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Courts Commission Secretary

(No. 16-CC-1 Respondent Turner retired.)

In re CIRCUIT JUDGE VALARIE E. TURNER
of the Circuit Court of Cook County, Respondent

Order entered December 1, 2017.

Sidley Austin LLP, of Chicago, for Judicial Inquiry Board.
Tabet DiVito & Rothstein, LLC, of Chicago, for Respondent.

Before the COURTS COMMISSION: BURKE, Chairperson, DAUGHERITY, DE SAINT PHALLE, McBRIDE, SCHOSTOK, WEBER, WOLFF, commissioners. ALL CONCUR.

ORDER

On December 2, 2016, the Judicial Inquiry Board (Board) filed a complaint against respondent, Judge Valarie E. Turner, a Cook County Circuit Judge who was assigned to the Markham Courthouse. The complaint alleged that on August 11, 2016, Rhonda Crawford, who was running unopposed for a judicial vacancy, but who was not yet a judge nor had been sworn in as a judge, was observing judges in the Markham courthouse to prepare for her possible election to the bench. After the 10:30 a.m. court call, respondent introduced Crawford to prosecutor Luciano Panici Jr., and asked him if he had met "Judge Crawford." Crawford did not correct the erroneous characterization, and, at that time, Panici Jr. believed that Crawford was a judge. Later that afternoon, as respondent was presiding over the afternoon court call, respondent said "We're going to switch judges." Respondent stood up and gave her judicial robe to Crawford. Crawford put on the robe and sat in the judge's chair behind the bench while Respondent stood behind Crawford. Crawford then purported to preside over several traffic violations. While purporting to preside over one of the matters, Crawford asked respondent if she could deny Panici Jr.'s request for a continuance, and respondent told her that she could.

At some point after the afternoon court call, Panici Jr. learned that Crawford was not a judge. The attorney informed Judge Marjorie Laws, the presiding judge in Markham, of the

events that had taken place that afternoon. Judge Laws then went to find respondent to confirm those events. She asked respondent whether she had given "Rhonda [her] robe and let her preside over tickets[,]" and respondent replied "I thought she was a judge." Judge Laws told respondent that Crawford was not a judge, then left to confirm the events with Crawford as well. Crawford confirmed to Judge Laws that she had presided over at least two traffic tickets. Judge Laws then returned to respondent, and informed her that she would be reporting the matter to the Board.

On August 17, 2016, the Executive Committee of the Circuit Court of Cook County met to discuss the allegations of respondent's improper conduct. The Executive Committee concluded that the allegations posed a threat of injury to the public's confidence in the integrity and impartiality of the judiciary and to the orderly administration of justice. The Executive Committee issued a special order, removing respondent from her judicial assignment and reassigning her to restricted duties.[1]

On September 1, 2016, the presiding judge reheard the traffic tickets that Crawford purported to preside over, and dismissed each one, *nunc pro tunc*, to August 11, 2016. The complaint further alleged that respondent "recently was diagnosed with Alzheimer's disease[,]" and that she "has suffered and continues to suffer from memory loss, and is mentally unable to perform her duties."

At the prior November 11, 2016, hearing before the Board, counsel for respondent was permitted to make opening statements. Counsel stated that respondent had undergone a spinal tap, and that the results showed "a couple of biomarkers which indicate Alzheimer's disease.

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[1] Illinois Supreme Court Rule 56 allows a judge to be temporarily reassigned to restricted duties or duties other than judicial duties, when there are charges or implications of improper conduct, depending on the severity and nature. Ill. Sup. Ct. R. 56 (effective Dec. 1, 2008).

Judge Turner has Alzheimer's." In articulating respondent's position, counsel clarified that respondent was "not contesting that she's mentally incapable of performing her duties" but argued that a complaint should not be brought against her because "she will not return to the bench" and would be "essentially retiring" by applying for temporary total disability benefits.

Respondent was called to testify. She testified that she had been a judge since being elected in 2002. Respondent stated that she was taking a medication to help her memory, because "[r]ecently I'm forgetful on certain things." She stated that she did not want to serve as a judge, because "even with the medicine I want to know that I'm whole [and] [t]hat I can do the work well." Respondent agreed that she could not "serve as a judge given [her] memory related issues" and that she was not contesting that she was "not capable of performing [her] duties as a judge." Regarding the events leading up to the hearing, specifically that respondent had allowed someone to put on a robe and act as a judge, respondent stated that she "thought [Crawford] was a judge" and that Crawford had "already been sworn in[.]" She further stated that "In our district when a new judge comes on, they shadow a judge to see, you know, how that judge does the judging. So [Crawford] was shadowing me. I thought she was a judge."

In response to the complaint, respondent filed a motion to dismiss pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)). In her Motion to Dismiss, respondent did "not dispute that she suffers from a condition that ensures she will never return to the bench"—namely, that "she has Alzheimer's disease." She further stated that "she has committed to never return" to the bench or resume her judicial duties, and, as a result, she "effectively has retired." Respondent cited "a long line of precedent dismissing Judicial Inquiry Board complaints against judges who *** have vacated their judicial duties." *In re Pincham,* No. 88 CC 1 (Jan. 28, 1992); *In re Behle*, No. 06 CC 1 (May 2, 2007); *In re Doyle*, No. 05 CC 1

(Aug. 28, 2006); *In re Buoscio and Sheridan*, No. 97 CC 2 (Jul. 30 1999). Respondent compared herself to the respondents in those cases because "she has committed to never serve again in any judicial capacity [and] [h]er current status is akin to retirement." Respondent acknowledged that the Court's Commission had the authority to "suspend, with or without pay, or retire a Judge or Associate Judge who is physically or mentally unable to perform his or her duties." Citing Ill. Const. 1970, art. VI, § 15(c)(2). She contended, however, that this authority "should be exercised only in very limited circumstances, such as where a respondent with a mental disability denies having such disability or the need for treatment and refuses to cease judicial activity."

On January 18, 2017, Respondent submitted a supplemental memorandum in support of her motion to dismiss, which alleged that, since the motion's filing, the Judge's Retirement System notified respondent that "her application for Temporary Total Disability status has been approved by the System's Consulting Physician and that [she] will soon begin to receive benefits pursuant to that status." Respondent attached a copy of that letter, and contended that the Judge's Retirement System's finding "justifies the dismissal of the JIB's Complaint, for the reasons discussed in the motion to dismiss." The letter, which was signed by a manager at the Judge's Retirement System, informed respondent that her application and medical documentation were reviewed by the consulting physician, who agreed that her "physical condition is of such a nature as to prevent [her] from reasonably performing [her] duties as a judge and that [her] disability is likely to be permanent." The letter further stated that her case would "again be reviewed in January 2018 and each year thereafter, to determine [her] eligibility to continue receiving this benefit." Thereafter, on March 13, 2017, respondent submitted a second supplemental memorandum, in which she stated that she had "received formal written notice from the Judge's Retirement System that her 'application for temporary disability benefits has been approved.' "

On February 21, 2017, the Board responded to respondent's motion to dismiss. The Board alleged that respondent's motion to dismiss "ignores the core issue in this case, namely whether the Commission can retire or suspend her pursuant to its authority under the Illinois Constitution." The Board noted that respondent's "mental inability to act as a judge [was] uncontested" and that she "has not resigned, retired, been removed, or reached the end of her term without retention." The Board pointed out that, "for economic reasons[,]" respondent "has chosen not to retire and receive *permanent* disability benefits. Instead, she has chosen to remain a judge and to seek *temporary* disability status." (Emphasis in original). However, by seeking temporary disability benefits, the Board argued that respondent retained her judicial position, and thus, "the Commission retains the ability to consider whether Respondent's inability to perform judicial functions necessitates removal or suspension from that position."

Respondent replied on February 24, 2017. She suggested that by the Judge's Retirement System's acceptance of her disability status, it has effectively found that she has been removed from the bench. Respondent argued that the Board was essentially seeking an advisory opinion, since she had already been removed and had committed to never returning to the bench. Respondent further argued that, "to the extent [the Board] believes that [she] claimed the wrong disability status and is receiving excess benefits, its argument should be addressed to the Board of Trustees of the Judges Retirement System, not this Commission."

On April 6, 2017, the Court's Commission denied respondent's Motion to Dismiss, without further comment.

On August 22, 2017, this matter was presented for hearing by the Court's Commission. The parties submitted the following stipulation:

"1. Respondent is a Circuit Judge of the Circuit Court of Cook County and was assigned to the Markham Courthouse in August 2016.

2. Respondent was diagnosed with Alzheimer's disease on November 8, 2016.

3. Respondent has suffered and continues to suffer from memory loss and is mentally unable to perform her duties.

4. Respondent applied for, and received, temporary total disability status from the Judges' Retirement System of the State of Illinois.

5. Respondent is not currently performing any judicial functions."

At the hearing, the Board contended that respondent's receipt of temporary disability benefits "is by definition temporary" and that respondent "continues to occupy her judicial position and remains able to return to judicial service in the future." The Board requested that the Commission "enter an order finding what is stipulated and not in dispute, namely that [respondent] is mentally unable to perform her judicial duties." Regarding the consequence of such a finding, the Board "defer[red] entirely to the Commission [regarding whether to] suspend [respondent], with or without pay, or retire her."

Respondent's counsel first repeated the contention that the Board was seeking an advisory opinion. Counsel acknowledged that respondent's Alzheimer's was "a permanent condition[,]" but contended that the Judges Retirement System reviewed this case and, knowing that she suffered from a permanent condition, found that she "qualified for *** temporary total disability [benefits]." Respondent also contended that she was not a judge because she was receiving a reduced salary through the temporary disability benefits, and because the temporary total disability statute indicated that her benefits occurred following her "removal" from the

payroll. Respondent acknowledged that the Commission "has the power to remove a judge" but contended that such authority should not be exercised in this case because she "readily admits" that she suffers from a mental disability, and has "no intention of coming back on the bench." Respondent further argued that if the Commission removed respondent it "would provide an incentive" for others to "conceal [their mental of physical disabilities] and continue to perform as a judge."

Following the Court's Commission hearing, respondent filed a motion for leave to file a supplemental memorandum on September 11, 2017, seeking to address "two questions raised during oral argument: (1) whether the Temporary Total Disability statute applies to individuals with permanent disabilities; and (2) whether the Commission should abstain from exercising its discretion to sanction [respondent] where a statute already provides a remedy." Respondent maintained that the "Temporary Total Disability statute applies to individuals with permanent disabilities, because the statute's use of the term 'temporary' refers to the nature of the *benefits*, not to the nature of the *disability*." Respondent further contended that "where, as here, [respondent] has availed herself of a statutory remedy *** and has voluntarily ceased her judicial duties and sworn under oath not to return to the bench, there is no need for the Commission to take further action."

ANALYSIS

Article VI, Section 15 of the Illinois Constitution, created the Judicial Inquiry Board to "conduct investigations, receive or initiate complaints concerning a Judge or Associate Judge, and file complaints with the Courts Commission." The Board can file a complaint with this Commission when five of its nine members believe that "a reasonable basis exists (1) to charge the Judge or Associate Judge with 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, or (2) to charge that the Judge or Associate Judge is physically or mentally unable to perform his duties." Ill. Const., 1970, art. VI, § 15.

Article VI, Section 15 of the Illinois Constitution also created this Commission, which is charged with hearing complaints filed by the Board, and has two specific, and concomitant, types of authority: "(1) to remove from office, suspend without pay, censure or reprimand a Judge or Associate Judge for willful misconduct in office, persistent failure to perform his or her duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend, with or without pay, or retire a Judge or Associate Judge who is physically or mentally unable to perform his or her duties." Ill. Const., 1970, art. VI, § 15.

The Complaint in this case was brought under the second provision. From our review of prior Court's Commission orders, we do not believe that the second provision has been exclusively utilized by this Commission when considering a complaint brought by the Board. Nonetheless, the intent of the provision is obvious. The two types of authority given to this Commission are separate, and, under the second provision, there is no requirement to show any willful misconduct, persistent failure, or any other prejudicial conduct. Ill. Const., 1970, art. VI, § 15. In order to protect the interests of our State and uphold the integrity of the judiciary, this Commission's authority must extend to, not only those judges whose conduct violates the judicial Canons, but also those judges who are unable to perform their duties—even if a violation has not yet occurred. The Board bears the burden of proving the allegations of the complaint by clear and convincing evidence. Ill. Cts. Comm'n R. Proc. 9(b) (eff. June 27, 1999) ("The allegations of the complaint must be proved by clear and convincing evidence"); 14-CC-2, *In re Drazewski and Foley* (March 11, 2016).

Respondent does not dispute that she is mentally unable to perform her duties. Respondent agrees that her condition is permanent, that there is no evidence that Alzheimer's disease is curable, and that she will never return to judicial service. Despite the permanent nature of her disability, respondent has applied for and received Temporary Total Disability benefits. Respondent's primary argument is that because she has sought and received temporary total disability benefits from the Judges Retirement System, she has "effectively retired," and the complaint against her should be dismissed. Accordingly, the primary issue before this Commission is whether, in light of respondent's receipt of temporary disability benefits, she remains a judge, or whether, as respondent claims, she has "effectively retired."

After reviewing the applicable constitutional and statutory provisions, we conclude that respondent's argument that her receipt of temporary total disability benefits amounts to retirement or resignation, is contrary to any reasonable interpretation of those provisions and well-settled law.

Article VI, section 12 of the Illinois Constitution, entitled, "The Judiciary" provides for the Election and Retention of Illinois judges. It states that, "The office of a judge shall be vacant upon his death, resignation, retirement, removal, or upon the conclusion of his term without retention in office." Ill. Const., 1970, art. VI, § 12. Because respondent has not died or been removed, and her six year term does not end until 2020, this Commission must consider whether respondent's receipt of temporary total disability payments amounts to "resignation [or] retirement[.]"

As described above, respondent contends that she has "effectively retired" because she has applied for, and is currently receiving, a temporary total disability benefit from the Judges

Retirement System. See 40 ILCS 5/18-126.1 (West 2016). Under section 18-126.1 of the Illinois Pension Code (Code):

> "A participant who has served for at least 2 years as a judge and has at least 2 years of service credit shall be entitled to a temporary total disability benefit provided:
>
> (1) While in employment as a judge, the participant is found by medical examination to be mentally or physically incompetent to perform his or her duties;
>
> (2) The participant does not receive or have a right to receive any salary as a judge;
>
> (3) The board has received written certifications by at least 2 licensed and practicing physicians designated by it certifying that the participant is totally disabled and unable to perform the duties of his or her office as a consequence thereof; and
>
> (4) The participant is not engaged in any form of gainful occupation during his or her disability."

Section 18-126.1 of the Code further provides that such benefit "shall begin as of the day following the removal of the judge from the payroll on account of the disability and be payable during the period of disability but not beyond the term of office for which the participant was last elected or appointed." *Id.* A person receiving temporary total disability benefits receives a monthly payment of "50% of the participant's rate of salary in effect at the date of removal from the payroll" and "service credit for retirement and survivor's annuity purposes for the period that temporary disability benefits are paid." *Id.*

The permanent disability statute, by contrast, provides that a participant "shall be considered permanently disabled only if (1) disability occurs while in employment as a judge and is of such a nature as to prevent the participant from reasonably performing the duties of his or her office at the time, and (2) the board has received a written certificate by at least 2 licensed and practicing physicians appointed by it stating that the participant is disabled and that the disability is likely to be permanent." 40 ILCS 5/18-126 (West 2016).

Under section 5/18-124, a participant is entitled to begin receiving permanent disability benefits, or, as labeled in the statute, a "retirement annuity," subject to the following:

> "(1) the date the annuity begins is subsequent to the date of final termination of employment, or the date 30 days prior to the receipt of the application by the board for annuities based on disability, *** ;
>
> (2) the participant *** has become permanently disabled and as a consequence is unable to perform the duties of his or her office;
>
> (3) the participant has at least 10 years of service credit ***;
>
> (4) the participant is not receiving or entitled to receive, at the date of retirement, any salary from an employer for service currently performed."

Our review of these statutes does not support respondent's contention that she has retired or that her current status is "akin" to retirement. In comparing the statutes above, we note that the permanent disability statute uses terms such as "retirement annuity," "final termination of employment," and "date of retirement." The temporary disability statute, by contrast, does not include any of the above terms, and instead, uses terms like "during his or her disability" and "during the period of disability." The use of such language in the above statutes demonstrates the legislative intent that a judge's receipt of benefits under the permanent disability statute

constitutes "retirement," while a judge's receipt of benefits under the temporary total disability statute does not. See *In re John C.M.*, 382 Ill. App. 3d 553, 567–68 (2008) ("*The inclusion of one is the exclusion of another*, a generally accepted canon of construction, construes the express inclusion of a provision in one part of a statute and its omission in a parallel section as an intentional exclusion from the latter." (Emphasis in original) (internal quotations and citations omitted)); *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11 ("The purpose of statutory interpretation is to determine the legislative intent, which is best demonstrated by the statutory language, given its plain and ordinary meaning."). The language of the temporary disability statute envisions the return of the judge to his or her judicial office when the temporary disability ends, and evinces the legislature's intent to provide benefits during a temporary period of disability, until the participant can resume the duties and obligations of judicial office. The permanent disability statute, by contrast, is intended to provide benefits upon the judge's "retirement."

This conclusion is further supported by the statutory title, "temporary total disability," which connotes that it is designed to provide benefits to a participant who suffers from a *temporary* disability (see *Banco Popular North America v. Gizynski*, 2015 IL App (1st) 142871, ¶ 57 (noting that a statute's title can provide guidance in resolving issues of legislative intent)), and by the common understanding of that term. Black's Law Dictionary defines "total disability" as, "A worker's inability to perform employment-related duties because of a physical or mental impairment" and "temporary total disability" as "Total disability *that is not permanent*." (Emphasis added). Black's Law Dictionary 474 (7th ed. 1999). As such, "temporary total disability" benefits are generally not thought to be applicable in cases where a person's disability has become permanent. See *Rambert v. Indus. Comm'n*, 133 Ill. App. 3d 895, 902–03 (1985)

("The period of temporary total disability extends from the time the injury incapacitates the employee until the claimant has recovered as much as the character of the particular injury will permit"); *Mech. Devices v. Indus. Comm'n*, 344 Ill. App. 3d 752, 759–60 (2003), quoting *Manis v. Industrial Comm'n*, 230 Ill. App. 3d 657, 660 (1992) ("Once an injured employee's physical condition has stabilized, the employee is no longer eligible for TTD benefits because the disabling condition has become permanent") ; *Hayden*, 214 Ill. App. 3d at 754 ("An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of the injury will permit. [citations] Thus, once an injured employee's physical condition stabilizes, he is no longer eligible for temporary total disability benefits").

Additionally, a judge receiving temporary total disability benefits is entitled to receive "service credit for retirement *** for the period that temporary disability benefits are paid" (40 ILCS 5/18-126.1 (West 2016))—*i.e.*, the judge is able to continue receiving credit towards her pension, maximizing its future value, in the same way she would if she continued to actually serve as a judge during the period that she receives those benefits. This language demonstrates that a judge who is receiving temporary total disability benefits has not actually retired, since she is able to increase the benefits that she will receive upon her later retirement. We are aware of no circumstances in which an employee is able to accumulate pension credit after his or her retirement. The permanent disability statute, by contrast, does not provide for similar service credit. Instead, the participant is entitled to then begin receiving her "retirement annuity," based on her prior years of service. 40 ILCS 5/18-124 (West 2016); 40 ILCS 5/18-126 (West 2016).

We also note that the temporary total disability statute limits the time period that a person can receive the benefit to "not beyond the term of office for which the participant was last

elected or appointed." This language also demonstrates that the judge continues to occupy his or her "office" during the period of benefits, and that the receipt of such benefits is not intended to be permanent. As stated in the letter respondent attached to her supplemental memorandum in support of her motion to dismiss, her case will be reviewed annually, beginning in January 2018, to determine her eligibility to continue receiving the benefit, until the end of her term, in 2020.

Respondent's request that to construe her receipt of temporary total disability benefits as an effective retirement or resignation is also contrary to the commonly understood meaning of those terms. Black's Law dictionary defines "retirement" as "Voluntary termination of one's own employment or career, esp. upon reaching a certain age" and "resignation" as "1. The act or an instance of surrendering or relinquishing an office, right, or claim; 2. A formal notification of relinquishing an office or position." Black's Law Dictionary 1311, 1317 (7th ed. 1999).

Respondent, however, has not voluntarily terminated her employment. She has not given a formal notification, or taken any other action which would surrender or relinquish her office. In fact, there is no vacancy for her judgeship. Instead, by applying for and accepting temporary total disability benefits, respondent has chosen to hold on to her judicial office, leaving open the possibility that she could return to that position in the future. Respondent has not retired or resigned as those terms are commonly understood.

Respondent's plea that she has committed not to return to service as a judge does not alter our conclusion. Contrary to respondent's claim, respondent has chosen to pursue benefits that are temporary, and that keep her in a position as a judge. She has not resigned or retired by accepting permanent disability benefits. Instead, respondent sought and has accepted temporary benefits that apply to judges who are expected to return to service in the future.

Respondent points to the language of the temporary total disability statute, and contends that it indicates that in order to qualify for benefits, she has been "removed" as a judge. We disagree. Notably, respondent does not mention the three words following the word "removal," in the statute—namely, "from the payroll[.]" Unlike respondent, we read this statute to support the finding that respondent has not been removed as a judge. Instead, the statute specifies that she has been removed, only, "from the payroll." As such, the temporary total disability statute indicates that a judge on temporary total disability remains a judge, and envisions the judge's return to performing the duties and obligations of the office, after the temporary disability has been resolved.

Respondent also contends that, if she were to attempt to return to judicial service, the Board "would have every opportunity at that time to reinstate proceedings against her based on those changed circumstances." She further argues that if she "claims at some future time to have somehow been cured of her disability, this Commission then would ultimately decide whether she has in fact been cured and whether she were then capable of performing her judicial duties." Respondent's contentions are, essentially, a request to hold this matter in abeyance until a future time when she returns to judicial duty. Respondent effectively asks this Commission to abdicate its constitutionally imposed duties based on her promises and to ignore the fact that she is mentally unable to perform her duties based on what she admits is a permanent condition, so as to allow her to maximize her pension.

By discussing the disability benefits statutes in this order, we do not mean to suggest that we are reviewing or resolving the question of which benefits apply to respondent's situation. Whether respondent qualifies for benefits under one or both statutes is not at issue before this Commission. Although respondent places great weight on the fact that the Judges Retirement

System has found her eligible for temporary total disability benefits, the Judges Retirement System's determination is not at issue, and we express no opinion on whether it was proper. It is this Commission, and not the Judges Retirement System, that has authority over the conduct of judges, and to suspend or retire those judges who are "physically or mentally unable to perform [their] duties." Ill. Const., 1970, art. VI, § 15. Similarly, whether respondent's condition is temporary or permanent is not germane to our analysis. However, respondent has raised the issue of whether she has retired by way of receiving those benefits, and accordingly, this Commission must consider the effect of her receipt of benefits on her judicial office. Thus, we discuss the above concepts to the extent that they help us resolve the true question before this Commission—whether respondent's receipt of temporary total disability benefits means that she has retired.

Respondent's argument, that she is like other judges whose complaints have been dismissed after retirement, is not persuasive. Respondent cites a number of cases in support of her contention that the complaint should be dismissed because she, like the respondents in those cases, has "vacated [her] judicial duties." See *In re Pincham*, No. 88 CC 1 (Jan. 28, 1992); *In re Behle*, No. 06 CC 1 (May 2, 2007); *In re Doyle*, No. 05 CC 1 (Aug. 28, 2006); *In re Buoscio and Sheridan*, No. 97 CC 2 (Jul. 30 1999). However, unlike respondent here, the respondents in those cases actually retired or resigned from their judicial duties. *In re Pincham*, No. 88 CC 1 (Jan. 28, 1992); *In re Behle*, No. 06 CC 1 (May 2, 2007) (dismissing the complaint with prejudice on the Board's motion, because the respondent was "no longer a sitting Illinois judge"); *In re Doyle*, No. 05 CC 1 (Aug. 28, 2006) (dismissing the complaint against the respondent where the parties agreed that respondent had "voluntarily vacated his judicial position," the "vacant position [had been filled] with a new judge," and respondent was "no longer a state judge"); *In re Buoscio and*

Sheridan, No. 97 CC 2 (Jul. 30 1999) (dismissing the complaint against the respondents where they had "resigned from office"). As such, those cases do not support respondent's position, and she has submitted no authority to support her claim that her acceptance of temporary disability benefits is akin to retirement, such that she should be treated like the respondents in the cited cases.

Respondent's citation to *In re Brim*, No. 13-CC-1 (May 9, 2014) is similarly unpersuasive. In *Brim*, this Commission considered a complaint against the respondent which alleged that, while on the bench and in open court, she made a number of inappropriate comments, and, the next day, pushed a Cook County Deputy Sheriff, which resulted in a criminal complaint being filed against her. The complaint further alleged that the respondent had, and continued to have, schizoaffective disorder (bipolar type), and was mentally unable to perform her duties unless she received regular treatment, including taking necessary and appropriate medication. The respondent did not deny the allegations of the complaint, but believed that "she was fit to continue to hold her judicial office because she had finally been properly diagnosed and knew that she had to take medication every day for the rest of her life." After considering the evidence presented, this Commission stated that we were:

> "sympathetic to respondent's mental health issues. Nonetheless, the judicial profession requires a high level of mental ability and proper mental function. 'A judge has a position of power and prestige in a democratic society espousing justice for all persons under law. The role of the judge in the administration of justice requires adherence to the highest standard of personal and official conduct. Of those to whom much is committed, much is demanded. A judge, therefore, has the responsibility of conforming to a higher standard of conduct than is expected of lawyers or other persons in society. *** Our legal

system can function only so long as the public, having confidence in the integrity of its judges, accepts and abides by judicial decisions.' *In re Winton,* 350 N.W. 2d 337, 340 (Minn. 1984).

Our main concern in determining the appropriate sanction is to protect the public by ensuring the integrity of the judicial system. Our goal is to maintain public confidence in our court system and its judicial officers. The Commission finds that the respondent suffers from a mental disability that persistently interfered with the performance of her judicial duties. The respondent's repeated failure to follow through with proper medical treatment resulted in conduct that was prejudicial to the administration of justice and brought the judicial office into disrepute. The only appropriate remedy in this case is to remove and dismiss respondent from the office of Circuit Court Judge, effective immediately."

Respondent suggests that *Brim* stands for the proposition that this Commission's authority should "be exercised in only very limited circumstances, such as where a respondent with a mental disability denies having such disability or the need for treatment and refuses to cease judicial activity." Respondent contends that she, by contrast, has "readily acknowledged her disease" and "committed *** that she will no longer serve as a judge[.]"

Unlike respondent's characterization, the respondent in *Brim* did not deny having a disability or the need for treatment. To the contrary, the respondent in *Brim* believed that she had been properly diagnosed and recognized her need for treatment. Nonetheless, this Commission found that her mental disability persistently interfered with the performance of her judicial duties and removed her from her judicial office. Although respondent in *Brim* did indicate her intention to continue her judicial service on appropriate medication, there is nothing

in *Brim* that indicates that our authority should be exercised only in situations when a judge refuses to cease judicial duties.

As in *Brim*, this Commission is "sympathetic to respondent's mental health issues." This order is not intended to punish or penalize respondent because she suffers from Alzheimer's. However, we cannot ignore that the complaint at issue in this matter was initiated based on respondent's actions in allowing a person who was not elected or sworn in as a judge to preside over formal matters which could only be resolved by a judicial officer. Although respondent has testified that her actions were based upon the belief that Crawford was a judge, even assuming she so believed, we are unaware of any authority which would allow judicial assignments to be made by a non-supervising judge such as respondent. See Ill. Const. 1970, art. VI, § 7(c) (general administrative authority over a court rests with the Chief Judge); Ill. Sup Ct. R. 21(c) (eff. Dec. 1, 2008) ("The chief judge of each circuit may enter general orders in the exercise of his or her general administrative authority, including orders providing for assignment of judges ***."); Committee Comments to Ill. Sup. Ct. R. 56 (eff. Dec. 1, 2008) ("a judge is vested with the full jurisdiction of the court to which elected or appointed. However, the matters over which the judge may exercise that jurisdiction on a day-to-day basis is determined in large measure by the judge's *assignment* and is subject to the chief judge's general administrative authority.") (Emphasis in original). In other words, there was no authority for respondent to delegate assignments and permit any other person, judge or not, to handle respondent's court call.

Moreover, newly appointed or elected judges are not trained by other judges presiding over cases such as the traffic matters that were the subject matter of these proceedings. We take judicial notice that new judges are mandated to participate in formal judicial training by the

Supreme Court's Committee on Education,[2] and thereafter they are given their judicial assignments by the chief judge. Respondent is not such a judge.

There is simply no question that these proceedings, wherein respondent permitted a person, not elected or sworn in as a judge, to don respondent's robe and perform functions that only an elected judge is permitted to perform, were prejudicial to the administration of justice, brought the judicial office into disrepute, and diminished the public's confidence in the integrity of Illinois's judges. Although there is no requirement that the Board make these showings where a complaint is filed based upon a judge's inability either to physically or mentally perform the functions of a judge (Ill. Const., 1970, art. VI, § 15), it is clear to this Commission that the proceedings that launched the Board's investigation into respondent resulted in the negative consequences to the Illinois judiciary described above.

Regardless of those negative consequences, the Constitution authorizes this Commission to retire or suspend any judge who is physically or mentally unable to perform his or her duties as a judge, upon a complaint being filed by the Board and a public hearing being held. This is so because the judicial office requires a high level of mental ability and proper mental function. *In re Brim*, No. 13-CC-1 (May 9, 2014). The complaint in this matter charged that respondent is

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[2] We take judicial notice of the *Comprehensive Judicial Education Plan for Illinois Judges*, illinoiscourts.gov, http://www.illinoiscourts.gov/education/plan/Plan_IIIB.asp (last visited Oct. 25, 2017); Ill. Cts. Comm'n R. Proc. 9(c) (eff. June 27, 1999) ("The Commission shall have the right to take judicial notice of matters of which courts of record in this state may take judicial notice.") *People v. Davis*, 65 Ill. 2d 157, 161 (1976) ("matters susceptible of judicial notice include facts capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy." [Internal quotations and citation omitted])).

mentally unable to perform the functions of judge, and, as stated, the burden is on the Board to prove that charge by clear and convincing evidence. Ill. Cts. Comm'n R. Proc. 9(b) (eff. June 27, 1999); 14-CC-2, *In re Drazewski and Foley* (March 11, 2016). There is no question that the Board has more than met that burden, as respondent has stipulated that she is mentally unable to perform her duties as judge, and two physicians have certified that respondent is unable to perform her duties and that her condition is likely to be permanent.

For all the foregoing reasons, we find that respondent remains a judge, and we continue to reject her claim that the complaint against her should be dismissed. Since she has stipulated that she is "mentally unable to perform her duties," the only question remaining for this Commission is whether respondent should be suspended, or retired, as a result. In deciding whether respondent should be retired or suspended, we have reviewed all the pleadings on file, the transcript of proceedings before the Board, the transcript of proceedings before the Court's Commission, the parties' arguments, and our constitutional obligation and authority to review complaints presented to the Courts Commission by the Board. We are guided by the principles and purpose of the Judicial Code of Conduct which states that our "legal system is based on the principle that an independent, fair and *competent* judiciary will interpret and apply the laws that govern us." (Emphasis added) Ill. S. Ct. Code of Jud. Conduct pmbl. (adopted Aug. 6, 1993). We have considered what effect a dismissal of the complaint would have upon the integrity of the judicial system and the public's perception, if we were to allow respondent to continue to hold her judicial office despite no intention or ability to return to judicial service in the future.

If the condition that respondent was suffering from was temporary, and it was possible that she could regain the ability to perform her judicial duties in the future, suspension could be a plausible result. See 2 Record of Proceedings, Sixth Illinois Constitutional Convention, 1095

(1970) (referring to "a stroke [or] heart attack" as examples when the Commission could conceivably suspend a judge for his or her inability to perform their duties). However, that is not the case here. Respondent acknowledges that she is permanently unable to perform her judicial duties, and, accordingly, the outcome reached by this Commission must be similarly permanent.

Because respondent has not retired or resigned from office, and she is mentally unable to perform her duties as judge, this Commission, under its constitutional authority, retires Respondent Turner from judicial office, effective immediately. It is so ordered.

Respondent Turner retired from office.