ORDERS AND OPINIONS

OF THE

ILLINOIS COURTS COMMISSION

Cite as 2 Ill. Cts. Com. ____.

(No. 80 CC 1.—Complaint dismissed.)

In re ASSOCIATE JUDGE JOHN W. NIELSEN of the Seventeenth Judicial Circuit, Respondent.

Order entered December 29, 1980.—Order denying motion for reconsideration entered February 13, 1981.

SYLLABUS

On April 28, 1980, the Judicial Inquiry Board filed a multi-paragraph complaint with the Courts Commission, charging the respondent with conduct that is prejudicial to the administration of justice and that brings the judicial office into disrepute. More particularly, the allegations in summary form were: that three defendants, who had been charged with traffic offenses in violation of a municipal ordinance or statute, filed written demands for jury trial; that each

defendant appearing *pro se* came before the respondent for trial; that defendants were compelled by the respondent to execute waivers of jury trial which were attested to by the respondent as freely made even though he knew the defendants did not voluntarily waive trial by jury; that the respondent told courtroom personnel that they were witnesses to the defendants' "freely and voluntarily made" jury waivers; that the respondent told his chief judge that he, the respondent, had talked the defendants into signing jury waivers and that none of the defendants had filed jury demands; and that by engaging in such conduct the respondent violated Supreme Court Rules 61(b), 61(c)(1)-(5), and 61(c)(8) (Ill. Rev. Stat., ch. 110A, pars. 61(b), 61(c)(1) through (5) and (8)).

Held: Complaint dismissed.

Subsequent to the Courts Commission's decision, the Judicial Inquiry Board filed in the Supreme Court a motion for leave to file a petition for an original writ of *mandamus* concerning the Commission's interpretation of the Supreme Court rules of judicial conduct in *In re Nielsen*. Leave to file was allowed on June 29, 1981, and on April 16, 1982, the Supreme Court denied the petition for a writ of *mandamus*. See *People ex rel. Judicial Inquiry Board v. Courts Com.* (1982), 91 Ill.2d 130.

Krupp & Miller, and Pierce, Webb, Lydon & Griffin, both of Chicago, for Judicial Inquiry Board.

Edwin T. Powers, Jr., of Rockford, for respondent.

Before the COURTS COMMISSION: RYAN, J., chairman, and LORENZ, JONES (alternate), HUNT and MURRAY, JJ., commissioners. ALL CONCUR. On denial of motion for reconsideration, SCOTT, J., commissioner, participated and HUNT, J., did not participate. ALL CONCUR.

ORDER

The Illinois Judicial Inquiry Board (Board) filed a Complaint with the Illinois Courts Commission (Commission), charging Judge John W. Nielsen, an associate judge of the Seventeenth Judicial Circuit (respondent), with conduct prejudicial to the administration of justice, and which brings the judicial office into disrepute. It is

charged that the conduct of the respondent constituted a gross abuse of judicial power. The respondent is specifically charged with having denied three persons, who were charged with traffic offenses, of their right to jury trial. The offenses charged were speeding offenses and were punishable by fine only.

Jeffrey Heid received a traffic ticket for speeding in violation of a municipal ordinance of the city of Rockford. The reverse side of the ticket contains instructions to the recipient as to what should be done in order to avoid multiple court appearances if he intends to stand trial. There are also instructions concerning how to proceed if the recipient wants to plead guilty. If a trial is desired, there are boxes which may be checked indicating whether a trial by the court or by a jury is requested. Heid had checked the box requesting a jury trial. He appeared before Associate Judge Riggs on October 26, 1979, at a preliminary call. Judge Riggs put the case over to November 5, 1979, for trial, and informed Heid that he would have to have jury instructions prepared for the jury trial. On November 5, 1979, Heid appeared before the respondent. It appears that there were between 35 and 40 cases on the respondent's call that morning. When Heid's case was called, the respondent asked him if he had his jury instructions. When he said he did not, the respondent gave Heid a jury waiver form and told him to sign it, which Heid did.

The proceedings were essentially the same with regard to Donald Hall and Bruce Schandelmeier, both of whom were also charged with speeding. Hall, like Heid, was charged with a city ordinance violation, whereas, Schandelmeier was charged with a violation of the Illinois Vehicle Code. The same form of traffic ticket had been used in all three cases. Each defendant had appeared at the preliminary proceeding before Judge Riggs on October 26, 1979. Each had indicated by

checking the appropriate box on the traffic ticket that he wanted a jury trial. Judge Riggs had informed each of the necessity for jury instructions, and had set each case before the respondent for November 5, 1979. The three cases were called near the end of the respondent's call on that date, and were either called in sequence, or with possibly one or two cases between them. When each of the three defendants was asked if he had jury instructions, he replied that he did not, and the respondent asked each to sign the jury waiver form presented to him. One or more of the three defendants objected to the signing of the jury waiver and the respondent informed the objector that he could order him to do so. It is clear that the signing of the jury waiver by each defendant was not voluntary.

An assistant State's Attorney was in the respondent's court that morning and testified for the Board. She stated during her testimony that Heid was more vocal than the others and pounded on the podium and insisted that the judge had violated his constitutional rights. She also testified that at the conclusion of the call, as the respondent was leaving the courtroom, he stated to the court personnel present words to the effect that they had all witnessed the signing of the jury waivers and that they could all be witnesses to the fact that the waivers were freely and voluntarily signed.

Heid, who is now a student at Northern Illinois University majoring in political science, was at the time of the occurrence a student at Rock Valley College. After the occurrence on November 5, 1979, he brought the incident to the attention of the press and Judge John E. Sype, the chief judge of that circuit. Judge Sype stated that Heid had called him and "sounded most unreasonable on the telephone, was irate and was berating me for not doing something about it."

On the afternoon of November 5, 1979, the respon-

dent went to the chambers of Chief Judge Sype and told him he had had a jury call earlier and had talked some *pro se* traffic defendants into jury waivers, and that they had "gone to the newspaper" and the chief judge might hear about it. The respondent told the chief judge that some of the cases were ordinance violations where he believed no jury trial was appropriate. The chief judge stated "from an administrative standpoint that the best thing to do would be to try to defuse the issue that had been raised", and suggested that the three defendants be permitted to withdraw the jury waivers and to proceed with jury trials.

The jury waivers were subsequently withdrawn and in December of 1979 Associate Judge John Beynon conducted another preliminary jury call. When Heid's case was called, he again pounded on the podium and stated in front of Judge Beynon that he wanted to get the respondent. One witness testified that he was "quite noisy."

The three jury trials were tried *pro se*. Hall went to trial before Judge Riggs on December 5, 1979, and was found guilty of speeding by the jury, in violation of a city of Rockford ordinance. Heid was tried before Judge Riggs on December 6, 1979, and was found not guilty of speeding by a jury. This was also a city of Rockford ordinance violation charge. Schandelmeier was tried by a jury before Judge Beynon on December 6, 1979, and was found guilty of speeding, in violation of the Illinois Vehicle Code.

The respondent, as an affirmative defense in this proceeding, alleged the existence of an administrative order of the Seventeenth Judicial Circuit which was entered April 1, 1971, and which was still in effect at the time of the occurrence in question. The order provides that "in misdemeanor and ordinance violation cases, where the penalty is a fine only, the parties may be

denied trial by jury." Although this administrative order was in effect at the time the respondent denied the three defendants the right to jury trial, it is clear that the respondent, in doing so, did not rely upon the administrative order. The fact that he inquired whether the defendants had their jury instructions prepared when their cases were called is not consistent with the denial of their jury demands, based on the administrative order. Also, the evidence discloses that the respondent had, on other occasions, granted jury trials in misdemeanor and city ordinance violation cases which were punishable by fine only.

The defendants, particularly Heid, insisted that their right to trial by jury was of constitutional origin and at the hearing before the Commission, Heid referred to his right to trial by jury as a sixth amendment constitutional right. The right to a trial by jury for the violation of a city ordinance, or for a misdemeanor punishable by fine only, however, is not of constitutional origin. (*Duncan v. Louisiana* (1968), 391 U.S. 145, 20 L. Ed.2d 491, 88 S. Ct. 1444; *Argersinger v. Hamlin* (1972), 407 U.S. 25, 32 L. Ed.2d 530, 92 S. Ct. 2006; *Muniz v. Hoffman* (1975), 422 U.S. 454, 45 L. Ed.2d 319, 95 S. Ct. 2178; see also, *County of Cook v. Lloyd A. Fry Roofing Co.* (1974), 59 Ill.2d 131, 139; *County of McLean v. Kickapoo Creek, Inc.* (1972), 51 Ill.2d 353, 355.) In fact, a city ordinance violation, though quasi-criminal in character, is civil in form and is ordinarily termed a civil action, not a criminal prosecution. A defendant's right to trial by jury in a city ordinance prosecution is to be found in section 64 of the Civil Practice Act (Ill. Rev. Stat. 1979, ch. 110, par. 64), and not in the Constitution. (*City of Danville v. Hartshorn* (1973), 53 Ill.2d 399.) Heid and Hall, who were prosecuted for violating an ordinance of the city of Rockford, although they had no constitutional right to a jury trial, must be considered to have properly demanded

a trial by jury under section 64 of the Civil Practice Act by checking the appropriate box on the traffic ticket indicating their desire to be tried by a jury.

Schandelmeier was charged with a State offense punishable by fine only. Therefore, he also had no constitutional right to a jury trial. However, the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 103—6) grants to every person charged with an "offense" the right to a jury trial unless understandingly waived in open court. The Code defines an "offense" as a violation of any penal statute of this State. (Ill. Rev. Stat. 1979, ch. 38, par. 102—15.) Prior to October 1, 1977, section 16—104 of the Vehicle Code (Ill. Rev. Stat. 1975, ch. 95½, par. 16—104) provided that it was a misdemeanor to violate a provision of the act, and a person charged with a violation of the act was therefore entitled to a jury trial. (*People v. Manion* (1972), 3 Ill. App. 3d 621.) However, effective on October 1, 1977, section 16—104 was amended and provides that a person convicted of his first or second violation of the act shall be guilty of a "petty offense". (Ill. Rev. Stat. 1979, ch. 95½, par. 16—104.) No court of review of this State had determined whether a person charged with a "petty offense" under the act was entitled to a jury trial until the opinion was filed on September 26, 1979, in the case of *People v. Beil* (1979), 76 Ill. App. 3d 924. In that case the defendant was charged with speeding in violation of the Vehicle Code and was denied a jury trial. On appeal the State contended that by virtue of the 1977 amendment classifying violations of the act as "petty offenses", such violations were not violations of a penal statute and one charged with such an offense was not entitled to a jury trial. The appellate court disagreed with that contention and held that a defendant charged with a "petty offense" under the act is entitled to a jury trial by virtue of sections 103—6 and 102—15 of the Code of Criminal Procedure of 1963. (Ill.

Rev. Stat. 1979, ch. 38, pars. 103—6, 102—15.) The opinion in *Beil* was filed only about one month before the conduct of the respondent complained of in this proceeding. Also, the evidence does not show whether the *Beil* opinion had been published in an advance sheet, or whether the respondent knew of that opinion before he denied the defendants the right of trial by jury. It is clear, however, that prior to November 5, 1979, it had been established by a court of review in this State that Schandelmeier was entitled to a trial by jury. The respondent therefore erred by depriving him of this right, as well as by depriving Heid and Hall of their right to jury trials for the violations of the city ordinances where they had properly requested a trial by jury.

This Commission feels that in high volume courts, where parties often appear *pro se*, procedural requirements should not be so strictly construed as to deprive a party of the full benefit of a judicial proceeding. Such cases necessarily require additional participation on the part of the judge to insure that a litigant is not deprived of his constitutional rights or rights conferred by statute. In these cases, the fact that the *pro se* defendants did not have jury instructions prepared was not a sufficient reason to require them to forego their right to jury trial which they had properly requested.

This Commission has heretofore discussed the significance of the change in Supreme Court Rule 62 (73 Ill.2d R. 62), which deleted therefrom the requirement that a judge *consistently* violate the Standards of Judicial Conduct before discipline may be imposed. (*In re Campbell* (1980), 1 Ill. Cts. Com. 164, 171.) Although Rule 62 does not require that the Standards of Judicial Conduct be consistently violated, the change in language does not make every infraction a subject for which discipline may be imposed. As noted in *Campbell*, the effect of the change acknowledges that there may be serious single

violations of the Standards that will, by themselves, warrant discipline; however, because of the general terms of the Standards set out in Rule 61 (73 Ill. 2d R. 61), occasional and inadvertent violations may be too insignificant to call for official action. (See *In re Knowlton* (1979), 1 Ill. Cts. Com. 131.) We conclude in this case, as we did in *Campbell*, that there has been no showing of a general attitude of arbitrariness on the part of the respondent in the performance of his judicial duties or in the exercise of judicial authority. The Board has not proved by clear and convincing evidence that the respondent's conduct constitutes such a gross abuse of the Standards of Judicial Conduct as to require the imposition of discipline.

The Complaint against the respondent is therefore dismissed.

Complaint dismissed.

SUPPLEMENTAL ORDER ON DENIAL OF MOTION FOR RECONSIDERATION

The above matter coming on for hearing on the motion of the Illinois Judicial Inquiry Board for reconsideration of the Illinois Courts Commission's order of December 29, 1980, and the Courts Commission being advised in the matter finds as follows:

Most of the argument under Point I of said motion raises questions that were raised and argued before the Courts Commission before its order of December 29, 1980, was entered, and now constitutes primarily a reargument of the case that was previously heard and decided by the Courts Commission. The Commission also finds that much of the argument contained under Point 1 of this motion is based on conclusions drawn by the Judicial Inquiry Board from facts in the case, which conclusions do not correspond with those drawn by the

Courts Commission, *i.e.*, that the respondent attempted to cover-up his coercive treatment, that the respondent misrepresented facts to his chief judge, and that the respondent testified falsely before the Commission.

As to the second point raised in the motion, the Courts Commission finds that the standards of conduct enunciated in the order do not constitute an unjustified deviation from Supreme Court Rule 62. The order entered on December 29, 1980, noted that in *In re Campbell*, 1 Ill. Cts. Com. 164, and in *In re Knowlton*, 1 Ill. Cts. Com. 131, the Commission had referred to the change that had been made in Supreme Court Rule 62 which deleted from that rule the requirement that a judge *consistently* violate the Standards of Judicial Conduct before discipline may be imposed. However, as noted in those cases, the change in language was not intended to make every infraction a subject for judicial discipline. The change was nothing more than a recognition that there may be single infractions that would be so severe as to warrant discipline; however, the rule retained its prior concept in other respects. The order in *Nielsen* was the third instance in which this Commission has referred to this change and the reason for it. When the order was entered in this case, this principle was therefore well established and the Supreme Court has made no alteration in Rule 62 since that construction was given to the rule by the Courts Commission. It must therefore be assumed that this construction is not contrary to that intended by the Supreme Court when it modified Supreme Court Rule 62.

In summary, the Courts Commission finds that there is no substance or merit to the Judicial Inquiry Board's motion to reconsider.

It is therefore ordered that the motion of the Illinois Judicial Inquiry Board for reconsideration of the Illinois Courts Commission's order of December 29, 1980, dis-

missing the Complaint in the above matter is hereby denied.

Motion denied.
