
(No. 92 CC 2. — Complaint dismissed.)

In re ASSOCIATE JUDGE ARTHUR ROSENBLUM of the Circuit Court of Cook County, Respondent.

Order entered July 29, 1993.

SYLLABUS

On October 15, 1992, the Judicial Inquiry Board filed a two-count complaint with the Courts Commission, charging the 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 summary form, Count I of the complaint alleged that the respondent identified himself as a judge when speaking to the social worker of a tenant of an apartment building he owned with another investor and used official court stationary when communicating with the social worker

and the organization responsible for paying the tenant's rent; the respondent assumed a substantial role in the hearings on a criminal misdemeanor complaint against the tenant; the respondent himself signed a second criminal complaint against the tenant; the respondent discussed with his co-investor the latter's prospective testimony in the proceeding and had an influence on that testimony; and that such conduct violated Supreme Court Rules 61, 62A, 62B, and 65C(1) and (2).

Count II of the complaint alleged that when the respondent was hearing a matter in Juvenile Court, and learned that a representative from the same organization referred to in Count I was taking the position that the minor should not be placed with his grandmother, the respondent noted that he had an argument with the organization, and then returned the minor to the custody of the grandmother, contrary to the wishes of the prosecutor and the representative; and that such conduct violated Supreme Court Rules 62A and 62B. (134 Ill. 2d R.62A, 62B.)
Held: Complaint dismissed.

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

Collins & Bargione, of Chicago, for respondent.

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

ORDER

The Judicial Inquiry Board (Board) filed a two-count complaint against the respondent, Judge Arthur Rosenblum. Count I alleges that the respondent violated Illinois Supreme Court Rules 61, 62B, 65C(1)

and 65C(2) of the Code of Judicial Conduct. (134 Ill. 2d R. 61, 62B, 65C(1),(2).) Count II, which is based on facts other than those alleged in Count I, alleges that the respondent violated Supreme Court Rules 61 and 62A and 62B of the Code of Judicial Conduct. (134 Ill. 2d R. 61, 62A, and 62B.) In the summary of allegations the Board maintains that the respondent "improperly used the prestige of his office as an associate judge of the Cook County Circuit Court to advance his personal interests and respondent exploited his judicial position in connection with property owned by respondent located" in the City of Chicago.

COUNT I

The allegations of Count I are in substance as follows.

The respondent, who has been an associate judge in the circuit court of Cook County since 1983, and his co-investor, Roger Rewocki, owned an apartment building at 2723 West 60th Street in Chicago. In approximately March 1990, Rewocki, who was generally responsible for the management of the property, leased a second floor rear apartment to Robin McAley. McAley's lease payments were guaranteed by a charitable organization, Lawrence Hall Youth Services. The lease provided for double rent, pro-rated for each day on which a tenant holds over and fails to vacate the premises after expiration of the term of the lease.

Toward the end of March 1991, it was determined that Robin McAley's lease for the premises would not be renewed. The lease terminated March 31, 1991. McAley, however, had an understanding that she would be permitted to remain in the apartment for a short period of time after March 31, 1991, until she could make arrangements for another apartment. When McAley did not vacate the

premises on March 31, the respondent took active steps to force McAley to vacate the premises. He telephoned Sharon Dhuse, a social worker from Lawrence Hall Youth Services who was assigned to the McAley case, and left his chamber's telephone number for Dhuse to return the call, thus "clearly identifying himself as an associate judge."

As of April 7, 1991, McAley had not vacated the apartment. The respondent wrote a letter to Lawrence Hall Youth Services stating that McAley and Lawrence Hall might be held liable for an amount equal to double the rent as long as she and the organization remained in possession. The letter was mailed by the respondent to Lawrence Hall Youth Services in an envelope that was the official stationery of the circuit court of Cook County and bore the name "Arthur Rosenblum, Associate Judge, circuit court of Cook County."

McAley vacated the premises some time in mid-April 1991. On May 1, 1991, the respondent wrote to the executive director of Lawrence Hall conceming the McAley matter. The letter was also on the official stationery of the circuit court of Cook County and bore the legend of the circuit court and the name "Arthur Rosenblum." The stationery had pre-printed on it "Circuit Court of Cook County," but the respondent typed X's through that line. The respondent also typed X's through the line containing "Associate Judge." The phrase, "Not official correspondence," was typed at the top of the letter. The respondent's home address was typed on the envelope.

On June 20, 1991, Roger Rewocki signed a criminal misdemeanor complaint in the circuit court of Cook County charging Robin McAley with obtaining "unauthorized control over oak doors and a floor rug of the value of less than $300.00."

After the misdemeanor complaint was signed, the respondent attended several court hearings and

"assumed a substantial role in those hearings. His presence at the hearings was unnecessary and he made his judicial position known with the purpose of exploiting his position for his own and his co-investors advantage."

On August 7, 1991, the respondent himself signed a second criminal complaint against Robin McAley charging her with criminal damage to property. The complaint alleged that McAley knowingly destroyed the front door, toilet bowl, stove, bathroom sink, kitchen linoleum and bathroom window of the apartment. The respondent "signed this criminal complaint because he was dissatisfied with court proceedings in the McAley case" that he had attended that day.

On August 22, 1991, the respondent went directly to the office of the State's Attorney who was to prosecute the case, although most witnesses for cases in that branch court usually meet with the assistant State's Attorney prosecuting the case in the court room to which the case is assigned. The respondent presented the assistant State's Attorney with his official court business card indicating he was an associate judge. He made clear to the assistant State's Attorney that he wanted approximately $500 in restitution from McAley in connection with the criminal case. When the assistant State's Attorney told the respondent it is "difficult to get water out of a stone," a reference to McAley's lack of assets, the respondent stated that perhaps they could get "a few pebbles."

Before trial, which had been transferred to the Daley Center, the respondent met with the assistant State's Attorney prosecuting the case. The assistant State's Attorney told the respondent that the State had moved *in limine* to prohibit the jury from learning that the respondent was an associate judge in the circuit court. That motion had been granted. The respondent "became upset and stated that he wanted the jury to know he was a judge."

When the assistant State's Attorney prepared Roger Rewocki to testify concerning the "missing" bookcase doors referred to in the complaint, Rewocki told the prosecutors he realized the doors were missing in McAley's apartment on one occasion when he entered the apartment. He said that McAley was not in the apartment at that time. Because that testimony did not establish that McAley took the doors or even knew they were gone, the prosecutors expressed some concerns about prevailing on the case. That evening, October 8, 1991, "Rewocki discussed his prospective testimony with respondent and respondent had an influence on that testimony."

On the following day, shortly before the trial in the McAley case was scheduled to begin, Rewocki met with the prosecutors again to go over his prospective testimony. Rewocki, for the first time, said that McAley was in the apartment when he realized the bookcase doors were gone and that he had confronted her about it. Because the prospective testimony was different from what Rewocki had said the evening before, the prosecutors confronted Rewocki with the conflict in his two stories. Rewocki acknowledged that "maybe she wasn't there after all." He admitted he had spoken with the respondent and, when asked if the respondent had told Rewocki what to say, Rewocki stated in effect that "he didn't want to get the judge in trouble." After that meeting with Rewocki, the assistant State's Attorneys sought and received permission from their supervisors to drop the case. Later that morning, charges were dismissed on the State's motion.

In Count I, the Board maintains that the respondent violated the following supreme court rules:

(1) Supreme Court Rule 61, which requires a judge to observe "high standards of conduct so that the integrity and independence of the judiciary may be preserved."

(2) Supreme Court Rule 62B, which provides that a judge should not allow "his family, social, or other relationships to influence his judicial conduct or judgment"; he "should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him."

(3) Supreme Court Rules 65C(1) and 65C(2), which require that "a judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves." Although a judge may hold and manage investments, including real estate, and engage in the activities usually incident to the ownership of such investments, a judge should not assume an active role in the management or serve as an officer, director, or employee of any business.

COUNT II

The allegations of Count II are in substance as follows:

On April 28, 1991, the respondent heard a matter relating to a minor which was assigned to the respondent's docket in Juvenile Court. Lawrence Hall Youth Services was providing counseling for the minor. A representative of Lawrence Hall Youth Services appeared in court on the matter and took a position before the respondent that the best interests of the minor were not served by a placement with his grandmother. When the respondent learned that the representative from Lawrence Hall Youth Services was taking a position in a case pending before him, the respondent stated, "I have a problem though, I have a personal matter, I have a big argument with

Lawrence Hall." The prosecutor in the case did not want the minor returned to the custody of his grandmother and stated, "Your Honor, that should not affect the best interest of the community at large." The respondent then returned the minor to the custody of his grandmother, contrary to the wishes of the prosecutor and Lawrence Hall Youth Services.

In Count II, the Board maintains that the respondent again violated Supreme Court Rules 61 and 62B. The respondent was also charged with violating Supreme Court Rule 62A, which provides that "a judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

We have set out the specific allegations of the complaint at great length because the Board has pleaded much evidence and we had difficulty in determining what specific conduct the Board contended was sanctionable. In response to inquiries by this Commission during opening statements, the attorney for the Board expressed some question whether any specific act of the respondent would be sanctionable, but said that the respondent's entire "course of conduct" would be. We turn now to the evidence.

Robin McAley testified that she leased an apartment on West 60th Street in Chicago from April 1, 1990, to March 31, 1991. She was 18 years old at the time she began living there. She was living alone because her mother had a drinking problem. She became affiliated with Lawrence Hall Youth Services at the time she rented the apartment. Her counselor was Sharon Dhuse. She rented the apartment from Roger Rewocki. The lease she signed indicated that pets were not allowed. A cat and a dog lived with her, and Rewocki was aware of it. When her lease expired on March 31, 1991, she was going to move into a new apartment, but the apartment would not be

ready until May 1. She was going to stay in the apartment at West 60th until May 1. She did not receive any kind of notice that her staying on would not be acceptable before March 31. She had been asked to move by the "landlord" in April. She moved out of the apartment on April 19, 1991. She had cleaned the apartment so that she could get her security deposit back when she moved. Some of the security deposit was Lawrence Hall's money and some of it was hers. She was arrested on June 19, 1991, on a complaint signed by Rewocki. She was present in court when the respondent made certain statements to the trial judge.

A transcript of the proceedings held before Judge L.J. Kutrubis on August 7, 1991, was received in evidence. The Board now argues that those proceedings show that the respondent falsely told Judge Kutrubis that McAley had been "legally evicted." (We note that that allegation of wrongdoing was not included in the detailed recitation of facts in the complaint that the Board maintains was a wrongful "course of conduct" on the part of the respondent.) We will discuss those proceedings in more detail later.

McAley testified that she had never been "legally evicted" and had never received service of any type of legal process "to lead toward a legal eviction." She denied that she had been living in the building after April 19. Her boyfriend's parents, whom she described as her "in-laws," continued to live in the building, but they moved out during the summer of 1991. She denied that she removed any oak doors from the fireplace. She also denied doing any damage to a toilet bowl and a front door and a window. Her rent was paid every month by Lawrence Hall Youth Services. Rewocki did express objections to her about her keeping dogs and cats and her dogs using the corridors of the building. Rewocki told her that the animals were creating a stench in the

building. After she returned to the building to visit the grandparents of her child, she sometimes brought her dog with her.

Sharon Dhuse, a social worker for Lawrence Hall Youth Services, testified that she visited McAley at least once a month. McAley was a good housekeeper. McAley's son was born before she entered the apartment. Lawrence Hall made the rent payments. Dhuse had never been informed that anyone associated with the building required McAley to move or that McAley was about to be evicted.

On April 2, 1991, she received a message that "Judge Rosenblum" had called and left a number. She called the number, which was a circuit court number, and spoke to the respondent. He told her there was a clause in the lease that provided for double rent if McAley remained in the apartment at the expiration of the lease. The "gist of the conversation" was that McAley "would not be allowed to hold over."

Some time later she received a letter signed by the respondent; the envelope had a printed return address, "Circuit Court of Cook County, Arthur Rosenblum, Associate Judge, Chicago, IL 60602." In that letter, dated April 7, 1991, addressed to the Lawrence Hall Youth Services and signed by the respondent, the respondent recited that the lease terminated March 31, 1991; he had advised McAley and her social worker that he would not renew the lease and requested her to surrender and vacate the premises. He returned a check in the sum of $350 which was tendered for the month of April. He expressly recited, "However, we refuse to allow Robin McAley to remain in our premises as a tenant." He also pointed out that McAley and Lawrence Hall "may be liable for an amount equal to double the rent as well as court costs and attorney fees pursuant to the lease provisions."

On April 15, Dhuse wrote the following letter to the respondent:

> "Dear Judge Rosenblum,
>
> Thank you for your letter dated April 7, 1991. I am working with Robin McAley to vacate the premises as you have requested.
>
> Neither Robin McAley or myself have been advised by either Roger Rewocki or yourself that Robin McAley's lease would not be renewed. I have discussed with both you on Tuesday, April 9, 1991, and with Roger Rewocki on two previous occasions, complaints concerning Robin McAley. I have attempted to monitor her apartment closely. I will notify you in writing when the apartment has been vacated."

She addressed the letter to the respondent at the circuit court of Cook County because of the return address on the envelope. The letter itself showed his home address of 3240 North Lake Shore Drive in Chicago.

McAley vacated the premises on April 19. Dhuse's organization submitted a double rent payment for the first 19 days of April. Some time later her organization received a letter addressed to the executive director. It was signed by the respondent and showed his home address of 3240 North Lake Shore Drive in Chicago. The circuit court seal had been crossed out; at the top of the letter was the phrase, "Not Official Correspondence"; the term, "Associate Judge," had been X'd out under the name of the respondent.

In that letter, the respondent said that he was very dissatisfied with the conduct of Sharon Dhuse. He outlined his complaints against McAley, referring specifically to her maintenance of dogs and cats in the apartment and the effect the animals had on the

apartment and halls. He expressed the view that Dhuse had told McAley she could not be responsible for damage which encouraged McAley to willfully cause specific damages which he outlined. He maintained that he was entitled to the sum of $700, which would represent double rent for all of April.

On May 17, 1991, Dhuse sent a letter to the respondent at his home address. In that letter she disputed the claims of damages made by the respondent. She also said the following:

> "Robin McAley did not vacate the apartment at the end of the lease but had talked with Roger Rewacki [sic] concerning her desire to remain another month in the apartment. It was only when you called and spoke with me on April 9, 1991, was I informed that the apartment needed to be vacated immediately. You also notified me of the clause in the lease for the double rent."

On June 3, 1991, the respondent sent another letter, addressed to McAley in care of Lawrence Hall Youth Services, in which he repeated his claim for double rent for an additional 11 days of April; he also repeated his claim for damages to the apartment.

On June 21, 1991, the respondent sent a letter to Sharon Dhuse in which he again claimed that he was entitled to double rent for an additional 11 days in April.

On cross-examination, Dhuse testified that Rewocki never expressed the view to her that McAley should "not stay around any longer than was necessary." She admitted that Rewocki called her in August 1990 about the dog and cat belonging to McAley; he was also concerned "that there was somebody living there besides" McAley. He called

again about the pets in March 1991; he told Dhuse the apartment was "smelly." She had conversations with McAley in March in which McAley said she was "thinking" that there was a "possibility" that she would move.

Jason Danielian, an assistant State's Attorney, testified that in August 1991 he was assigned to Branch 46 of the First Municipal District at 13th Street and Michigan Avenue in Chicago. On August 22, the respondent came into his office at about 8:30 a.m. The respondent gave him a business card with his name on it and said he was a complainant in a case that would be heard that morning. It was unusual that a complainant would walk into his office because complaining witnesses are notified either by mail or in person to appear on the fifth floor of the court building, not in the State's Attorney's office. It was also unusual for persons to make their "way past the reception area" without being escorted back to the assistant prosecutors' offices. He asked the respondent what his expectations were and the respondent "mentioned restitution." When Danielian learned that McAley was represented by a public defender, he said, "You can't wring water from a stone." The respondent said, "Maybe we can get a few pebbles from her."

The case was later transferred to the Daley Center before a judge from outside Cook County because the respondent was a Cook County judge. Danielian made a motion *in limine* in which he sought an order which would bar McAley's attorney from referring to the respondent as a judge before the jury. That motion was allowed. When Danielian told the respondent that he had filed the motion and that it had been allowed, the respondent "reacted very unfavorably. He became upset." He said, "I want them to know I'm a judge." Danielian told the respondent that Danielian was the prosecutor in the case and that he would make decisions regarding trial

strategy and would not allow a complaining witness to direct or dictate how he would be handling the case. He then decided that he would not use the respondent as a witness; he would use Rewocki instead.

He and another assistant State's Attorney, Michael Latz, interviewed Roger Rewocki on the afternoon of October 8. The respondent was not present. Rewocki told Danielian that, at some point toward the end of McAley's lease, he went into the apartment and noticed that the oak doors were missing and that rugs were missing. No one else was present when he discovered the doors were missing. Danielian did not ask Rewocki whether he confronted McAley about the missing doors. Danielian questioned Rewocki the following morning. Rewocki told him that after he discovered the doors and rugs were missing, he confronted McAley about the missing items. Danielian told Rewocki that his story at that time was contrary to the story he had given the previous day. He asked Rewocki if he had discussed his testimony with anyone, and Rewocki said that he had talked to the respondent "about the testimony." Danielian asked if Judge Rosenblum had told him to say that Robin McAley was present. Rewocki's exact words were, "I don't want to get anyone in trouble, the judge, he's a good man."

After conferring with his superiors, Danielian explained to the respondent that matters had come to his attention which would preclude him from prosecuting the case. He informed the respondent of his intention to seek a dismissal of the complaint; and the complaint was dismissed. Danielian's testimony completed the Board's case under Count I.

Edwin Be was the Board's only witness under Count II. He was the director of foster care for Lawrence Hall Youth Services. He testified that on May 28, 1991, he appeared before the respondent, who was sitting in the Juvenile Court, in the case of a 15-year-old boy who was charged with possession of

a gun. The minor, who was under the supervision of Lawrence Hall Youth Services, had previously been charged with shooting someone about three or four weeks before. That charge was still pending. The minor was being confined in the Audy Home at the time of the hearing. Be spoke to a representative of the Department of Children and Family Services (DCFS), Ms. Herndon, who was also in court. It was Be's position that the minor should not be returned to his grandmother, but should remain in custody.

A transcript of the proceedings before the respondent was introduced into evidence. That transcript discloses that the minor was represented by an assistant public defender. Be was present, as was Ms. Herndon, who informed the respondent that the minor was a ward of DCFS. The minor was living with his grandmother. A police officer testified that he arrested the defendant on May 24 and that he observed a handgun in the minor's hand. When the officer identified himself as a police officer, the minor dropped the gun. After the police officer testified, the respondent made a finding of probable cause.

An "adjudicator" informed the respondent of other referrals of the minor that had been made to the juvenile court. He had previously been found guilty of delinquency by another judge, and that matter was pending for disposition that same day. That matter apparently involved the shooting that Be had referred to before. It was disclosed that a warrant had been issued because the minor was unable to make his court date on the other pending charge because of his arrest on the case pending before the respondent. The representative of DCFS said that the warrant would be recalled. The assistant public defender then said, "No problem, we will release him to DCFS." Ms. Herndon, from the DCFS, then asked the judge if he would "hear from Lawrence Hall." When the respondent said, "I can release him right today, can't I?", the following occurred:

"MS. HERNDON: Your Honor, that is a problem, this young man is living at home with his grandmother. Lawrence Hall is going into the home giving counseling. Lawrence Hall is here saying that grandmother cannot control the child. So, if you are not holding because he is living with the grandmother, he is not in residential placement.

THE COURT: Are you from Lawrence Hall.

MR. BE: Yes, your Honor.

STATE'S ATTORNEY: Your Honor, State is seeking a hold in custody until the trial date.

RESPONDENT: Well, I have a problem though. I have a personal matter where I have got a big argument with Lawrence Hall. STATE'S ATTORNEY: Well, your Honor, that shouldn't [a]ffect the best interest of the community at large. This minor respondent should be held in custody. He's had one finding, he is pending disposition, he also has another matter in Calendar 5. I would ask that this minor respondent who was found running toward the police with a gun be held in custody until his trial date.

RESPONDENT: The only thing I got a big argument with that organization.

STATE'S ATTORNEY: Maybe that should be handled outside of this courtroom.

PUBLIC DEFENDER: Your Honor, if he is a ward of DCFS, if you

> have a problem with the placement they can find him another placement.
>
> RESPONDENT: I am going to RUR him to DCFS. I need a trial date.
>
> ADJUDICATOR: June 27, Calendar 2.
>
> RESPONDENT: June 27, '91, 9 o'clock, Calendar 2. I can't hold him in custody because of my personal fight with that organization, with some of their workers."

The respondent is 76 years old; he was licensed to practice law in Illinois in June 1940. He became an associate judge in Cook County on January 3, 1983. For five years he was assigned to the housing court hearing criminal cases until 1988. At the time of the hearing, he was assigned to the Juvenile Court.

He testified that Roger Rewocki was a friend, whom he had known for 15 or 20 years. Rewocki married a Philippine citizen and lived in the Philippine Republic. The respondent and Rewocki bought the building in issue for about $150,000. He owned a three-quarter interest, and Rewocki a one-quarter interest. Before they bought the building there was an agreement that the building would be rehabilitated before it would be rented out. He did that because of his experience as a judge in the housing court. He did not want any kind of a record to indicate that he was the owner of a slum building in Chicago. The building was rehabilitated. Rewocki was responsible for the "day-to-day operation" of the building. Rewocki also drew a salary from the building's revenue.

In the middle or latter part of March 1991, Rewocki informed him that he was not going to renew McAley's lease and that other tenants had threatened to move because McAley had animals that were urinating and defecating in the hall and common stair-

case. There "was a terrible scent, and the carpet was ruined." The respondent had nothing to do with the building; he relied on Rewocki. He had never been to that building other than the time the building was bought.

The respondent knew that Lawrence Hall Youth Services was paying the rent. Rewocki said he could not have McAley as a tenant whether the rent was paid or not. Rewocki said that she was ruining the building and that the other tenants had threatened to move.

Either Sharon Dhuse called him and left a message or he called her and left a message. He gave the general telephone number of the Juvenile Court. He did not have chambers in the Juvenile Court; he had only a locker. He had to take all his stationery to his home. He typed the letters that were introduced in evidence. He X'd out his title and typed in the information that it was not official correspondence because "it was a private matter and didn't involve [his judicial duties or obligations]." He used his home address on the letters.

He did not cause the filing of the original criminal complaint against McAley; Rewocki did. Rewocki informed him that McAley had moved to the third floor and was living with the grandmother of her child. She had two dogs and a cat. She was there every day and stayed overnight. It was causing a problem to Rewocki. The problem was that the dog was running up and down the hall urinating and barking. The purpose of his speaking out before Judge Kutrubis was that he wanted a protective order of some kind preventing McAley from returning.

His best recollection is that he never went to 13th and Michigan. He went to the State's Attorney's Office in the Daley Center and gave the receptionist his card. He said he would like to talk to an assistant State's Attorney, and he was introduced to Assistant State's Attorney Michael Latz. He did not say that he

wanted to get restitution from McAley. He knew that any attempt to get restitution would be futile because McAley was 19 years old and was being supported by an agency.

He never told Rewocki to lie to anybody about the case and specifically did not tell him to lie about any doors.

When the minor's matter came before him in the Juvenile Court, he informed the litigants that he had a dispute with Lawrence Hall because it was his duty; it is in the Canon of Ethics that he would have to disclose if he had any interest or prejudice to give the litigants an opportunity to file a substitution of judges or to request that he recuse himself. He did not feel any bias for or against the minor. He did not feel that he had an obligation to recuse himself because the Lawrence Hall Youth Service was not a party; they were only rendering counseling service and had no "official capacity" with the minor. They could not give counseling service if the minor was "locked-up."

The respondent identified a memorandum dated February 20, 1991, from the presiding judge of the Juvenile Court, Arthur N. Hamilton, which referred to another memorandum from the Superintendent of the Audy Home. The memorandum from the Superintendent is as follows:

> "The temporary detention center is facing a severe problem of overcrowding. Often the temporary detention center is forced to exceed it's [sic] rated capacity and at time it's [sic] physical capacity. Based on the numbers for the month of February alone suggests that this trend will continue. Overcrowding conditions make it very difficult to provide the various services, maintain a high level

> of security and create management problems.
>
> Therefore, we respectfully request that the Juvenile Court of Cook County exercise the upmost [sic] discretion when entering custody orders and consider other alternatives to detention when feasible."

The respondent testified that he was aware that the minor had another case before another judge. He still felt that he was correct in not ordering the minor to jail.

He was upset with the prosecutor for making a motion *in limine* to prevent any mention of the respondent being a judge.

On cross-examination he testified that he did not sign any leases or interview any tenants in connection with the building. There were some eviction cases but they were handled by lawyers whom Rewocki hired. He signed the second complaint against McAley because the assistant State's Attorney instructed him to sign it. He never told anyone in the State's Attorney's Office that he "wanted to wring a few pebbles out of Robin McAley." He did not talk to Roger Rewocki about his testimony on the night of October 8.

He had used circuit court envelopes on other occasions. He recalled sending a letter to an assistant State's Attorney asking her to sign an affidavit for him. In the corner of the letter was stamped, "Judge Arthur Rosenblum." On redirect examination it was established that the affidavit of the assistant State's Attorney was made in connection with a suit brought against the respondent by McAley. That suit was dismissed with prejudice.

The respondent introduced affidavits from six judges or former judges, a former president of the Illinois State Bar Association and a former client of the

respondent. In their opinion the respondent was a man of integrity and honesty, truth and veracity.

We repeat that we had difficulty, after reading the complaint, in determining precisely what conduct on the part of the respondent the Board deemed sanctionable. We are still not certain. Consequently, we will briefly address some of the allegations which we gather the Board may consider improper conduct. The Board concedes that it must establish wrongful conduct by clear and convincing evidence. *In re Karns*, 2 Ill. Cts. Com. 28, 33 (1982).

We find nothing wrong with the respondent seeing the assistant State's Attorney personally before trial nor in the respondent signing the complaint and appearing in court. The allegation of the complaint that the respondent's "presence at the hearings was unnecessary and he made his judicial position known with the purpose of exploiting his position" is unfounded. So also is the allegation of the complaint that the respondent "signed this criminal complaint because he was dissatisfied with court proceedings in the McAley case" that he attended that day.

We also find that no sanctionable conduct occurred in the colloquy between Assistant State's Attorney Danielian and the respondent. Danielian testified that he told the respondent that he could not "wring water out of a stone," and the respondent said that perhaps he could get "a few pebbles." The respondent denied this conversation. We are satisfied that such a conversation took place, but we do not believe the respondent knowingly testified falsely in denying the conversation. Danielian regarded the respondent's comment as a "quip in response to [Danielian's] quip." He said that the respondent was "joking." It is understandable that the respondent might not remember such a conversation. (See *In re Alfano*, 2 Ill. Cts. Com. 11, 22 (1982).) In any event, even assuming that the remark was made, we find no violation of judicial standards. As

Danielian recognized, very often a complaining witness may seek restitution, and restitution is often made a condition of probation. It was Danielian who asked the respondent "what his expectations were," and the respondent answered the question.

Last, we also find nothing wrong with the respondent expressing disagreement with Danielian's motion to bar the respondent from testifying that he was a judge.

We will now address what we perceive to be the principal claims of misconduct on the part of the respondent. They are:

(1) the respondent's identifying himself to Dhuse as a judge and his subsequent use of court stationery;

(2) the respondent's order denying the State's Attorney's request that a minor be held in custody;

(3) the change in Rewocki's prospective testimony; and

(4) the statement by the respondent that McAley had been legally evicted.

We find that the respondent's identifying himself as a judge to Dhuse and subsequent use of circuit court stationery under the circumstances shown are not clear and convincing evidence of an attempt by the respondent to exploit his official position. He first identified himself as a judge to Dhuse when he spoke to her by phone and told her of his and Rewocki's intention to terminate McAley's lease. The purpose of his call was to provide information. There was nothing adversarial or rancorous between Dhuse and the respondent at that time. The fact that a judge identifies himself as a judge, standing alone, does not, in every business transaction, establish a violation of the supreme court rules. (*Cf. Evanston Firefighters Association, Local 742 v. Labor Relations Board*, 241 Ill. App. 3d 725, 609 N.E.2d 790 (1992), (mere fact of municipal employees identifying themselves as such does not

establish violation of rule barring use of office to influence other persons).) The letter told Dhuse nothing which she did not already know, that is, that the respondent was a judge. The facts of this case are not like those in *In re Karns*, 2 Ill. Cts. Com. 28 (1983), in which the respondent was stopped for a suspected traffic violation and, when asked for his driver's license, told the officer he was a judge and gave the officer his business card.

The Board has cited *Inquiry Concerning a Judge*, 822 P.2d 1333 (Alaska 1991), and *Matter of Vasser*, 75 N.J. 357, 382 A.2d 1114 (1978). In *Inquiry Concerning a Judge*, the petitioner, a Justice of the Alaska Supreme Court, was an officer and director of a for-profit corporation[1] which was sued by a State agency; the corporation counterclaimed. The parties agreed to form a settlement committee; the petitioner was asked by the State agency to be one of the members; and he agreed. He met with the counsel for the State agency, and they agreed on the format and procedures for presenting evidence to the settlement committee. They also agreed to file a stipulation with the trial judge to request a delay on rulings on motions then pending. Later that afternoon, the petitioner met the trial judge by chance in the courthouse parking lot and informed him of the stipulation. The judge requested the petitioner to put their parking lot discussion into writing and send it to opposing counsel.

Three days later the petitioner sent three letters to the attorney for the State agency. The letters were sent on the petitioner's judicial "chambers stationery" and were typed by the petitioner's secretary. The first letter confirmed the agreement

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[1] This is not a violation of the Alaska Code of Judicial Conduct. It would be a violation of Illinois Supreme Court Rule 65C(2). (134 Ill.2d R.65(C)(2).)

between the petitioner and opposing counsel regarding the procedures to be followed by the settlement committee; the second letter informed counsel that the petitioner had met the trial judge in the courthouse parking lot; the third letter confirmed the petitioner's mailing of a settlement package to opposing counsel.

The settlement panel negotiated a settlement which was approved by the petitioner's board of directors. Under the settlement, the petitioner's corporation was to receive $573,000 from the State agency. The settlement was disapproved by the State agency's executive director and the attorney with whom petitioner had corresponded. Under the law, however, the agency was required to present the proposed settlement at a public hearing.

The petitioner learned that the agency's executive director intended to use his influence with the Governor to delay or cancel the public hearing. The petitioner, who was a long time friend of the Governor, called the Governor and asked to meet with him on a personal matter. The petitioner met with the Governor and expressed his view that the public hearing should go ahead as scheduled. The Governor took no action as a result of the meeting.

A public hearing was conducted, and the State agency eventually approved the settlement. Reports of the petitioner's involvement in the case subsequently became public.

The Judicial Conduct Commission filed a complaint against the petitioner which included charges that the petitioner's use of court stationery, his manner of arranging the meeting with the Governor and his actual meeting with the Governor created an appearance of impropriety in violation of the Code of Judicial Conduct. The Commission appointed special counsel who subsequently made a motion to dismiss the charges against the petitioner. The Commission denied the motion. Under the

Alaska statute, unlike Illinois law, the Commission itself heard the complaint and found that the use of court stationery, the petitioner's calling the Governor's office and subsequently meeting the Governor created an appearance of impropriety. The Commission, which under Alaska law may not impose sanctions, recommended to the Alaska Supreme Court that the petitioner be publicly admonished.

In a three-to-two opinion, the majority imposed a sanction of private reprimand. Two justices agreed that the petitioner's letters and his meeting with the Governor created an appearance of impropriety; they did not agree that the manner in which the petitioner set up the meeting with the Governor created an appearance of impropriety. One justice agreed that the letters created an appearance of impropriety; he held that the manner in which the petitioner set up the meeting with the Governor did create an appearance of impropriety; he also held, contrary to the Commission's finding, that the meeting between the petitioner and the Governor was an actual impropriety. Two justices dissented, holding that none of the petitioner's conduct violated judicial standards.

The Alaska case and this case differ in that the respondent took some steps to show that the circuit court stationery was not part of official correspondence and the respondent used his home address. In addition, the Alaska Supreme Court noted that the petitioner "should have realized that these materials could come to the attention of the public and therefore harm the judiciary...." (*Inquiry Concerning a Judge*, 822 P.2d at 1345.) We do not think it reasonable that the respondent in this obscure case, unlike the Alaska case involving a substantial amount of public money, could have realized that his correspondence could come to the attention of the public.

We wish to make our position clear, however, that our decision does not depend upon the

distinctions between the Alaska case and this case. We find the reasoning of the majority unpersuasive, and the reasoning of the dissenting justices sound. The applicable standard which was accepted by all the justices was whether the petitioner used "reasonable care to prevent a reasonably objective individual from believing that an impropriety was afoot." (*Inquiry Concerning a Judge*, 822 P.2d at 1340, 1350.) The principal dissenting opinion pointed out certain facts which a reasonably objective individual would consider: The attorney for the State agency knew that the petitioner was a supreme court justice. Consequently, the letters, which were factually accurate and in no way could be considered adversarial, told the State agency's counsel nothing which he did not already know. The petitioner had been asked by the State agency to actively participate in the settlement negotiations. Those facts were ignored by the majority. The dissent also pointed out that there was no rule or policy barring the use of chambers stationery by a justice in any way he wanted to use it. The majority deprecated that fact; we deem it probative nonetheless. In addition, we point out that one of the letters was sent at the direction of the trial judge. We agree with the dissenting opinion's conclusion that a violation of the judicial standards had not been established by clear and convincing evidence. Parenthetically, we find it anomalous that the petitioner might be an officer and director in a for-profit corporation and participate in the corporation's affairs to the extent that the petitioner did, all without fear of discipline, but would be disciplined for writing a letter on his chambers stationery.

In the other case cited by the Board, *Matter of Vasser*, disciplinary proceedings were brought against the respondent, a lawyer, based on his conduct while he was a municipal court judge. He had previously resigned his judicial position. Under New Jersey law,

a municipal court judge may continue to practice law.

The respondent, who represented a person charged with assault and battery, informed the court clerk that the assault and battery complaint "should be deferred and not processed in the ordinary course of municipal court business"; he told the court clerk to "bury" or "lose" or "postpone" the complaint for a while "until things cool off." (*Vasser*, 382 A.2d at 1115.) The respondent also "used official court stationery with respect to a transaction relating solely to his private law practice." (*Vasser*, 382 A.2d at 1116.) The Ethics Committee found that both actions of the respondent were violations of the disciplinary rules.

The New Jersey Supreme Court upheld the findings of the Ethics Committee and suspended the respondent's right to practice law for six months. The court found that the respondent's use of court stationery was a violation of Disciplinary Rule 2-102(A)(4) since it involved a "misuse of letterhead." (*Vasser*, 382 A.2d at 1117.) The contents of the letters are not recited. The court made the narrow holding that a "judge who uses official court stationery in his law practice in effect employs his judicial office and title to further wholly private ends." (*Vasser*, 382 A.2d at 1117.) In our judgment, the facts of *Vasser* are wide of the mark in this case.

The Board has also cited two advisory opinions from ethics advisory committees of Florida and Washington. We have considered the opinions and have determined that they do not assist us under the particular facts of this case.

We next find that the Board has not established a violation of the rules by the respondent's order in the Juvenile Court proceedings. (The Board does not argue that the respondent was obliged to recuse himself.) We note first that there is a variance between the allegations of the complaint and the proof. The complaint alleges that the respondent "returned the minor to the custody of his grandmother,

contrary to the wishes of the prosecutor and the Lawrence Hall Youth Services." The proof was that the respondent ordered the minor to be placed in the custody of DCFS, not the minor's grandmother. As the assistant public defender pointed out before the respondent made his ruling, if the minor was a ward of DCFS and there was a problem with placement with his grandmother, DCFS "can find him another placement."

Any variance aside, however, we must still reject the Board's argument. During oral argument the Board's attorney acknowledged that it was the Board's position that the respondent "arrived at a decision that he would otherwise not have arrived at but for the fact that Lawrence Hall took a certain position." The thrust of the Board's argument is that the respondent ruled as he did because of spite against Lawrence Hall Youth Services, rather than from his own convictions. We judge that the Board has failed to establish that conclusion under any recognized standard. Certainly, that conclusion has not been established by clear and convincing evidence.

The Board also contends the respondent influenced Rewocki's testimony. The complaint alleged that Rewocki first told the prosecutors that McAley was not in the apartment when he first noticed the missing doors and that he later told the prosecutors that McAley was in the apartment when he noticed the doors were missing and that he confronted her about the missing doors. Once again, the evidence did not establish the precise allegations of the complaint. Danielian did testify that Rewocki first told him that no one was present when he discovered the missing doors. Danielian never asked Rewocki whether he "confronted Robin McAley afterwards about the missing doors." Danielian later questioned Rewocki and Rewocki told him that he confronted McAley when he discovered the missing

doors. There is no contradiction in Rewocki's stories to the prosecutors. He did not say in the second interview that McAley was present when he noticed the missing doors. He was not asked in the second interview whether she was present. And he did not say in the first interview that he did not confront McAley about the missing doors. He was not asked that question either.

More important than the variance between the allegations of the complaint and the proof, however, and the failure to show that Rewocki made a contradictory false statement is the absence of any admissible evidence to establish that, if Rewocki did make a false statement, it was made at the instigation of the respondent. In oral argument, the attorney for the Board conceded that the complaint "suggested" that the respondent "suborned perjury" (or attempted to subom perjury). Even if we were to determine that Rewocki's statements to Danielian were admissible against the respondent, and we do not, we would still be required to find that the Board has failed to prove that Rewocki made false statements to the prosecutors at the instigation of the respondent. We conclude that the allegation of the complaint that "Rewocki discussed his prospective testimony with Respondent and Respondent had an influence on that testimony" has not been established by clear and convincing evidence.

The Board's last contention is that the respondent falsely told Judge Kutrubis that McAley had been legally evicted. We note that this claim of a violation of judicial standards was not included in the detailed allegations of the complaint. We would be justified in ignoring this claim. Proof without pleadings is as defective as pleadings without proof. (*Greene v. Rogers*, 147 Ill. App. 3d 1009, 498 N.E.2d 867(1986).) Nonetheless, we have determined to address the Board's argument.

The respondent conceded that McAley had not been "legally evicted." He was not asked to explain why he used the term when he addressed Judge Kutrubis. During oral argument his attorney maintained that the term was "ambiguous." In our judgment, when a lawyer tells a judge in a court proceeding that a person has been "legally evicted" the judge would conclude that the person had been evicted by court order and not by expiration of a lease or by the urging or remonstrances of the landlord. We find, therefore, that the respondent should not have told Judge Kutrubis that McAley had been "legally evicted."

We are not convinced, however, that the statement was made knowing it to be false and with an intent to mislead. Whether McAley was out of the apartment by expiration of the lease or by court order was not material. What was material was the fact that she was out of possession, and Judge Kutrubis knew that. He was also informed that the assistant public defender disputed the respondent's claim; he told Judge Kutrubis that his client had never been served with any process. We have been informed that eviction proceedings had been instituted against the grandparents of McAley's baby; and there was some evidence that she was living in the grandparents' apartment after she had left her own apartment. Under all these circumstances, we do not believe the respondent's isolated and negligent statement to Judge Kutrubis rises to the level of sanctionable conduct. See *In re Alfano*, 2 Ill. Cts. Com. 11 (1982); *In re Nielsen*, 2 Ill. Cts. Com. 1 (1981).

For these reasons, the complaint against the respondent is dismissed.

Complaint dismissed.