(No. 80 CC 4.—Respondent reprimanded.)

In re APPELLATE JUDGE JOHN M. KARNS, JR. of the Fifth Judicial District, Respondent.

Order entered December 17, 1982.—Motion for reconsideration denied February 25, 1983.

SYLLABUS

On July 11, 1980, the Judicial Inquiry Board filed a multi-paragraph complaint with the Courts Commission, charging the respondent with willful misconduct in office and with conduct that is prejudicial to the administration of justice and that brings the judicial office into disrepute. In summary form, the allegations were that on the night of September 21, 1978, the respondent, while driving his car through the village of Caseyville, Illinois, was stopped by a Caseyville police officer and was advised by the officer that he was to be charged with driving under the influence of alcohol; that when the police officer asked him for his driver's license, the respondent said he was a judge, and when the officer said his car would be towed for

safekeeping, the respondent became abusive and cursed the officer; that while seated in the police car, the respondent handed the police officer a business card which identified him as a judge; that after being transported to the police station, the respondent declined to take a breathalyzer test, and initially refused to cooperate with police personnel and to be fingerprinted or photographed; that at the police station the respondent threatened to fight the arresting officer and used profanity; that after his attorney arrived at the station, the respondent did cooperate with the police personnel to be fingerprinted and photographed; that the respondent was charged in two complaints with driving under the influence of alcohol and with improper lane usage; and that when he was advised he would be required to post bond, the respondent said he was a judge and could sign his own recognizance bond, and the arresting officer after conferring with the chief of police released the respondent on a recognizance bond.

The complaint further alleged that in the morning following his arrest, the respondent and his attorney met with the chief of police at the police station and, as a result of the meeting, the original traffic complaints and copies of the relevant arrest and processing documents were turned over to the respondent and his attorney; that on "information and belief" the respondent and his attorney were responsible for the destruction or suppression of the documents and records; that the respondent was never prosecuted for the traffic offenses; and that by engaging in the above-described conduct, the respondent violated Supreme Court Rules 61(b) and 61(c)(4) (Ill. Rev. Stat., ch. 110A, pars. 61(b) and 61(c)(4)).

Held: Respondent reprimanded.

Krupp & Miller, Dan K. Webb, and Pierce, Lydon, Griffin & Montana, all of Chicago, for Judicial Inquiry Board.

William J. Harte, Ltd., of Chicago, for respondent.

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

ORDER

The Judicial Inquiry Board filed a Complaint which alleges that the respondent, John M. Karns, is guilty of

judicial misconduct (Supreme Court Rule 62, Ill. Rev. Stat. 1981, ch. 110A, par. 62) arising out of events which occurred when he was stopped by a Caseyville, Illinois, police officer on September 21, 1978. According to the Board, the respondent: (1) used profane and offensive language toward Caseyville police officers; (2) attempted to dissuade the police from charging him with traffic offenses by referring to his judicial office; (3) presided over his own bond hearing; (4) caused the unlawful dismissal of traffic charges which had been brought against him; and (5) was responsible for the destruction of the records concerning his arrest.

The following facts are material as background for our discussion of these charges.

On September 21, 1978, the respondent, a resident of Belleville, Illinois, got up at 5:30 a.m. and drove to Decatur, Illinois, where he participated in a seminar sponsored by the Illinois Press Association. The seminar ended at 4:30 p.m., but the respondent remained in Decatur for another hour, and he had one or two drinks with the publishers and journalists who attended the meeting.

At about 5:30 p.m., the respondent drove to Glen Carbon, Illinois, where Judge George Moran was having a housewarming party. The respondent arrived at the party between 8:00 and 8:30, and stayed until about 11 p.m. The evidence shows that, although he was tired and he had had several drinks at the party, the respondent was not intoxicated when he drove home.

The route home took the respondent through Caseyville, Illinois, where Ronald Tamburello, a Caseyville police officer who was driving an unmarked car, signaled for the respondent to stop. As soon as he ascertained that the unmarked car actually was a police vehicle, the respondent stopped.

Tamburello informed the respondent that his vehicle

had crossed a yellow line several times. The respondent believed that Tamburello was referring to an area of roadway where the two-lane highway had just been converted into three lanes with a left turn lane in the center. This recent construction had caused some confusion about the lane markings, so the respondent told the officer that there was no basis for charging him with a lane change violation.

Tamburello asked for the respondent's driver's license, and instead of producing his license, the respondent told Tamburello that he was a judge and handed the officer his business card.

When questioned about drinking, the respondent admitted that he had had a few drinks over the course of the day. In reply Tamburello said that he intended to charge the respondent with making illegal lane changes and with driving while intoxicated. Then, Tamburello insisted on having the respondent's car towed to the Caseyville police station, even though the station was almost in sight and Caseyville Trustee Rick Casey, an observer who was riding in the police car, was willing to drive the respondent's car the block or two to the station. Using some profane and offensive language, the respondent protested that, under the circumstances, it was ridiculous to have his car towed such a short distance.

When they got to the police station, the respondent sought to invoke his right to call an attorney.[1] Instead, the respondent was asked to take a breathalyzer test first. As a result, he believed that the Caseyville police were unreasonably depriving him of the right guaranteed by section 103—3 (Ill. Rev. Stat. 1977, ch. 38, par. 103—3), and he again used some profane and offensive language when addressing the police officers.

[1] See section 103—3(a) of the Code of Criminal Procedure of 1963, Ill. Rev. Stat. 1977, ch. 38, par. 103—3(a).

Eventually, he was permitted to call his attorney, Charles Hamilton, who arrived in about half an hour. Hamilton observed that the respondent appeared to be sober, and after the respondent informed him of what had transpired, Hamilton concluded that there was no reasonable basis for stopping or charging the respondent. Hamilton further concluded that the respondent's intemperate language had caused some hard feelings toward the respondent, and Hamilton wanted a disinterested supervisor to review the circumstances and decide whether there were any grounds for filing traffic charges. So, at Hamilton's request Tamburello called Donald Paulik, the Caseyville Chief of Police.

Hamilton informed Paulik that he did not believe that there were any grounds for filing traffic charges against the respondent, and that the respondent's offensive language had apparently angered the police. After discussing the matter with Tamburello, Paulik decided that he would have to determine whether there were any grounds for filing charges. But because of the late hour, he felt that his decision could wait until morning. It was understood, however, that no charges would be filed until Paulik completed his investigation the next morning.

Despite the understanding that no decision had been reached on whether there were any grounds for filing charges, when the respondent and Hamilton were leaving the station, Tamburello insisted that the respondent sign a bond form. To avoid sparking another argument, Hamilton told the respondent to just sign the proffered bond form.

The next day, after having reviewed the occurrence of the previous night, Paulik determined that there were no grounds for filing traffic charges against the respondent.

Initially, we note that the 1970 Illinois Constitution authorizes the Courts Commission to discipline a judge

who is guilty of "willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute * * *." (Ill. Const. 1970, art. VI, sec. 15(e)(1).) The Supreme Court's Standards of Judicial Conduct (Supreme Court Rule 61 *et seq.*, Ill. Rev. Stat. 1979, ch. 110A, par. 61 *et seq.*) provide useful guidance for judicial officers, but it is section 15(e) of article VI of the 1970 Illinois Constitution which both authorizes us to discipline judges and which limits the circumstances in which we can impose the prescribed sanctions. Moreover, the phrases "conduct that is prejudicial to the administration of justice" and "conduct * * * that brings the judicial office into disrepute" are inherently vague. The Courts Commission, therefore, must proceed carefully on a case-by-case basis in determining whether these vague guidelines have been violated in a particular case.

It must also be emphasized that, in light of the grave nature and serious consequences of charges of judicial misconduct, we have consistently required that the Judicial Inquiry Board must prove its allegations by clear and convincing evidence rather than merely by a preponderance of the evidence. (See 1 Ill. Cts. Com., Rule 11, at page xxvi (1980).) Fundamental fairness, and longstanding American traditions of justice, prevent us from stigmatizing judicial officers with disciplinary sanctions unless the Judicial Inquiry Board had proven its charges by a high degree of certainty. Therefore, proof that alleged judicial misconduct is merely probable, or even more probable than not, does not justify discipline under section 15(e) of article VI of the 1970 Illinois Constitution.

An additional distinction which must also be kept in mind is that:

" 'Willful misconduct in office' normally refers to cases where a judge has acted in bad faith while acting in his

judicial capacity. 'Conduct prejudicial to the administration of justice' refers to conduct that detracts from the public esteem in which the judicial office is held by reason of misconduct not related to the judge's official duties." Overton, *Grounds for Judicial Discipline in the Context of Judicial Disciplinary Commissions*, 54 Chi-Kent L. Rev. 62 (1977).

In light of the foregoing principles, and the burden of persuasion imposed by our Rule 11, we make the following findings:

(1) The Judicial Inquiry Board has proved, by clear and convincing evidence, that the respondent brought the judicial office into disrepute by addressing profane and offensive language toward Caseyville police officers.

(2) The respondent volunteered the information that he is a judge, after he was detained by a police officer who suspected that he had violated traffic laws, although he should have known that his conduct could have been misinterpreted as indicating that he was attempting to use his judicial office to keep from being charged. We find that this conduct brought the judicial office into disrepute.

(3) The Board has failed to sustain the charge that the respondent committed willful misconduct in office by judically authorizing his release on his own recognizance. The Board simply failed to prove, by clear and convincing evidence, that the respondent signed the proffered bond form in the place reserved for a judge who held a bond hearing, rather than in the place reserved for the signature of the arrestee. Nevertheless, the respondent was released without posting any cash, even though Supreme Court Rule 526 (Ill. Rev. Stat. 1977, ch. 110A, par. 526) required that a cash bond be posted (in the absence of a judicially authorized recognizance bond) for the charges the police contemplated

filing against the respondent.[2] Thus we find that the respondent has brought the judicial office into disrepute by permitting the creation of an appearance of impropriety concerning his release from custody.

(4) The Judicial Inquiry Board failed to prove that there was any wrongdoing, impropriety, or illegality involved in the decision not to file traffic charges against the respondent. Section 107—6 of the Code of Criminal Procedure of 1963 authorizes the police to unconditionally release an arrestee if the releasing officer is satisfied that there are no grounds for a prosecution. (Ill. Rev. Stat. 1977, ch. 38, par. 107—6.) Before enactment of this provision, the police were prohibited from unconditionally releasing someone who had been arrested, even if it became obvious that a mistake had been made. (Ill. Ann. Stat., ch. 38, par. 107—6, Committee Comments, at 460 (Smith-Hurd 1980).) The purpose of section 107—6, therefore, is to "allow mistakes to be erased without inconvenience or expense to both parties." (Committee Comments at 460-61.) Moreover, the power to uncon-

[2] The fact that someone has been released on bond under Rule 526 does not necessarily mean that charges have been filed or a prosecution commenced. Section 2—16 of the Criminal Code of 1961 provides that a prosecution commences with the return of a grand jury indictment or the issuance of a prosecutor's information. (Ill. Rev. Stat. 1977, ch. 38, par. 2—16.) There is no reference in section 2—16 as to when a prosecution by complaint is considered as having commenced, although section 111—1 of the Code of Criminal Procedure of 1963 specifies that a prosecution may be commenced by complaint as well as by indictment and information. (Ill. Rev. Stat. 1977, ch. 38, par. 111—1.) By definition, however, a "complaint" is a written charge, other than an information or indictment, which has been "presented to a court" (Ill. Rev. Stat. 1977, ch. 38, par. 102—9). Therefore, prosecution by complaint is not commenced until the complaint is filed with the court. Furthermore, a traffic ticket does not constitute a complaint until a copy of the ticket has been filed with the circuit court. (Ill. Rev. Stat. 1977, ch. 38, par. 111—3(b).) It necessarily follows that neither the issuance of a traffic ticket, nor release of a possible traffic offender under Supreme Court Rule 526, constitutes the filing of charges or the commencement of a prosecution. This conclusion is further supported by section 110—7(c) of the Code of Criminal Procedure which contemplates that a charge might not be filed until *after* someone has been released on bail. Ill. Rev. Stat. 1977, ch. 38, par. 110—7(c).

ditionally release an arrestee also extends to the supervisors of the arresting officer. Committee Comments at 461.

In the present case, Chief Paulik's investigation convinced him that there were no grounds for filing a complaint against the respondent, and he concluded that the contretemps involving the respondent was caused by the respondent's offensive language and the resentment it had engendered in the arresting officer. This all occurred before a complaint was filed with the circuit court and a prosecution commenced. (See footnote 2.) So, once Paulik became convinced that a mistake had been made in arresting the respondent, and that there were no grounds for filing charges against him, it was proper to invoke section 107—6 so that the "mistak[e] [could] be erased without inconvenience." Ill. Ann. Stat., ch. 38, par. 107—6, Committee Comments, at 460 (Smith-Hurd 1980); *cf. People v. Thoms* (1977), 50 Ill. App. 3d 398 (section 107—6 is not applicable when the releasing officer actually knows that there were grounds for prosecuting the person arrested).

It may be that Paulik erred in concluding that there were absolutely no grounds for filing charges against the respondent, but nevertheless, it is clear that the respondent, his attorney, and Paulik all believed, in good faith, that there were no grounds for filing a complaint against the respondent.

There was a valid good-faith decision — as authorized by law — not to file charges against the respondent, and we necessarily conclude that this did not involve any misconduct or wrongdoing.

(5) Finally, we find that the Judicial Inquiry Board failed to prove by clear and convincing evidence that the respondent is responsible for the destruction of the records concerning his arrest. The only evidence that the respondent was in any way responsible for the missing

records are statements made at a Board hearing in which he voiced a conclusion that his attorney had received and destroyed the missing records. The respondent's baseless speculation was commendably candid, but this unsupported conjecture is not sufficient to provide a basis for holding him responsible for the missing documents. We also find it insignificant that the respondent acknowledged that his attorney offered to get him the identification picture which was later found to be missing from the police files; the attorney obviously knew that he could lawfully obtain this picture for the respondent under section 5 of "An Act in relation to criminal identification and investigation" (Ill. Rev. Stat. 1977, ch. 38, par. 206—5).

The remaining issue is the question of sanctions. In resolving this question, the Commission must consider the nature and circumstances of judicial misconduct, and the need for maintaining public confidence in the judiciary.

Throughout a long and distinguished career as a judge and a public servant, the respondent has maintained an unblemished record. Moreover, the written opinions which constitute the work product of an appellate judge show that the respondent is a superb jurist who has greatly contributed to the goal of furthering justice in Illinois.

Balanced against the respondent's enviable achievements as a jurist is the fact that on a single occasion, at the end of a long day, he permitted his good judgment to momentarily falter, and he lost his temper.

We conclude that, considering the nature and circumstances of the respondent's improper conduct, and its degree of remoteness to his official duties, the appropriate sanction in this case is a reprimand.

It is so ordered.

Respondent reprimanded.