cullom address, and he did not recall changing it. However, he "very well could have" given the Cullom address and later changed it to Harding.

Respondent testified that, at the time he and his wife created the land trust to purchase the home at Kent Road in 1989, his home address was 3620 N. Harding, while his wife's home address was on West Aldene. However, respondent conceded that on the land trust agreement, his wife gave her home address as 530 West Aldene, and respondent gave his as 3805 W. Cullom. He further conceded that the form did not ask for a temporary address. Respondent explained that one of the advantages of a land trust was that a casual person going through the tract books cannot see who

holds the property. If a person did a title search, he or she would learn that the owner is a bank. Respondent said that this was important to his wife because of the possibility of malpractice suits: a casual observer could not go through tract books and see what property she owned. The home at 3620 N. Harding was not owned by a land trust, but rather was held in respondent's father's name: Francis X. Golniewicz.

Respondent testified that when he first became a judge in 1991, his wife's home address was their house on Kent Road, but his home address was still 3620 N. Harding. Respondent was shown a series of forms that he had to fill out when he became a judge. One of them was the Central Management Services, State of Illinois Group Insurance Program Beneficiary Designation. On this form, respondent listed his wife as his primary beneficiary and gave her address as 3620 N. Harding. Respondent agreed that his wife had never lived at 3620 N. Harding, that she never had a home address there, and that was never her permanent abode. Respondent denied that he did this to hide his Kent Road address.

Respondent was shown a copy of a form entitled Statement Required of Members of the Judiciary of the State of Illinois. This is a statement of economic interests, and respondent testified that he had filled one out every year since he became a judge, that he took them seriously, and was honest in answering the questions on the form. To certain questions, respondent wrote the abbreviation "DNA," which respondent said meant "does not apply." Respondent wrote DNA to a question asking him to list, *inter alia*, any salaried employment of his wife and minor children. Respondent acknowledged that his wife had salaried employment at that time. He explained that he never disclosed her employment because he always misread the question. He assumed that it was referring only to employment with a government agency.[2] Respondent was then shown the 1994 form, which he filled out one year after his wife became a partner in her practice. He wrote "DNA" to question 7, which asked for, *inter alia*, the fiduciary positions of his wife or minor children. Respondent acknowledged that his wife had a fiduciary relationship with her partners, but said that he did not list it because it did not occur to him that this was the type of fiduciary relationship to which the form referred. He testified that he had never disclosed his wife's employment on one of these forms, which are publicly available, but that this was because he had never understood the questions.

In 1992, respondent ran for judge in the Democratic primary and lost. He was living in Riverside with his wife at the time, but when he filed for candidacy with the State of Illinois he listed Harding Avenue as his residence. He answered the question this way because it was being posed to him in his professional capacity. Respondent was not advised by election attorney Michael Lavelle in the 1992 primary, and Lavelle never told him to list Harding Avenue as his address when he ran in 1992. When asked why he listed Harding Avenue, respondent answered, "Again home means many things to many people. I put the address down as 3620 N. Harding because that was the most truthful address to give in as much as given all my contact with that address, all the indicia of residency I had at that address. That would be the truthful answer to give." Respondent was then shown a form filed with the State of Illinois entitled "Form D–1 Statement of Organization." Respondent referred to this as a form that he was required to fill out when he formed his campaign committee to run for judge in 1992. He listed his address on the form as 3620 N. Harding, and he

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[2]In full, question 5 of the form provides: "My offices, directorships, and salaried employments and the offices, directorships, and salaried employments of my immediate family (spouse and minor children residing with me) are as follows: (Here list in accordance with numbered paragraph 5 of the instructions.)"

did not list his Riverside address. He explained that he always felt that 3620 N. Harding was his primary address.

Respondent was then asked about his family life in Riverside. He agreed that, beginning in 1989, he lived a normal family life in Riverside. He and his wife were a two-income family, and two children were born to the marriage while they lived at Kent Road. He was an active father and spent time with his children. He typically slept at Kent Road, typically left for work from there, and spent time with his wife and children there. However, when asked if he lived at home with his children and his wife, respondent said, "I lived at home with my children and my wife as I lived on Harding Avenue." When asked to explain this statement, respondent said:

> "I'm sorry. You keep using the word lived and I lived with my wife and family on Kent; yet, I lived at 3620 N. Harding. As I understand it lived is not something that is quantitatively measured. It's a vernacular word that means just about anything, sir, and that is why I am having a very difficult time when you are constantly using that verb to know exactly what you mean. And again, I am not trying to side step you or anything but the word live is the word that is being contested at this hearing, sir."

Respondent further elaborated that, although his wife and children's home address from 1989 to 1995 was 341 Kent Road, he personally had two home addresses: 341 Kent Road and 3620 N. Harding. He said that the difference between himself and his wife and children was his strong residential ties to 3620 N. Harding. He acknowledged that when he was growing up, his parents did not have a different home address from him. Respondent testified that his children went to grammar school in Riverside and played baseball and basketball in Riverside. His family's primary church was St. Mary's in Riverside. During the years 1992, 1993, and 1994, respondent would stay at 3620 N. Harding approximately 10 to 14 days out of the year. Sometimes his wife and children were there with him, but usually he was there by himself.

Respondent was next asked about his tax returns. He agreed that, every year since 1991, he has used his Riverside addresses on his tax returns. He has never listed 3620 N. Harding. Respondent signed the tax returns, which are not publicly available, under penalty of perjury. The 1995 tax return included a schedule for the sale of a home. Respondent acknowledged that the purpose of the form was to document the profit or loss on the sale of a home. Respondent agreed that the form asked for the "date your former main home was sold." Respondent listed the date he sold the house at Kent Road. The form also contained a line that asked, "have you bought or built a new main home?" Respondent agreed that the answer to the question was "yes," and that the answer referred to Longcommon. Respondent explained that this was a main home for tax purposes. When asked why he always used his Riverside addresses on his tax returns, respondent explained that the returns were mostly concerned with his wife's business and that it also made sense to use the Riverside addresses because that was where the available deductions for property taxes and mortgage interest were. However, he acknowledged that he previously gave a different answer to this question. When he appeared before the Board on November 8, 2002, to answer questions about his residency, he said he used his Riverside addresses on his returns because "one address is as good as another." Respondent said he now regretted making that remark, which he characterized as "flip."

When respondent and his wife sold the Kent Road home and purchased the Longcommon property, they again used a land trust. When respondent and his wife filled out the Uniform Residential Loan Application, they both used 341 Kent Road as their address. On all of the relevant transfer documents, respondent used the 341 Kent Road address. When they refinanced the loan on

the mortgage on the property, respondent used the Longcommon address.

Respondent agreed that Illinois law provides for a property tax exemption for homestead property, and that the relevant statute defines homestead property as "residential property that is occupied by its owner or owners as its or their principal dwelling place." Respondent was shown a 2001 taxpayer exemption application for a homeowner exemption. The property referenced on the application was 177 Longcommon Road, Riverside. Respondent's signature appeared on the form under an affirmation that read "I affirm by signature that this property was occupied by it's [*sic*] current or previous owner as a principal residence as of January 1, 2001. I understand that it is against the law to provide false information on this homeowner exemption application." Respondent identified similar forms for 1998 and 2000. He agreed that Longcommon Road was a principal residence, but stated that the reason he took the exemption for that property was that it was the only property he owned. When asked if Longcommon Road was in fact his principal dwelling place in 1998, he responded: "Again I'm not sure what the exact definition of principle [sic] dwelling place or how Mr. Houlihan applies that in the assessor's office but certainly I felt I could claim it as my principle [sic] dwelling place because it was a residence and I dwelled there."

Respondent testified that he received his Visa bills at Kent and at Longcommon. He received Discover Card and American Express bills at Longcommon. His Mastercard bill went to Harding Avenue until 2000 or 2001, when he began receiving it at Longcommon. He also received newspapers and magazines at Longcommon. His homeowner's insurance and automobile insurance also went to Longcommon. Respondent agreed that it is cheaper to insure a car in Riverside than in Chicago.

Respondent testified that his parents own 3620 N. Harding. Respondent has two sisters, but he did not know if they ever intended to return to 3620 N. Harding. He also did not know if they would have the same future rights to that property as he would, because that would depend on how his father drafted the will. However, respondent was willing to concede that they were all three equal heirs to their parents' estate.

Respondent's wife's car was registered at 177 Longcommon Road. However, respondent's 1985 Cadillac was registered in Capron, Illinois. Capron is approximately 75 miles northwest of Chicago, and respondent's parents own a summer home there. Respondent purchased this car in 1998, but he never registered it at what he claimed were his home addresses. However, respondent stated that the home in Capron was also a residence of his. When asked why he registered his car in Capron and not in Longcommon, respondent gave the following answer:

> "When this first came up about a year-and-a-half ago I was trying to remember why I started registering cars out in Plain–I'm sorry–out in Capron, Illinois. I think what happened is that I had cars stored there. I had an old '59 MGA and an Austin Healy that was stored out there and I just felt that this was an in rem registration; however, as a result of this investigation I then find out that it must be registered to the residence of the owner. And it was only since this investigation did I then find that that was the requirement."

Respondent acknowledged that the registration form asked for "residence/business address," but claimed that he had not read the form correctly at the time. Respondent's MGA and Austin Healy were also registered in Capron. Respondent agreed that title records are publicly available, and that if someone would have searched the title records they would have seen that his cars were registered in Capron, not in Riverside. Respondent had his cars serviced in Riverside.

Respondent testified that the utility bills for Longcommon went to the Longcommon address.

The ComEd and Nicor bills were in his wife's name, while the water bill went to "F. Galniewicz." Respondent never corrected the spelling. Respondent agreed that he used the Harding address for professional and public purposes, but claimed that he used it for other purposes as well. Respondent acknowledged that the following either used the Harding address or were sent to it: (1) his attorney registration; (2) his driver's license; (3) his employment records with Cook County; (4) his campaign disclosure forms; and (5) a resume he prepared in 1989 in seeking to become an appointed judge. He did not consult with Michael Lavelle about what address to use on the resume in 1989, and it would not have been difficult for him to add the Kent address to the resume.

Respondent registered to vote in 1991 at Harding Avenue, even though by that time he had already lived in Riverside for two years. At the same time, respondent's wife was registered to vote from the Kent address. She continued to be registered there until 1994, shortly before respondent ran for election, when she changed her registration to 3620 N. Harding. Respondent knew that the law required a voter to be registered at his or her permanent abode. When asked why he and his wife registered to vote in different locations during those years, respondent gave the following answer:

> "It comes down to the voter's intent. This will come up over and over again throughout this hearing. The intent of making one residence with your permanent abode, I had much more contacts with Harding Avenue. In 1991 I only lived in Riverside for a couple years but I had been living in Harding Avenue since childhood. To me in my mind it made more sense for me to register out of a location I had more contact in and connection with."

Respondent did not receive advice from Michael Lavelle on where to vote in the 1994 election.

Respondent agreed that he ran for election from the Tenth Subcircuit and that the law required him to be a resident of the unit that selected him. Respondent's residences in Riverside were in the Fourth Subcircuit. The following exchange took place:

> Q. To the extent that you know or understood in 1994, the information that was publicly available about Frank Golniewicz, the judge–Frank Golniewicz, the lawyer indicated that you lived at Harding correct?
>
> ***
>
> A. You are making an assumption that I deliberately segregated the fact that I had a residence in a home in Riverside from my legal–my status as a lawyer or status as a judge. I never did that with any deliberation. It may have worked out that way but I never hid the fact that I had a residence in Riverside.
>
> Q. It did work out that way didn't it?
>
> A. It did. Wait a minute, I don't agree with you. There are people–there were people in the legal community that knew I had two residences. I never made any effort to deceive or hide the fact that I had two residences."

Respondent testified about the advice he received from election attorney Michael Lavelle. Respondent had decided that he wanted to run for judge in 1994, and that his chances for being elected were better in the Tenth Subcircuit race than in the county-wide race. Respondent met with Lavelle to discuss what would happen if someone objected to his candidacy. Respondent testified that he was concerned about his wife and children living in Riverside while he had a living situation

at two addresses. Respondent wanted to make sure he was qualified to run from the Tenth Subcircuit. However, he did not call the Board of Elections, nor did he ask for a written legal opinion from Lavelle. The meeting with Lavelle took place over breakfast, and Lavelle would not take any money for the meeting. Respondent never intended to run out of the Fourth Subcircuit, and his meeting with Lavelle was not to determine which subcircuit was the best and most appropriate out of which to run. Rather, he merely wanted to see if he could run in the Tenth Subcircuit. Lavelle told respondent that intent was the controlling factor, and respondent told him his intent was to live at Harding. Lavelle questioned him about his living circumstances at both locations. Respondent agreed with the Board that if he had contacts with Harding but not the requisite intent, then it could not be his permanent abode. Respondent told Lavelle that his intent was to make Harding his permanent abode, and Lavelle accepted that that was respondent's intent. Lavelle did tell him that a person can have only one permanent abode for voting and candidacy purposes. Respondent agreed that if a person has multiple residences that he may not just pick one for voting and candidacy purposes; rather, the proper question is which one of the residences is that person's permanent abode.

Respondent agreed that a person's permanent abode is one's home. He then claimed, however, that he had two homes–one in Riverside and one at 3620 N. Harding–and that it was his intention that 3620 N. Harding was his permanent abode. Respondent agreed that before these proceedings arose, he had referenced Riverside as "home." Respondent acknowledged that he used the word "home" in reference to Riverside in a previous proceeding before the Board. During that proceeding, when he was explaining his demeanor in the *Crocker* case, he stated that he had a big fight with his wife before leaving home to go to court. Respondent explained that it was a heated fight over his oldest son, and that he did not live far from court. When respondent made that statement, he was referring to Riverside. Respondent had also testified in a previous proceeding before the Board about an encounter he had with the police. Respondent was bonded out before a court in Cook County on or about May 15, 2003. Respondent signed the bond slip, upon which his Longcommon address appeared. Respondent testified that he did not give that address, but that he did not correct it either. He explained that he just wanted to sign the bond slip and get out of there. However, he did agree that Longcommon would have been the appropriate address for that incident.

Respondent was shown copies of his campaign committee's D–2 forms for the 1992 and 1994 elections. Respondent's signature appeared on both forms. Respondent signed the front page of these forms, but they were filed by his mother, who was his campaign committee's treasurer. Respondent agreed that his signature appeared underneath a verification that he had read the report and any accompanying schedules and that they were true and accurate. However, respondent never reviewed the attached schedules. On the schedule for the reporting period January 1994 to June 1994, respondent's wife's address is listed as 3620 N. Harding. Respondent claimed that he did not know that the schedule listed her address as Harding Avenue, but he assumed that the reason was that she had registered to vote out of Harding Avenue in 1994. She changed her registration shortly before the 1994 election. When asked if his wife's permanent abode changed shortly before the 1994 election, respondent answered, "Again my wife's intent–the subject never came up as to what her intent was so, therefore, I can't answer for her." He did not try to stop her from changing her registration to Harding Avenue.

At no time in connection with either the 1994 Democratic primary or the 1994 general election, did respondent disclose to the voters of the Tenth Subcircuit his relationship to Riverside. Respondent explained that it was not relevant to his qualifications as a candidate. However, when asked if he had made residency an issue in his campaign flyer, he responded, "I had told them in my campaign flyer, I stated neighbors, as a life long resident of St. Viator's parish and that is a true

statement. That is a true statement." Respondent wrote the letter that appeared in the campaign circular, and he reviewed the flyer before it went out. According to respondent, he was a resident of St. Viator's Parish and he was neighbors with the people of the Tenth Subcircuit. He agreed that he also had neighbors in Riverside. He said that it would be a stretch to say that the people in Capron were his neighbors, but it was not a stretch to say that the people in the Tenth Subcircuit were his neighbors. He was not at the time, however, a registered parishioner at St. Viator's Parish. He might have attended mass there once or twice in 1994. He said that his intention in the flyer was to give the people of the Tenth Subcircuit the impression that he was experiencing the same problems as them on a day-to-day basis. This was a true statement because he worked in the city. According to respondent, the campaign flyer was not misleading and Michael Lavelle reviewed the flyer before it went out.

Respondent was shown as an exhibit a document entitled "Real Addresses of Fourth District Judges." Respondent's Riverside address on Longcommon is listed on the form. Respondent testified that he had not seen this document prior to the hearing. The Fourth Municipal District is a suburban subdivision of Cook County, encompassing several western suburbs, including Oak Park, Maywood, Riverside, and North Riverside. From the time of respondent's first appointment as a judge in 1991, the chief judge's office had respondent's address listed as Harding Avenue. Defendant testified that he was transferred from 26th and California to Maywood in 1997. He said he did not disclose the Riverside address when he was first transferred, but rather when "the subject came up." He said that he did not remember how it came up. When pressed, he said that he had no independent recollection of how they came about having both addresses or how he communicated that information to them.

Respondent was shown the Judicial Declaration of Candidacy form that he filled out in 1999 to run in a 2000 retention election. He listed 3620 N. Harding as his address and signed the form. He testified that he did so because he intended that 3620 N. Harding would be his permanent abode. He said that it was a truthful declaration, and that he would do it that way again. Respondent was next shown an agreed order that was entered in June 2003 in his divorce case. Respondent acknowledged that the order was prepared by his lawyer and refers to the "marital residence" as 177 Longcommon Road, Riverside.

At the end of respondent's examination by the Board, respondent was asked if he believed that he had behaved with integrity with respect to his residency for the past 15 years. Respondent said that he had done so, that he had consulted with an attorney about the issue, and that he absolutely denied any dishonesty concerning the residency issue. When asked whether he would do anything differently, respondent replied:

> "When this first came up not in anybody's wildest dreams could it be thought that this type of prosecution could have come about that anybody could have taken the facts out of context to fabricate that kind of prosecution. I could not–in other words it would be impossible to have foreseen that something like this would have happened.
>
> Would I have done something differently? I would have had no reason to."

Respondent further put the blame for his predicament on the Board and referred to its prosecution as "wrong headed."

Patricia Hefner testified that she has been employed by the Office of the Chief Judge of Cook County for 32 years. Hefner was assigned to work in the Maywood branch of the court in 1997. She was part of the office staff while respondent was a judge in that branch. Judge Nudelman was the presiding judge at the Maywood branch. Hefner identified exhibit 66 as a document that she prepared entitled "Real Address of Fourth District Judges." Hefner explained what led to this document being prepared. One weekend, respondent was assigned to weekend bond court, and he failed to show up for Saturday marriage and bond court. Presiding Judge Nudelman told Hefner to get a list of all the judges in the Fourth District with their cell phones and home addresses. Prior to this incident, the only address information for the judges was on the master list from the Chief Judge's office. That list did not include respondent's Riverside address; it had an address for Respondent on Harding Avenue in Chicago. When Hefner was preparing the "Real Addresses" list, she asked respondent for his home address and phone number, and he gave her his address on Longcommon. On cross-examination, Hefner was asked if respondent had two addresses, one in Riverside and one on Harding Avenue. She said that this was correct. When asked if respondent could be reached at one address if he was not at the other, she responded, "I guess, yes." She also acknowledged that the word "real" in the document's title was hers.

Michael Lavelle

Michael Lavelle testified that he is an attorney specializing in election law. While he was in law school, he was the chief clerk of the election department of the Cook County Clerk's Office. After graduating, he continued with the county clerk's office as a part-time election attorney and also began practicing in the area of election law. Lavelle had also previously worked as a precinct captain in one of the wards in Chicago. When he was at the county clerk's office, he served as the attorney for the Cook County Officers Electoral Board and dealt with petition filings and objection hearings. In 1973, he was appointed to the Illinois State Board of Elections. He served as vice chairman or chairman until 1978. At that time, he resigned from the Board and was appointed to serve as a member of the Chicago Board of Election Commissioners. His fellow members selected him as chairman. He continued in that position until 1988, when he went into private practice with a focus on election law.

Lavelle met respondent through a mutual friend, Judge William O'Malley. Lavelle met respondent when Lavelle was serving as O'Malley's campaign legal adviser. In 1993, O'Malley called Lavelle and asked him if he would help respondent, who wanted to run in the 1994 primary election. Lavelle met with respondent over breakfast in Oak Park. At that meeting, respondent asked if it would be appropriate for him to run from the Harding Avenue address. Specifically, respondent wanted to know if he was eligible to run from the Harding Avenue address despite his Riverside address. Lavelle said that they discussed the "factual circumstances in connection with his Harding Avenue address and the factual circumstances in connection with the Riverside address where his wife and children lived as well as he. He was maintaining residency at both locations." Lavelle could not remember exactly what was said with respect to both residences, but he believed that he was very careful to get all the facts before he made a recommendation. He said that it is "not uncommon to have candidates who either maintain two different addresses or who are in the process of moving or they may have a location in one place and are seeking to establish a location in a new district in order to establish residency to be a candidate."

With respect to the Riverside address, Lavelle remembered respondent saying that he had moved there to establish a residence with his wife for several reasons. One was so that she could be

closer to her job and another was the advantages of the schools in the area. With respect to Harding Avenue, Lavelle remembered respondent saying that his parents owned the property. He also remembered respondent saying that he was born and raised there, that he had lived there his whole life and continued to live there, that he had very significant contacts there, that his bedroom was still maintained there, and that he continued to maintain it as his permanent place of residence. Respondent explained to Lavelle that he always wanted this place to be his permanent location because that is where his friends, neighbors, and political connections were. Lavelle agreed that with respect to voter registration and candidacy purposes, intent is the most important factor in determining one's permanent abode. Lavelle advised respondent that he was eligible to run from Harding Avenue because his intent, coupled with all the factual circumstances, qualified Harding Avenue as his permanent abode under the Election Code. Lavelle remembered that this particular meeting lasted for a couple of hours.

Respondent eventually did decide to run from the Harding Avenue address, and Lavelle prepared his petitions and necessary documentation. Lavelle said that it was not unusual for a person to have two residences, and he had given advice to other persons with respect to residency issues hundreds of times, if not more. Further, Lavelle had previously told the Board in 2002 that he believed that respondent had the right to run from the Tenth Subcircuit in 1994. Lavelle did not believe that it was unusual for someone to reside with his wife and children in one location while also residing elsewhere. When asked what the relevance was of the amount of time a person spent at each of his residences, Lavelle gave the following answer:

> "Well, it becomes a factor with regard to the contacts that are maintained, the circumstances, the significant circumstances. The actual amount of time is not the most significant thing. There are cases that say that you can have a temporary absence from a location for a period of years and still maintain the place that you have significant circumstantial contacts with coupled with the subjective intent to maintain that as your permanent abode.
>
> There is a 1994 Appellate case that specifically holds that and that case builds on prior cases that go back to the 1800s."

On cross-examination, Lavelle agreed that the law was clear that a person must have a permanent abode for voter registration and candidacy purposes. To run for judge, a person must run from the place that contains his permanent abode, and a desire to run from a particular place is not sufficient. Lavelle stated that physical contacts plus intent is the test for a permanent abode and that intent is the main factor. He also believed that a fact finder looks to the circumstances to verify intent. With respect to the breakfast meeting, Lavelle conceded that the discussion about residency only took up a minor portion of the two hours that they spent together. Lavelle further conceded that in previous testimony before the Board he had represented that the amount of time spent on the residency discussion was a few minutes, and probably not more than five minutes. He currently had no independent recollection of the amount of time spent on the discussion, but stated that he would not have given an opinion on the residency matter unless he had all the facts that he needed. Lavelle did ask what respondent's intent was as to his permanent abode, and respondent told him that it was Harding Avenue. If respondent would have said that his intent was his Riverside address, then Lavelle would have told him that he was not eligible to run from Harding. Lavelle took respondent's representation of his intent as true and did no independent investigation. He did not review any

documents or speak to any other people. Lavelle did not charge respondent for his advice and did not give him a written legal opinion. Lavelle agreed that what specifically concerned respondent when he sought Lavelle's advice was whether he could withstand a challenge to his candidacy based on residency. Lavelle agreed that if respondent had not been honest with him about his intent, then he would not have been eligible to run from Harding.

On re-direct, Lavelle explained that some of the factors he considered were where respondent was registered to vote, where he maintained an address for various purposes (his driver's license, general mail, and employment records), and other things that would indicate that one considers a location a viable residence. Lavelle further defended his opinion, explaining that he believed that respondent had significant contacts at both locations and that therefore his intent controlled with respect to establishing a permanent abode.

Respondent's Testimony in his Defense

Respondent later testified in his own behalf. He explained that he first sought to run for judge in 1991. At that time, he was seeking a county-wide seat. He used the address 3620 N. Harding when he ran. He explained that he did so because that was his home. He said that he later learned from Michael Lavelle that the term was permanent abode, but at the time he just felt that it was his home. Respondent said that the reason he used his Longcommon and Kent Road addresses on his tax returns was that those were the relevant properties. Specifically, he was trying to avoid paying capital gains tax on the sale of Kent Road by rolling over the proceeds into Longcommon. He also said that he took exemptions for the Longcommon address because he had a home at that address.

With respect to his Attorney Registration and Disciplinary Commission registration record, respondent said that he had used the Harding Avenue address continually since 1979. He also had always had his State of Illinois W–2 forms sent to Harding Avenue.

Respondent further explained that he had always listed the land trust that owned his Riverside properties on the statement of economic interests that he was required to file every year. Respondent also listed his mortgage for the property. Respondent further explained that the reason he held the Riverside properties in a land trust was that it is good business practice. It gives a person ease of conveyance. Respondent learned about land trusts from his father, who was an expert in real estate law. His father taught him that a land trust was good practice and that many people have them. Respondent had mortgage documents sent to his Kent Road and Longcommon addresses because those were the relevant properties. He also received mail at Harding Avenue from his schools, his life insurance and health insurance companies, various clubs, legal associations, charitable organizations, and his employer.

Respondent testified that he considered the summer home in Capron to be one of his residences. In the 1970s and 1980s, respondent registered approximately 15 cars at Harding Avenue. In the 1990s, he switched his automobile registrations to Capron.

Respondent was specifically asked if his intent with respect to the land trust and any other documents at issue had been to hide where he lived or had a permanent home. Respondent answered "no, sir." He said that hundreds of people knew about his Riverside addresses and that he had never tried to hide his relationship to those addresses. As far as the term "marital residence" being used in the agreed order in the divorce case, respondent explained that a marital residence is a home, acquired during marriage, that the husband and wife live in.

Respondent explained that he first learned what a permanent abode was when he spoke to Lavelle in Oak Park. Before that, he did not think of Harding Avenue as a permanent abode or a

permanent residence, he just thought of it as home. His roots were there, and he always returned to that area. Respondent did not believe that his campaign flyer was dishonest because people share the same problems universally.

CODE OF JUDICIAL CONDUCT

Respondent is alleged to have violated the following canons of the Code of Judicial Conduct (Illinois Supreme Court Rs. 61, 62(A), 63(A)(2),(3),(7),(8), 67(A)(3)(a),(d)(ii) (155 Ill. 2d Rs. 61, 62(A), 67(A)(3)(a),(d)(ii); 188 Ill. 2d R. 63(A)(2),(3),(7),(8))).

> "Rule 61: An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. 155 Ill. 2d R. 61.
>
> Rule 62(A): A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. 155 Ill. 2d R. 62(A).
>
> Rule 63(A):
>
> (2) A judge should maintain order and decorum in proceedings before the judge.
>
> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.
>
> (7) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction. ***
>
> (8) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. 188 Ill. 2d R. 63 (A)(2),(3),(7), and (8).
>
> Rule 67(A):
> (3) A candidate for a judicial office:
>
> > (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary[.]

(d) shall not:

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent[.]" 155 Ill. 2d R. 67(A)(3)(a),(d)(ii).

FINDINGS

Demeanor Counts

In Count I, the Board alleged that respondent's behavior in the case *People v. Ricardo Crocker*, No. 00 C4 41595, violated Rules 61, 62(A), and 63(A)(2),(3),(7), and (8). Because of the grave nature and serious consequences of charges of judicial misconduct, the Board is required to prove its allegations by clear and convincing evidence. *In re Karns, Jr.*, 2 Ill. Cts. Com. 28, 33 (1982). Respondent has stipulated to the conduct alleged in Count I and has agreed that the conduct was inappropriate and undignified and that it demeaned the integrity of the judiciary. Respondent agreed with the Board that he was out of control at the time. We find that the Board proved by clear and convincing evidence that respondent's behavior violated Rules 61, 62(A), and 63(A)(2), (3), and (7). However, we also find that the Board did not prove by clear and convincing evidence that respondent violated Rule 63(A)(8). Respondent admitted that the word "boy" directed at an African-American is offensive. He was, however, adamant that he did not intend to racially demean Mr. Crocker. Although we agree with the Board's assertion that the term "boy" directed at an African-American is offensive, the term itself is not objectively racist and thus does not necessarily indicate racial bias or prejudice. Although respondent's behavior was clearly inappropriate, we cannot find, without more evidence, that the Board proved by clear and convincing evidence that respondent manifested bias or prejudice in the exercise of his judicial duties. See 188 Ill. 2d R. 63(A)(8).

In Count II, the Board alleged that respondent violated Rules 61, 62(A), and 63(A)(2),(3) and (7), in the case *People v. Buford Williams*, No. 00 C4 40614, when respondent said to the defendant, after finding him not guilty, "Be careful. Be real fucking careful." Respondent has admitted making the comment and has admitted that it was a vile and undignified thing to say in the courtroom and that doing so was a violation of the canons. The Board has proven by clear and convincing evidence that respondent violated Rules 61, 62(A), and 63(A)(2),(3) and (7).

In Count III, the Board alleged that respondent's behavior in the case *People v. Malcolm Phillips*, No. 99 CR 16463, violated Rules 61, 62(A), and 63(A)(2),(3) and (7). Respondent has admitted that he showed a lack of impartiality once the verdict was returned and that his behavior violated the canons. The only factual allegation that we find was not proved by clear and convincing evidence is that the jurors were still in the courtroom when respondent tore up the jury certificates. Respondent testified that they were not, and the transcript seems to support respondent's version. Connie James, the court reporter, testified that the transcript accurately represented what happened. Russell Baker, the assistant State's Attorney on the case, testified that the transcript was not accurate and that the jurors were still in the process of leaving the courtroom when respondent tore up the certificates. Baker was a credible witness, but the conflict in the evidence is such that we cannot find that the Board proved by clear and convincing evidence that the jurors observed respondent tear up the certificates. Regardless, we find that the Board established by clear and convincing evidence that respondent's overall behavior when the verdict was returned violated Rules 61, 62(A), and 63(A)(2),(3) and (7). Respondent has admitted as much, and Charles Klimkiewicz's testimony shows

that the jurors were aware of respondent's displeasure with their service, regardless of whether they saw him tear up the certificates.

Residency Counts
Motion to Dismiss

Before proceeding to our findings on Counts IV through VIII, we will address our reasons for denying respondent's motion to dismiss these counts. Respondent argued, based on *People ex rel. Harrod v. Illinois Courts Comm'n*, 69 Ill. 2d 445 (1977), that the Commission could not resolve Counts IV through VIII of the amended complaint without exceeding its constitutional authority. Respondent contends that Counts IV, V, and VIII cannot be resolved without this Commission determining the meaning of the term "resident" as used in Article 6, section 11 of the Illinois Constitution (Ill. Const. 1970, art. VI, §11), and that Counts VI and VII cannot be resolved without this Commission resolving the meaning of the term "permanent abode" within the meaning of the Election Code.

In *Harrod*, the Illinois Supreme Court held that the Commission's primary function is one of fact finding, and that it may also apply the facts to *determined* law. *Harrod*, 69 Ill. 2d at 473. The Commission does not have the authority to resolve statutory ambiguities, and it may not determine, construe, or interpret what the law should be. *Harrod*, 69 Ill. 2d at 473. In *Harrod*, the petitioner was charged with committing judicial misconduct in handing down unorthodox sentences. For instance, when sentencing male defendants, the petitioner would occasionally order them to get a haircut and to appear in court again for observation. He would also require probationers to surrender their drivers' licenses to the clerk of the court and to receive in return a card that identified them as probationers. *Harrod*, 69 Ill. 2d at 452. The Board charged that he had violated Supreme Court Rule 61(c)(18), which prohibits judges from requiring those brought before them to submit to some act or discipline without authority of law. Respondent denied that his sentences were without authority of law because section 5–6–3 of the Unified Code of Corrections, in setting forth the permissible conditions of probation and conditional discharge, provided that: "The Court may *in addition to other conditions* require that the person: [10 permissible conditions are listed.]." Ill. Rev. Stat. 1973, ch. 38, par. 1005–6–3(b). Respondent relied on the phrase "in addition to other conditions," which to that point had not been interpreted by any court. By the time the Commission decided the case, the phrase "in addition to other conditions" had been interpreted by the appellate court in *People v. Dunn*, 43 Ill. App. 3d 94 (1976), a case involving one of the petitioner's haircut orders. The appellate court interpreted the phrase to mean that the other conditions had to be related to the crime charged. The Commission did not cite *Dunn*, but rather came up with its own "sensible construction." The Commission's construction was that the other conditions had to be directed toward rehabilitation, be reasonably related to the offense for which the probation was imposed, and could not be unduly restrictive of personal liberties. *Harrod*, 69 Ill. 2d at 456. The Commission then evaluated the petitioner's conduct under its new standard and found that the "haircut" and "driver's license" orders were impermissible and were imposed without authority of law. The Commission suspended the petitioner for 60 days, and he filed a petition for a writ of *mandamus* from the Illinois Supreme Court. The petitioner argued that the Commission had exceeded its constitutional authority by making its own independent interpretation and then evaluating the petitioner's conduct in light of

that interpretation. The supreme court agreed that the Commission has no power to interpret statutory ambiguities or to compel judges to conform their conduct to any such interpretation. The court elaborated that:

> "To interpret the Constitution as granting the Commission such power would do violence to the intended constitutional scheme of government in this State. To grant the Commission such authority would interfere with an independent judicial system and would place trial judges in an untenable position. If, as here, the statutory interpretation of the Commission differed from that of the appellate courts, trial judges who followed, as mandated, the guidance of the courts of review, would be subject to sanction by the Commission." *Harrod*, 69 Ill. 2d at 473.

The court then explained that the Commission is empowered to find facts and to apply the facts to determined law. The Commission exceeds its authority if it applies its own independent interpretation and construction. *Harrod*, 69 Ill. 2d at 473.

We disagree with respondent's assertion that we may not decide Counts IV through VIII without running afoul of *Harrod*. First, we would not have to interpret a statute or constitutional provision to determine if respondent sent out deceptive campaign literature as alleged in Count IV. The Board alleged that respondent sent out misleading campaign literature when he addressed the voters of the Tenth Subcircuit as his "neighbors," referred to himself as a lifelong resident of St. Viator's Parish, and claimed that he shared their problems. We do not believe that the question of this flyer's deceptiveness turns on the definition of "resident" as used in the Constitution. Next, we would not have to interpret independently a statute to resolve Counts VI and VII. These counts allege that respondent registered to vote in an improper election district and voted in an improper election precinct. The residency requirements for voting and registering are set forth in section 3–1 and 5–2 of the Election Code (10 ILCS 5/3–1, 5–2 (West 2002)). The Election Code is clear that the term "residence" as used in section 3–1 and 5–2 means "permanent abode." (See 10 ILCS 5/3–2 (West 2002) ("A permanent abode is necessary to constitute a residence within the meaning of Section 3–1"); 10 ILCS 5/5–2 (West 2002) ("To constitute residence under this Article 5 Article 3 is controlling").) Contrary to respondent's representation, "permanent abode" has a meaning in the determined law, and this Commission does not need to interpret a statutory ambiguity. Two elements are necessary to create a permanent abode: physical presence and intent to remain there as a permanent home. *Delk v. Board of Election Commissioners*, 112 Ill. App. 3d 735, 738 (1983); *Stein v. County Board of School Trustees*, 85 Ill. App. 2d 251, 256 (1967), *aff'd* 40 Ill. 2d 477 (1968). The Commission will apply this determined definition in resolving Counts VI and VII.

We also believe that the motion to dismiss had to be denied with respects to Counts V and VIII. In Count V, the Board alleged that respondent violated constitutional residency requirements from 1994 through 2000. In Count VIII, the Board alleged that respondent made a false statement of residency on his Judicial Declaration of Candidacy form when he declared himself a candidate to succeed himself in the election to be held on November 7, 2000. Respondent argues that these counts require this Commission to determine the meaning of the term "resident" as used in Article 6, section 11 of the Illinois Constitution (Ill. Const. 1970, Art. VI, §11). That section provides that "No person shall be eligible to be a Judge *** unless he is *** a resident of the unit which selects him." Respondent is technically correct that no court has specifically defined the term "resident" in this section. However, we believe that the determined law makes the definition of this term obvious, and this Commission does not need to apply an independent construction.

The Illinois Constitution also contains a residency requirement for state legislators. Ill. Const. 1970, art. IV, §2(c) (requiring that to be eligible to serve in the General Assembly, a person must

have, for two years preceding his or her election or appointment, been "a resident of the district which he is to represent"). The word "resident" in this provision of the Constitution has been interpreted to mean that a person must have his "permanent abode"in the district that will select him. See *Walsh v. County Officers Electoral Board*, 267 Ill. App. 3d 972, 976 (1994); *Dillavou v. County Officers Electoral Board*, 260 Ill. App. 3d 127, 132 (1994). Thus, the residency requirement in the constitutional provision relating to the state legislators has a meaning of "permanent abode" in the determined law. We believe that an examination of the determined law shows that this construction applies equally to the term "resident"as used in the constitutional provision relating to judges. When construing constitutional provisions, the courts apply the rules of statutory construction. *Baker v. Miller*, 159 Ill. 2d 249, 257 (1994). It is a cardinal rule of statutory construction that where a word is used in different sections of the same statute, the presumption is that the word is used with the same meaning throughout the statute, unless a contrary intent is clearly expressed. *People v. Maggette*, 195 Ill. 2d 336, 349 (2001); *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 513 (1998). There is no intent expressed in the Illinois Constitution for having the word "resident" mean two different things when referring to the residency requirement for legislators and judges, and we thus believe it is clear that the definition of "permanent abode" applies equally to the residency requirement for judges.

Moreover, respondent has not exhibited any confusion on this matter. He testified that "permanent abode" was the proper test and that that was the advice he had received from Michael Lavelle. Therefore, this is not like the situation in *Harrod* when the Commission was coming up with a definition of a statutory term for the first time and then evaluating the respondent's past conduct in light of the new test–a test that differed from the appellate court's construction. Here, respondent knew all along that permanent abode was the proper test, that is what his attorney told him, and respondent has taken the position that his permanent abode was on Harding Avenue. This Commission can decide these allegations without running afoul of the rule in *Harrod*, and respondent's motion to dismiss was properly denied.

PRELIMINARY FINDINGS

Before moving on to a discussion of the particular counts, we make the following preliminary findings. First, the Board proved by clear and convincing evidence that respondent's permanent abode, at least since 1989, was in Riverside, first at 341 Kent Road and then at 177 Longcommon Road. It appears that respondent had abandoned 3620 N. Harding as his permanent abode at least by 1985 when he married his first wife, and possibly as early as 1979. However, for purposes of this proceeding, we need only determine where respondent's permanent abode was from 1991 through 2000, and the Board proved by clear and convincing evidence that it was in Riverside.

Two elements are required for a permanent abode: physical presence in that place, plus intent to remain there as a permanent home. *Dillavou*, 260 Ill. App. 3d at 132. In *Park v. Hood*, 374 Ill. 36, 43 (1940), the Illinois Supreme Court further explained the meaning of permanent abode as follows:

> "A real and not an imaginary abode, occupied as his home or dwelling, is essential to satisfy the legal requirements as to the residence of a voter. One does not lose a residence by temporary removal with the intention to return, or even with a conditional intention of acquiring a new residence, but when one abandons his home and takes up his residence in another county or election district, he loses his privilege of voting in the district from which he moved."

In *Kreitz v. Behrensmeyer*, 125 Ill. 141, 195 (1888), the supreme court stated the following:

> "We have frequently held, that when a party leaves his residence, or acquires a new one, it is the intention with which he does so that is to control. Hence the shortest absence, if at the time intended as a permanent abandonment, is sufficient, although the party may soon afterwards change his intention; while, on the other hand, an absence for months, or even years, if all the while intended as a mere temporary absence for some temporary purpose, to be followed by a resumption of the former residence, will not be abandonment."

Intent is determined primarily from a person's acts. *Stein v. County Board of School Trustees*, 40 Ill. 2d 477, 480 (1968). Although declarations of intent are admissible as evidence thereof, acts and surrounding circumstances should be given more weight in making the factual determination of intent. *Delk*, 112 Ill. App. 3d at 738; see also *Kreitz*, 125 Ill. at 195 (declaration of party's intent can be disproved by his acts); *Dillavou*, 260 Ill. App. 3d at 133 (same).

Here, we find that respondent's declarations of his intent to make 3620 Harding Avenue his permanent abode were merely self-serving statements that were clearly disproved by evidence of his acts. We find that respondent was not a credible witness and that his declarations of intent were not credible and were contrary to human experience. Respondent admitted that, beginning in 1989, he lived a normal family life in Riverside. However, he also made the incredible assertions that: (1) although his wife and children had only one home address in Riverside, he personally had two home addresses: one in Riverside, and one at his parents' home at 3620 N. Harding; (2) his permanent abode was not with his wife and children in Riverside, but rather at his parents' home at 3620 Harding, where he had not lived full-time for years; and (3) he also had a separate permanent abode from his first wife. Hers had been at their apartment on Springfield Avenue, while his was at his parents' house at 3620 N. Harding. In *Park*, the supreme court explained that a permanent abode is "[a] real and not an imaginary abode, occupied as his home or dwelling[.]" The evidence conclusively showed that respondent's real abode occupied as a home or dwelling was in Riverside, first at Kent Road and then at Longcommon.

The evidence further showed that Harding was an imaginary abode. This was respondent's parents' home, in which respondent had no ownership interest and in which respondent had not lived for years. Respondent's two sisters were equal heirs to his parents' estate, and respondent did not know if they had any intention of returning to Harding Avenue. Moreover, despite respondent's self-serving statements, nothing in the evidence showed that respondent left temporarily with the intention of returning. He was an emancipated adult who had moved from place to place, finally establishing a residence with his wife in Riverside. Respondent conceded that when he was living in Riverside he had no intention of leaving his wife. Respondent testified that one's permanent abode is one's home, and the evidence proved by clear and convincing evidence that respondent's home was in Riverside. As the supreme court held in *Park*, "when one abandons his home and takes up his residence in another county or election district, he loses his privilege of voting in the district from which he moved." *Park*, 374 Ill. at 43. Many of the contacts respondent had with 3620 N. Harding were simply what would be expected of a person who still lives near his parents. For instance, the Commission finds nothing remarkable about the fact that respondent would sometimes eat meals there, had a key to the door, and knew the code for the burglar alarm. Moreover, the Commission gives little weight to the fact that respondent was receiving mail at Harding Avenue, because we find that this was merely part of respondent's scheme to create the impression that 3620 N. Harding was his permanent abode. Finally, the fact that respondent spent the night there when his wife and children were on vacation cannot transform that address into his permanent abode. The absurdity of

respondent's argument is that it would mean that respondent was *not* eligible to run for election or to vote in Riverside, where by his admission he was living a normal family life with his wife and children.

The Commission finds *Stein* instructive, as it also involved whether a person had a permanent abode at her parents' residence. That case involved a petition for detachment of territory from one school district and its annexation to other districts. The County Board of School Trustees of Du Page County held that it did not have jurisdiction to hear the petition because it had not been signed by two-thirds of the legal voters residing in the area. The trial court affirmed this decision, and the parties seeking detachment appealed. The dispute turned on whether one person, Nancy Kolby was a legal voter at the time the petition was filed on June 9, 1965. The appellate court stated that the proper test was whether Nancy had a permanent abode on that date (*Stein*, 85 Ill. App. 2d at 254) and that the test for a permanent abode was physical presence plus the intent to remain in that place as a permanent home (*Stein*, 85 Ill. App. 2d at 256). The evidence showed that Nancy had been living with her parents within the boundaries of the area in question. On January 29, 1965, the Kolby's home was destroyed by fire, and the family, including Nancy moved to a hotel outside the area in question while the home was being rebuilt. The parents at all times intended to return to their home after it had been rebuilt. Nancy, however was engaged to James Hunt at the time of the fire, and their wedding date was set for June 26, 1965. On or about May 10, 1965, Hunt executed a lease naming himself and Nancy Hunt as lessees. The lease period was to begin June 1, 1965. On June 1, Nancy began to move her personal belongings and furniture into the new apartment. However, she continued to reside with her parents at the hotel until her wedding on June 26.

The court noted that the question of Nancy's residence was a factual one, and resolved the question thusly:

> "The question of Nancy's residence is a factual one. There is no question that she had physically abandoned her parents' home within the area in question at the time of the fire in January of 1965. Her parents also physically left their residence at that time but, beyond doubt, they at all times intended to return there as their residence when it was rebuilt. Unquestionably, they did not abandon their established residence.
>
> Nancy's intent is something different. Not only did she physically abandon her prior residence, but we think it unquestionable that on June 9, 1965, her intent was unconditionally and unequivocally not to return there as her place of residence. True, the world being what it is and full of uncertainties, something might have happened between June 9 and June 26 so that Nancy would not marry her fiancé on that date. But so far as the question before us is concerned, the normal uncertainties of life did not make her intent, as of June 9, not to return to her parents' home as her place of residence, any less unconditional.
>
> On June 9, Nancy and her fiancé had been engaged for some time; approximately one month prior to this date, they had obtained a lease for their future home; the terms of the lease had already commenced on June 9 and Nancy had, in fact, removed some of her possessions and furniture from the temporary dwelling of her parents to her new home; her impending marriage was slightly more than two weeks away; and the rebuilding of her parents' home was obviously not close to completion as indicated by the fact that it was not reoccupied by them until the fall of the year.
>
> All of these facts and circumstances suggest but one conclusion as to Nancy's intent on June 9. It was that she would not return to her prior home at any future time, as her permanent dwelling or place of abode." *Stein*, 85 Ill. App. 2d at 258-59.

The court noted that Nancy's father's testimony was consistent in that he agreed that Nancy's intent was not to return to her parents' home, but found that this testimony was superfluous because the surrounding facts and circumstances suggested only one conclusion as to Nancy's intent on June 9. *Stein*, 85 Ill. App. 2d at 259. The court reversed the lower court's decision, holding that because Nancy was not a legal voter in the area in question, the petition had been signed by the requisite two-thirds of the legal voters. The supreme court affirmed the appellate court's decision. *Stein*, 40 Ill. 2d 477.

Despite the fact that Nancy had been living at her parents' home and was still living with them at the time of the fire, all that the appellate court needed to know to resolve the issue was that respondent had signed a lease with her fiancé and was planning on moving in with him after they were married. The court held that these facts "suggested but one conclusion" as to Nancy's intent. We also believe that the facts before us suggest but one conclusion: that respondent's intent was to make his permanent abode in Riverside with his wife and children.

We note that Michael Lavelle testified that it is not unusual for a person to have two residences and that it is "not uncommon to have candidates who either maintain two different addresses or who are in the process of moving or they may have a location in one place and are seeking to establish a location in a new district in order to establish residency to be a candidate." This may be true, but respondent was not one of these people. He had one residence with his wife and children in Riverside. The residence at Harding Avenue was respondent's parent's residence, not respondent's.

Dillavou is an example of a case in which the candidate in question had two residences. In that case, a challenge was made to Michael Curran's eligibility to run as State representative from the 100th District. Curran had been representing that district, but legislative reapportionment put Curran's residence in the 99th District. Curran knew that the law required him to establish residency in the 100th District at least 18 months prior to the 1994 election if he wanted to continue to represent the 100th District. *Dillavou*, 260 Ill. App. 3d at 129. In February 1993, the Currans put an offer on a house in the 100th District, but the deal fell through. Curran then rented a townhouse in April 1993, and moved in May 1993. Curran's family did not move with him, because they wanted their new home in the 100th District to be in the Butler School District. They planned to reunite as soon as a home that was both in the 100th district and the Butler School District could be found. Curran then purchased a home that was one block from his office at the State Capitol. This house was also temporary because it was not within the Butler School District, so Curran's wife and children still did not move in. Curran testified that he switched from renting to owning because he wanted to establish "absolutely" that he was a resident of the 100th District. Curran estimated that he spent 40% to 50% of his time with his wife at their old home, and the remainder of the time at the new house. *Dillavou*, 260 Ill. App. 3d at 129-30. The challengers' main contention was that the rental property had admittedly been a temporary residence, and therefore it could not have been respondent's permanent abode. If the time in the townhouse could not be counted, then Curran would not have been a resident for the requisite period. The court upheld the Electoral Board's decision that Curran had established residency in the 100th District. The court found it irrelevant that Curran had only intended to occupy the townhouse on a temporary basis. The undisputed evidence showed that Curran had established a physical presence by moving into a home in the 100th district. Further, the evidence showed clearly that Curran intended to make his permanent abode in the 100th district. The "permanence" does not have to attach to a particular structure. *Dillavou*, 260 Ill. App. 3d at 133-34.

Unlike the candidate in *Dillavou*, respondent did not have two residences, and there was no

evidence that he was trying to establish residency in the Tenth Subcircuit. Rather, the evidence showed conclusively that he had established a permanent abode with his wife and children in Riverside and was running for office using his parents' address in the Tenth Subcircuit.

The Commission further finds that, in general, respondent was not a truthful witness. For instance, respondent could not give simple answers to questions about where he lived at various times. He would give answers such as, "It depends what your subjective meaning of the word live is;" "You keep coming back to this word lived. There is no agreement as to what that word means because it's a vernacular subjective word;" and "as I understand it lived is not something that is quantitatively measured. It's a vernacular word that means just about anything, sir, and that is why I am having a very difficult time when you are constantly using that verb to know exactly what you mean." Also, when asked why he listed Harding Avenue as his residence when he filed his declaration of candidacy for the 1992 election, respondent claimed that it was "the most truthful answer [he] could give," an absurd statement given that respondent had been living in Riverside with his wife for three years by that time.

The Commission also finds that the Board proved by clear and convincing evidence that respondent engaged in a scheme to conceal his permanent abode in Riverside. The evidence showed that mail relating to respondent's legal career was sent to 3620 N. Harding. Further, that is the address that respondent gave to his employer. It was not until respondent failed to show up for court one day that he disclosed his true address in Riverside, and this address was then placed on a document entitled "Real Addresses of Fourth District Judges." Other mail, such as respondent's magazines and newspaper, utility bills, and mortgage correspondence was sent to respondent's home in Riverside. Clearly, it would have been more convenient for respondent to receive all of his mail where he was living in Riverside, and the Commission finds that respondent was having mail related to his legal career sent to 3620 N. Harding as part of an effort to conceal his permanent abode. Moreover, the Commission notes that information that was publicly available would not reveal Respondent's residence in Riverside. The Riverside homes were held in a land trust, while 3620 N. Harding was owned by Francis X. Golniewicz, a name that respondent shares with his father. Respondent registered his automobiles at his parents' summer home in Capron. Two of the three utility bills were in his wife's name, and the third was under the misspelled name "F. Galniewicz." Respondent registered his cars at his parents' summer home in Capron, instead of in Riverside where he was living and where he had his cars serviced. The Commission finds that respondent's stated reason for doing so was evasive and unconvincing. Moreover, respondent failed to disclose his wife's employment on the publicly available statements of economic interest that he filed every year. The Commission finds respondent's answer that he did not understand the questions unconvincing. The Commission also notes that respondent's campaign committee's D-2 forms for the 1992 and 1994 elections improperly listed respondent's wife's address as 3620 N. Harding, even though respondent has admitted that his wife never lived there. On forms that were not publicly available, such as respondent's tax returns and mortgage documents, he used his Riverside address. We believe that all of the evidence, taken together, shows that respondent actively concealed his permanent abode. Respondent has argued that there is nothing wrong with keeping your property in a land trust and that it makes good sense to do so. The Commission does not disagree with this statement, but we believe that respondent is missing the point. The land trust is but one piece of circumstantial evidence that, taken together with other evidence, shows that respondent was actively concealing his permanent abode in Riverside.

The evidence does not bear out respondent's position that he did nothing wrong, did not try

to conceal his residence in Riverside, and was always open and up front about where he was living. The record shows that while defendant was living on Cullom Avenue and working as an assistant State's Attorney, he changed the address in his records from Cullom Avenue to Harding Avenue, even though his relationship to Harding Avenue did not change during this time, and his actual address change was from Cullom Avenue to 341 Kent Road in Riverside. When respondent first became a judge in 1991, he listed his wife as his primary beneficiary on his insurance form with the State, but he listed her address as 3620 N. Harding, even though she had never lived at that address. Moreover, respondent's wife changed her voter registration from Kent Road to 3620 N. Harding, even though she had never lived at that address and her permanent abode was on Kent Road. Respondent did not try to stop her from voting at Harding. A schedule attached to respondent's D–2 form for the 1994 election lists his wife's address as 3620 N. Harding. Respondent claimed that he did not review the schedule, but he signed the D–2 form underneath a verification that he had done so. The evidence shows that, as far as his legal career was concerned, respondent was never open and honest about his Riverside address until the "Real Addresses of Fourth District Judges" list was prepared, following an incident in which respondent failed to show up for court and could not be found.

The Commission further finds that respondent's intent was not to have a permanent abode at 3620 N. Harding, but to run from the address that provided him the greatest chance of winning the election. The evidence showed that respondent was a Democrat, and that the Harding Avenue neighborhood was a Democratic stronghold. Riverside, on the other hand, was a Republican stronghold. Respondent's father had served as a judge while residing at the Harding Avenue address, and all of respondent's contacts were in that area. The evidence shows that respondent established a permanent abode in Riverside with his wife because she needed to be close to Hinsdale Hospital. Because this presented problems for respondent's political ambitions, he pretended that his permanent abode was at 3620 N. Harding.

COUNTS IV THROUGH VIII

We will now discuss the specific allegations in the residency counts. In Count IV, the Board alleged that respondent distributed misleading campaign literature and that this violated Rules 61, 62(A), 67(A)(3)(a), and 67(A)(3)(d)(ii). The Board has proven these allegations by clear and convincing evidence. The campaign flyer contained a letter written by respondent, in which he opened "Dear Neighbors." Moreover, respondent referred to himself as a "lifelong resident of St. Viators [sic] Parish on the Northwest side of Chicago" who shared the same problems as the voters in the Tenth Subcircuit. This flyer was deceptive. Respondent stipulated that he wanted those who received the flyer to think of him as their residential neighbor. He was not. Further, he was not a lifelong resident of St. Viator's Parish who shared the same problems as the people who lived in the Tenth Subcircuit. Rather, he was a resident of Riverside and had been for some time when he sent out this flyer. Although respondent was not a "resident" of the Tenth Subcircuit in the legal sense, that is not really the critical inquiry here. The relevant question is whether it was deceptive for respondent to make these representations to the voters of the Tenth Subcircuit while he was living in Riverside. Clearly, it was. No voter in the Tenth Subcircuit who received this flyer would understand that it was sent by a person who was living with his wife and children in Riverside. Respondent misrepresented present facts about himself and this demeaned the integrity of the judiciary.

In Count V, the Board alleged that respondent violated constitutional residency requirements

and that, in doing so, he violated Rules 61, 62(A), 67(A)(3)(a), and 67(A)(3)(d)(ii). The Board initially alleged that respondent violated constitutional and statutory residency requirements from 1994 to the present. However, the Board later modified the allegations in this count to 1994 through 2000 because of a perceived statutory ambiguity on whether a resident judge must continue to reside in the subcircuit after winning a county-wide retention election. We find that the Board has proved its allegations by clear and convincing evidence.

Article VI, section 11, of the Illinois Constitution provides that "No person shall be eligible to be a Judge *** unless he is *** a resident of the unit which selects him"(Ill. Const. 1970, Art. VI, § 11), and section 2f(e) of the Circuit Courts Act provides that "[a] resident judge elected from a subcircuit shall continue to reside in that subcircuit as long as he or she holds that office" (705 ILCS 35/2f(e) (West 2002)). As discussed above, residence in this context means permanent abode, and respondent's permanent abode was in Riverside, not at 3620 N. Harding. Respondent violated the law by running for office from the Harding Avenue address while living in Riverside.

Respondent argues that we cannot find that the Board proved by clear and convincing evidence that he violated the Code of Judicial Conduct because he relied on the advice of election attorney Michael Lavelle. We reject this argument. First, we find that respondent was not honest with Lavelle. Lavelle testified that respondent told him that his intent was that 3620 N. Harding was his permanent abode. We find that respondent was not being honest with Lavelle, as the evidence clearly shows that respondent's permanent abode was in Riverside. Lavelle agreed that if respondent's intent was to make his permanent abode in Riverside, then respondent was not eligible to run from Harding Avenue. Lavelle also testified that respondent told him that he continued to live at Harding Avenue and continued to maintain it as his permanent place of residence. These statements are simply untrue. Moreover, it is apparent that respondent did not seek Lavelle's advice on where his residence was for candidacy purposes. Rather, the evidence is clear that respondent had already devised his scheme to run from his parents' address and he sought Lavelle's advice to see if he could get away with it. Respondent had already begun to conceal his permanent abode before he met with Lavelle, and he had already used an improper address when he ran in the 1992 election. Respondent admitted that he did not call the Board of Elections and did not ask for a written opinion from Lavelle. Moreover, the conversation lasted only a few minutes, and clearly all of the evidence of respondent's intent could not have been considered in a few minutes. Because the evidence shows that respondent was not truthful with Lavelle, respondent's defense that he relied on Lavelle's advice in deciding to run from Harding Avenue must be rejected. Respondent's violation of the law in running from Harding Avenue demeaned the integrity of the judiciary and violated Supreme Court Rules 61, 62(A), 67(A)(3)(a), and 67(A)(3)(d)(ii).

Count VI alleged that respondent registered to vote in an improper election precinct and Count VII alleged that respondent voted in an improper election precinct. The Board alleged that this conduct violated Rules 61 and 62(A). The Election Code is clear that a permanent abode is necessary to constitute a residence. Respondent's permanent abode was in Riverside, but he never changed his voter registration to his Riverside address. Respondent registered to vote at his parents' address years after he had moved away, and he continued to vote from that address. This conduct demeaned the integrity of the judiciary, and the Board proved by clear and convincing evidence that respondent violated Rules 61 and 62(A).

In Count VIII, the Board alleged that respondent made a false statement of residency on his Judicial Declaration of Candidacy form and that this violated Supreme Court Rules 61, 62(A), 67(A)(3)(a), and 67(A)(3)(d)(ii). On June 21, 1999, respondent filed a Judicial Declaration of

Candidacy form, declaring himself a candidate to succeed himself in the 2000 election. Respondent falsely stated on the form that he resided at 3620 N. Harding. The Board proved by clear and convincing evidence that respondent's permanent abode was at 177 Longcommon Road in Riverside when he filled out this form. Respondent's conduct demeaned the integrity of the judiciary, and the Board proved the allegations of this count by clear and convincing evidence.

CONCLUSION AND ORDER

The Commission finds that respondent has consistently engaged in a pattern of behavior that violated the judicial canons, demeaned the integrity of the judiciary, and brought the judicial office into disrepute. Respondent used deception to get elected. He was living in Riverside, but used his parents' address to run for election because he had a much greater chance of winning an election using that address. Respondent actively concealed his true permanent abode. He sent out deceptive advertising to the voters, telling him that he was their "neighbor" and a lifelong resident of their district. Once elected, respondent continued to violate state residency laws by residing outside of the subcircuit from which he was elected. For years, respondent violated the Election Code by voting and maintaining his voter registration in an improper election precinct. On the bench, respondent in three separate cases acted in such a way as to demean the integrity of the judiciary. He cursed at one defendant, was verbally abusive to another, and improperly and immaturely showed his displeasure to a jury that returned a verdict with which respondent personally disagreed. Moreover, respondent's testimony at the hearing was dishonest and his answers were evasive. Instead of taking responsibility for his actions on the residency counts, respondent blamed the Board for its "wrong headed" prosecution and said that he would not do anything differently. The Commission finds that the only appropriate remedy in this case is to remove and dismiss respondent from the office of Circuit Court Judge, effective immediately. It is so ordered.

Respondent removed from office.