

(No. 96 CC 1. - Complaint dismissed.)

In re ASSOCIATE JUDGE STEVEN VECCHIO
of the Circuit Court of Winnebago County, Respondent.

Order entered February 19, 1998

SYLLABUS

On September 11, 1996, the Judicial Inquiry Board filed a complaint, later amended, with the Courts Commission, charging respondent with 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 and 62. In summary form, the complaint alleged that on or about August 10, 1995 and on or about January 6, 1996, respondent engaged in a pattern of conduct whereby he intervened in matters involving police action on behalf of his personal friends and acquaintances, using his position or status as a judge to affect or influence police conduct in matters not before him.

Held: Complaint dismissed.

McDermott, Will & Emery, of Chicago, for Judicial Inquiry Board.
Sreenan & Cain, P.C., of Rockford, for respondent.

Before the COURTS COMMISSION: HARRISON, Chairperson, BUCKLEY, RARICK, and VIRGILIO, commissioners, CONCURRING; GORMAN, commissioner, CONCURS IN PART and DISSENTS IN PART.

ORDER

The Judicial Inquiry Board (JIB) has filed a complaint against Steven Vecchio, Associate Judge of the Circuit Court of Winnebago County, charging him with conduct that is prejudicial to the administration of justice and conduct that brings the judicial office into disrepute. The thrust of the JIB's complaint, as amended, is that Judge Vecchio "engaged in a pattern of conduct whereby he intervened in a number of matters involving police action on behalf of his personal friends and acquaintances, using his position or status as a judge to affect or influence police conduct in matters not before him."

The "pattern of conduct" charged by the JIB actually consists of two separate incidents. The first is alleged to have taken place on August 10, 1995, approximately five months after Judge Vecchio first took the bench. The JIB charges that on that date, an attorney named Joseph Marconi, who was a friend or acquaintance of Judge Vecchio, was stopped by a Loves Park police officer because he was wanted on an outstanding warrant. According to the complaint, Marconi telephoned Judge Vecchio, who interceded on Marconi's behalf and dissuaded the officer from

serving the warrant on the understanding that Marconi would voluntarily appear in court the following day.

The second incident allegedly occurred on January 6, 1996, when William Bradley, a guest who had attended a party at Judge Vecchio's home, was involved in a single-car accident. Bradley's car was found abandoned in a ditch, and when Bradley could not be located, Vecchio was asked to come to the Bradley house to help. Once there Vecchio placed a 911 emergency call. Bradley walked into the house while Vecchio was on the phone with the 911 operator. Although it was determined that an ambulance would not be necessary, a Winnebago County sheriff's deputy was still dispatched to the scene. According to the JIB's complaint, Vecchio spoke with the deputy, declined to give the deputy Bradley's name, and, with the intervention of the deputy's supervisor, was able to postpone the deputy's interview of Bradley until later in the day.

The Commission held an evidentiary hearing on the JIB's charges on Dec. 17, 1997. At that hearing, the JIB called as its first witness the Loves Park police officer with whom Judge Vecchio dealt in the Marconi matter. The officer, named Lynde, testified that the warrant for Marconi's arrest was issued because Marconi had failed to pay restitution in a case involving an accident. Lynde indicated that Judge Vecchio was reluctant to alter the warrant because he had previously helped Marconi with a similar situation, but said he would "appreciate it" if Lynde would not serve the warrant on the understanding that Marconi would appear before Judge Grubb, who had issued the warrant, the following morning. Lynde recalled that Judge Vecchio asked him if the incident would be documented. He further testified that if not for Judge Vecchio's actions, he would have arrested Marconi and taken him to the county jail.

Cross-examination of Lynde showed that Lynde did, in fact, arrest Marconi and that Marconi had already been taken into police custody before Vecchio was contacted. Lynde did not handcuff Marconi or require him to ride in the squad car. Instead Lynde permitted Marconi to drive to the police station in his own vehicle. That concession was wholly unrelated to Judge Vecchio. Lynde testified that he gave Marconi this special treatment because as a lawyer, Marconi was an officer of the court.

Lynde understood that Marconi wanted to call a judge and permitted him to do so. He did not know which Judge Marconi intended to call and did not ask. Although Lynde knew the identity of the duty judge and assistant duty judge on call at the time, he made no effort to contact them himself.

Neither the police report subsequently filed by Lynde nor the statement given by Lynde to a Judicial Inquiry Board investigator made any mention of a statement by Vecchio that he had helped Marconi before. In contrast to Lynde's testimony at the hearing, there was also no mention of Marconi having asked Vecchio if he could help him. The police report did not contain any reference to Vecchio saying that he would "appreciate it" if the warrant were not served. In addition, Lynde conceded that he never stated in his report or complained to his superiors that he

regarded Judge Vecchio's conduct as improper. Although Lynde claimed to have made his own notes about the incident, he did not produce them during discovery or at the hearing because, in his words, "I don't know what I did with [them]."

Lynde's police report was published in the local newspaper eight months after the incident on the eve of a contested primary election in which Judge Vecchio was seeking his party's nomination to be a circuit judge. Lynde denied leaking the contents of the report to the press, but admitted that he had contributed financially to the campaign of an attorney who was against Vecchio and that he had done volunteer work for the attorney's campaign.

Following Lynde's testimony, the JIB called Deputy Anthony Moore, the Winnebago County police officer who responded to Judge Vecchio's 911 call in the Bradley matter. Moore stated that when he arrived at the Bradley's home, he wanted to interview the driver to determine, among other things, whether the driver was intoxicated when he crashed the car in the ditch. When Moore asked to interview the driver of the car, Judge Vecchio told him that the driver was upstairs in bed and that he did not want to bother him. Moore testified that when he repeated his request, Judge Vecchio responded, "I'd rather wait until tomorrow and do the police report and not bother him tonight." Moore then claims to have said, in a joking manner, "He's drunk, right?," to which Vecchio allegedly responded "Well, you know?"

Moore went on to describe the events that followed that night. His testimony tracked the version of the story set forth in the pleadings. He recalled how he returned to the Bradley's house after checking the crash scene and confirming that an accident report was necessary. He told the Commission how he had asked Judge Vecchio for the driver's name, how Judge Vecchio had refused to disclose that information, and how the judge indicated that he wanted to clear the matter up that evening without a police report.

Moore stated that Vecchio invited him into the Bradley's house. Once there, Moore telephoned his supervisor to discuss the situation. According to Moore, the supervisor and Vecchio spoke with one another on the phone, and Vecchio stated that he would have the driver contact Moore later that day. Moore then spoke with the supervisor again, and the supervisor advised him that as long as there were no serious injuries or signs of driving under the influence, the report could wait. After hanging up the phone, Moore thanked Judge Vecchio and left.

When the driver subsequently failed to contact Moore as arranged, Moore telephoned Judge Vecchio to get the driver's name and telephone number. Judge Vecchio supplied him with that information. He also asked Moore to wait a few minutes so that he could contact the driver directly and "yell at him" for not showing up. Moore did as the judge asked and was later able to reach the driver and complete his report.

Moore's testimony was followed by that of his supervisor, Sergeant Scott Andrews.

Sergeant Andrews corroborated that he discussed the situation with Vecchio over the phone and had no objection to delaying completion of the report, provided the driver made himself available later that day. Andrews testified that Vecchio's status as a judge was a major factor in his decision to agree to the delay. On cross-examination, however, he noted that it is common for accident reports to be delayed and that the delay here did not violate any regulation. He also clarified that he did not feel that Judge Vecchio had used his capacity as a judge to pressure him and did not feel that Judge Vecchio had coerced or "browbeaten" him in any way.

After Andrews testified, the JIB concluded its case by offering into evidence the transcript of the 911 emergency call placed by Judge Vecchio during the Bradley incident and a copy of a court order dated Aug. 11, 1995 in which Judge Grubb quashed the bench warrant he had issued for Marconi. Both exhibits were received without objection.

In his defense, Judge Vecchio called Judge Fred Kapala and Chief Judge Robert Coplan, both of the Circuit Court of Winnebago County. Both judges testified as to the duties of associate circuit judges and their knowledge of Judge Vecchio and his performance on the bench. Judge Kapala stated that Judge Vecchio's reputation for honesty is impeccable. Chief Judge Coplan agreed that Judge Vecchio's reputation for honesty and truthfulness was very good. He also testified that Judge Vecchio does very well in carrying out his official duties. In Judge Coplan's opinion, there is no question that Judge Vecchio is a credit to the judicial circuit in which he serves. These sentiments were echoed in testimonials submitted on Judge Vecchio's behalf by approximately 100 members of the local bar.

Judge Vecchio also testified on his own behalf. With respect to the Marconi incident, Vecchio stated that he had known Marconi since the two were teenagers, but did not consider Marconi a friend and had nothing to do with him socially. He discussed the call he received when Marconi was arrested by Officer Lynde in 1995 and related how reluctant he was to get involved in the matter. He confirmed that he wanted Lynde to contact Judge Grubb, who had issued the bench warrant, and stated that he received another call when Grubb could not be reached. According to his recollection, what Lynde said to him was this:

"Look, he's an officer of the court. He tells me that this warrant is vacated. I don't know if it has been or not. He says that. I believe it to be valid. But he does say he has court the next morning and he wants to put it off until the next day. What do you want to do?"

Vecchio responded, "Well, under these circumstances, if you have no problem with it, I would authorize the staying of the execution of the warrant until the next morning." In so responding, Vecchio had in mind that he was going to be at the courthouse himself the next morning and would check with Judge Grubb to make sure Marconi had shown up, which he did. Vecchio testified that he did not ask Lynde to let Marconi go and was not the one to come up with the idea of delaying service of the warrant conditioned on Marconi's appearance in court the next day.

Regarding the Bradley matter, Judge Vecchio testified that the driver of the automobile, William Bradley, was a friend who had attended a dinner party at the Vecchio's home, along with his wife and four other couples. Vecchio described Bradley as a generous, intelligent, good-hearted individual, whose personal behavior was very odd. According to Vecchio, Bradley left the party alone, without saying goodbye. He guessed that the time of Bradley's departure was around midnight or 12:30 a.m. Judge Vecchio thought that Bradley had probably drunk some alcoholic beverages that evening, but he did not know what Bradley had drunk or how much. In Judge Vecchio's opinion, none of the guests at the party was drunk.

When Bradley's wife was ready to leave the party, Kathy Thayer, the wife of another guest, offered to take her home. At approximately 2:00 a.m., after Judge Vecchio had gone to bed, he was roused by the sound of honking and screaming in his driveway. When he opened his window to see what was going on, he saw Kathy Thayer, hysterical, screaming that Bill Bradley had been in an accident and could not be located. Thayer asked Vecchio to come and help find Bradley, and he agreed.

When Judge Vecchio reached the accident scene, he saw Bradley's car in a ditch, situated precariously by a creek. There was blood on the door. After looking for Bradley without success, he went with Thayer and Mrs. Bradley to the Bradleys' house. When a search of the house failed to turn up any sign of Bill Bradley, Judge Vecchio placed a 911 emergency call for help.

During the course of the call, Bradley walked into the house, cold and wet, with bent eyeglasses and torn pants. Vecchio recalled telling the 911 operator that Bradley had been found. When the operator asked if they still wanted the ambulance, he checked with Thayer and Mrs. Bradley, who determined that Bradley was okay. Vecchio then told the operator that the ambulance could be cancelled. Before the call was terminated, the 911 operator advised that police officer would still be dispatched.

By the time the officer arrived, Bradley's wife had taken him upstairs so she could help him. Vecchio met the officer, Deputy Moore, in the driveway and gave him a summary of what had happened. Moore indicated that he needed to see the driver of the crashed vehicle in order to make out his report. Considering the lateness of the hour, now 2:30 or 3:00 a.m., and the circumstances, Judge Vecchio asked Moore if the report could be done later. Moore indicated that a report had to be made if damage to the vehicle exceeded \$500. Judge Vecchio told Moore that he had practiced law and was somewhat familiar with the procedures that had to be followed. He also told him that the damage to the vehicle was, in fact, over \$500.

Moore left the Bradleys' to check on the car for himself. When he returned, Vecchio again met him in the driveway. Moore confirmed that the damage exceeded \$500 and told Vecchio that he needed the driver's name and needed to go into the house to talk to the driver so that he could

finish the report that night. Having just attended a seminar for new judges, Judge Vecchio was mindful of the importance of not disclosing his position or using his influence improperly. He also recognized that he could not serve as Bradley's attorney, and did not want to. According to Vecchio, "I did not want to be there. I was only there to help in an emergency situation." Vecchio was also cognizant, however, that Deputy Moore had no authority to enter the Bradley's home without permission. Vecchio felt that he had no authority to aid the officer or waive Bradley's rights. The judge testified that he felt very, very uncomfortable about allowing Moore "in the house under these circumstances to do whatever." In Judge Vecchio's words, "I just felt very uncomfortable in agreeing to that, or assisting him in any way."

When Deputy Moore seemed insistent on obtaining the driver's name and in going into the house to speak with the him, Judge Vecchio suggested that they call Moore's supervisor and do what the supervisor thought appropriate. The two then proceeded into the house to use the phone. At this point Judge Vecchio told Moore that because he had just been appointed an associate judge he wanted everything to be handled properly and in accordance with policy.

According to Judge Vecchio's recollection, Moore placed the call to the supervisor, Sergeant Andrews, and then handed the telephone to him. Vecchio identified himself to Andrews, explained the situation, and asked if it was okay for the driver to report in later in the day. Sergeant Andrews agreed, provided that the driver would contact Moore at the beginning of his next shift, which was 6:00 p.m. that day. Andrews then spoke with Moore, and the matter was settled.

On cross-examination, Judge Vecchio stated that the time was chosen by Andrews, not him. He denied the JIB's insinuation that he had sought a delay in the interview because Bradley had been driving under the influence of alcohol. He also stated that Officer Moore had testified falsely when he claimed to have asked him if the driver of the vehicle was drunk. According to Judge Vecchio, Moore was either mistaken or lying.

At the conclusion of the evidence, the parties were permitted to make closing arguments. The Commission took the matter under advisement, and it is now before us for a decision. Ill. Cts. Com. Rule 17.

In addressing the JIB's charges, we begin by noting that the Commission is not authorized to pass on every transgression a jurist might commit in life or on the bench. It can only consider complaints by the JIB that a judge's conduct violates the Supreme Court Rules of judicial conduct. *People ex rel. Harrod v. Illinois Courts Commission*, 69 Ill. 2d 445,470 (1977). In the exercise of its duty to apply the rules of judicial conduct, the Commission has the authority to interpret or construe the rules, and its determination as to whether the rules have been violated in a particular case is final and unreviewable. *People ex rel. Judicial Inquiry Board v. Courts Commission*, 91 Ill. 2d 130, 135-36 (1982); Ill. Const. 1970, art. VI, sec. 15(f).

Violations of the Supreme Court Rules of judicial conduct may subject a judge to discipline (134 Ill. 2d R. 71), but discipline is not imposed automatically upon a finding that a rule has been violated. Under the judicial article of the 1970 Constitution, the Commission has authority to take adverse action against a Judge or Associate Judge only “for 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). Because the phrases “conduct that is prejudicial to the administration of justice” and “conduct that brings the judicial office into disrepute” are inherently vague, the Commission must proceed carefully on a case-by-case basis in determining whether these guidelines have been violated in a particular case. *In re Karns*, 2 Ill. Cts. Com. 28, 33 (1983). If the Commission determines that misconduct is *de minimis* or that a violation is not substantial, the complaint will be dismissed. See, e.g., *In re Scivner*, 3 Ill. Cts. Com. 6, 9 (1993); *In re Alfano*, 2 Ill. Cts. Com. at 27-28; *In re Nielsen*, 2 Ill. Cts. Com. 1, 8-9 (1981); *In re Campbell*, 1 Ill. Cts. Com. 164, 171-72 (1980).

Because of the grave nature and serious consequences of charges of judicial misconduct, the JIB is required to prove its allegations by clear and convincing evidence rather than merely by a preponderance of the evidence. *In re Karns*, 2 Ill. Cts. Com. at 33; Ill. Cts. Com. Rule 11. 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 (Ill. Const. 1970, art. VI, sec. 15(e)). *In re Karns*, 2 Ill. Cts. Com. at 33. We note, moreover, that where the JIB alleges that a judge’s misconduct is prejudicial to the administration of justice or is such that it brings the judicial office into disrepute, it must normally present evidence to substantiate those allegations, just as it must adduce evidence to prove every other element of its complaint. *In re Close*, 3 Ill. Cts. Com. 72, 83-84 (1994).

Applying these principles to the matter before us, we hold that the JIB has failed to sustain its claims against Judge Vecchio. As indicated at the outset of this disposition, the gist of the JIB’s complaint is that Judge Vecchio engaged in a pattern of conduct in which he used his position as a judge to help personal friends or acquaintances in their dealings with the police. In the case of the Marconi incident, we accept Judge Vecchio’s testimony that he did not regard Marconi as a friend, and we find no credible evidence that Judge Vecchio intended to use his status as a judge to help Marconi. Judge Vecchio did not initiate the contact with Marconi and Officer Lynde, he advised Lynde of his reluctance to alter Judge Grubb’s warrant, he referred Lynde to Grubb, he got involved only after Grubb could not be reached, he took no action that was contrary to Lynde’s wishes or recommendations, and he contravened none of the policies or protocols of the local circuit court. Although Officer Lynde insinuated at the hearing that Judge Vecchio wanted him to defer execution of the warrant as a personal favor, Lynde was shown to have a political bias against Judge Vecchio, and the absence of incriminating details in his initial reports and statements, coupled with his failure to produce his personal notes on the incident, render his credibility suspect.

The Bradley incident is more problematic. Unlike Marconi, Bradley was a friend of Judge

Vecchio. It was that friendship that brought Bradley to the party at Judge Vecchio's home, it was that friendship that led Judge Vecchio to leave his home in the early morning hours of January 6 to help look for Bradley when Bradley's car was discovered abandoned in a ditch, and it was that friendship that placed Judge Vecchio on the telephone summoning emergency assistance when blood was discovered at the accident scene and Bradley could not be found.

In reaching out to help a friend, Judge Vecchio was beyond reproach. There was nothing the slightest bit improper about his actions. To the contrary, his loyalty and dedication on behalf of a friend in distress were commendable.

What gives us pause is what took place after Deputy Moore's arrival. When Moore reached the scene and began his investigation, the situation changed. The evidence established that once the crisis past, Judge Vecchio became an active intermediary between the police and the Bradleys.

Vecchio claims that this was not by design, and we do not doubt him. He had come only to render aid and wanted to remain neutral. He did not want to serve as Bradley's advocate, but neither did he want to use his position to assist the police in conduct he considered improper.

We do not envy the difficult position in which Judge Vecchio found himself. At 3:00 a.m. on a cold January morning when your friend has just been in an accident, his wife is upset, and you believe the investigating officer is insisting on making an entry into their residence under circumstances when a warrant would otherwise be necessary, options are limited. The temptation to intercede is undeniable. Both personal allegiance and allegiance to the integrity of the law call out for action.

The real question is what action is appropriate. Had Judge Vecchio been merely a friend and attorney, there would be no doubt as to the propriety of his conduct. But he was not. He was a judge. As such, his behavior was governed by the Code of Judicial Conduct set forth in the Rules of the Supreme Court. Supreme Court Rule 62 states:

“(A) A judge should respect and comply with the law and should comport himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) 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.” 155 Ill. 2d R. 62.

In our view, the course of conduct most in keeping with this provision would have been for Judge Vecchio to have advised Mrs. Bradley and Mrs. Thayer of Officer Moore's arrival; suggest that

they contact counsel, if he thought that was necessary; explain that his status as a judge prohibited him from speaking to Moore on the Bradleys' behalf; and then retire from the scene to look in on Mr. Bradley or return to his own home.

Having said that, we do not believe that Judge Vecchio's actions warrant disciplinary action. There is no question that when a judge assumes the robes of office, he must stop thinking in terms of an advocate and begin thinking as a jurist. As virtually every judge will attest, however, this is a profound and fundamental transition that does not always come quickly or easily. At the time Judge Vecchio found himself in the middle of the Bradley incident, he had been on the bench less than a year.

We are also mindful that Judge Vecchio was not called to the scene because of his judicial position, and he did not intervene because he thought he could use his status as a judge in an improper way. To him and to the Bradleys, his office was irrelevant. He was there because he was a friend who could be counted on to take charge in an emergency. In addition, the evidence showed that delays in completing accident reports were not uncommon, the delay in completing the report on Bradley's accident did not violate any law or regulation, and the supervising officer who approved the delay testified that he did not believe that Judge Vecchio had pressured or coerced him.

In its complaint, the JIB alleged that Judge Vecchio's actions were part of a pattern of improper conduct. Such allegations may reflect charges raised in the local media at the time Judge Vecchio ran for the nomination for circuit judge, but they have no basis in the evidence that was presented to the Commission. The record before us shows that to the extent Judge Vecchio did anything wrong in the Bradley matter, his transgression was an isolated incident in an otherwise exemplary career. The two judges who testified, including the chief judge of the circuit court where Judge Vecchio serves, both attested to his reputation for honesty and truthfulness, and the chief judge characterized Judge Vecchio as a credit to his court. As previously indicated, these opinions were echoed by nearly 100 attorneys who know Judge Vecchio and have practiced with him and before him. The JIB offered no evidence to the contrary.

For the foregoing reasons, the JIB's complaint against Judge Vecchio is dismissed.

Complaint dismissed.

GORMAN, concurring in part and dissenting in part:

The majority correctly states the facts and cites the controlling authority. I concur in the majority decision that Judge Vecchio did not engage in a "pattern of conduct" and in the Marconi incident did not use his status as a judge in any improper manner.

I respectfully dissent from the majority position regarding the Bradley incident. The

majority correctly concludes that through no fault of his own, Judge Vecchio found himself in an admittedly difficult circumstance. The majority suggests how the judge might have handled the situation. Unfortunately, Judge Vecchio, in my opinion, did intervene in the police action in this instance and influence police conduct. Judge Vecchio initiated the suggestion that Officer Moore's superior be called and in speaking with Sergeant Andrews, Judge Vecchio identified himself as a judge and initiated the suggestion that further investigation of his friend be delayed. Whether that delay compromised the collection of any evidence is, of course, impossible to determine. Whether the police officers admitted to feeling pressure is irrelevant, they changed the conduct of the investigation in accordance with the request of Judge Vecchio.

In my view, there has been a violation of Supreme Court Rule 62 that warrants disciplinary action and I would reprimand respondent.