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In re Zoarski

**IN RE HONORABLE HOWARD F. ZOARSKI
(14589)**

PETERS, C. J., CALLAHAN, BORDEN, KATZ and PALMER, Js.

The respondent judge appealed to this court from a decision by the judicial review council suspending him from exercising his duties as a judge of the Superior Court for fifteen days on the ground that he had engaged in conduct that was prejudicial to the impartial and effective administration of justice. The council determined that the respondent, who had had a history of litigation with the owners of a certain poultry farm, should have disqualified himself from signing an arrest warrant charging an immediate member of the owners' family with littering. *Held:*

1. The council had clear and convincing evidence to support its conclusion that the respondent engaged in prejudicial judicial conduct when he signed the arrest warrant and, *sua sponte*, added a \$1000 bond requirement to it.
2. The respondent's claim that the council had no authority to adjudicate the charges against him without expert evidence on the standard to which judges must conform their conduct was unavailing; a majority of the members of the council who participated in the decision were judges or lawyers who could be expected to have a special understanding of the ethical standards that govern judges.
3. In the absence of allegations or proof that the complainant's public disclosure of the charges he had filed against the respondent had any impact on the fairness of the council's deliberations, dismissal of the charges was not required, the statutory (§ 51-51l [a]) mandate of confidentiality notwithstanding.
4. The respondent failed to establish any prejudice, constitutional or otherwise, resulting from the council's noncompliance with the statute (§ 51-51k [i]) mandating the enactment by it of comprehensive procedural regulations.
5. The council properly considered testimony that the respondent had given at his probable cause hearing; a hearing to determine probable cause is sufficiently adversarial to permit statements made by a respondent at that time to qualify as admissions for the purpose of a subsequent plenary adjudication on the merits of the charges of judicial misconduct.
6. The respondent could not prevail on his claim that it was unconstitutional for the members of the council to have conducted the investigatory hearing that led to a finding of probable cause and thereafter to have adjudicated the ultimate merits of the charges against him, he having failed to show actual prejudice.

Public policy underlying judicial discipline, discussed.

Argued September 21—decision released November 2, 1993

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Appeal to this court from a decision of the judicial review council suspending the respondent from exercising his duties as a judge of the Superior Court for fifteen days as a result of conduct prejudicial to the impartial and effective administration of justice. *Appeal dismissed.*

Roger J. Frechette, with whom was *Matthew E. Frechette*, for the appellant (respondent).

Donald B. Caldwell, with whom, on the brief, was *F. Timothy McNamara*, for the appellee (judicial review council).

PETERS, C. J. This appeal challenges the propriety of the suspension of a judge of the Superior Court for judicial misconduct. Pursuant to General Statutes § 51-51l,¹ the judicial review council (council) charged that the respondent, Judge Howard F. Zoarski, had violated General Statutes § 51-51i (a) (1) and (2),² by engaging in judicial conduct that (1) demonstrated a wilful violation of canons 2 B and 3 C (1) (a) of the Code of Judicial Conduct and (2) was prejudicial to the impartial and effective administration of justice. Although

¹ General Statutes § 51-51l provides in relevant part: "INVESTIGATION OF CONDUCT OF JUDGE, COMPENSATION COMMISSIONER OR FAMILY SUPPORT MAGISTRATE. (a) Except as provided in subsection (d), the judicial review council shall investigate every written complaint brought before it alleging conduct under section 51-51i, and may initiate an investigation of any judge, compensation commissioner or family support magistrate if (1) the council has reason to believe conduct under section 51-51i has occurred"

² General Statutes § 51-51i provides in relevant part: "GROUNDS FOR REMOVAL, SUSPENSION AND CENSURE. (a) In addition to removal by impeachment and removal by the governor on the address of two-thirds of each house of the general assembly as provided in the Connecticut constitution, a judge shall be subject, in the manner and under the procedures provided in this chapter to censure, suspension or removal from office for (1) conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute, (2) wilful violation of section 51-39a or any canon of judicial ethics. . . ."

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only six members of the council found that the first charge had been established by clear and convincing proof, all nine members of the council who heard the complaint found that the second charge had been so established. On the basis of the second charge,³ the council suspended Judge Zoarski from exercising his duties as a judge of the Superior Court for a period of fifteen days. Judge Zoarski appealed to this court in accordance with General Statutes § 51-51r.⁴ After a searching consideration of the merits of his claims, we dismiss Judge Zoarski's appeal.

The council made the following unchallenged findings of fact with respect to the second charge. Before becoming a judge, Judge Zoarski, a resident of Branford, was one of three partners in a partnership known as Ramzey Associates and was counsel for the partnership. The partnership owned land in Branford that abutted the Soffer poultry farm. Stuart Soffer, the complainant in these proceedings, has operated the Soffer family farm since 1977.

In or after 1977, several controversies arose between the partnership and the Soffer family, in part because the partnership sought to develop its property for a subdivision of homes. These disagreements concerned: (1) a claim by Joseph Soffer, Stuart Soffer's father, and Jacob Soffer, Stuart Soffer's uncle, that the Soffer family farm had a right-of-way over the partnership property; (2) a dispute about the compliance of improve-

³ General Statutes § 51-51m provides in relevant part: "VOTE OF COUNCIL. FINDINGS TO BE INDEXED. (a) The judicial review council may take any action upon a majority vote of its members present and voting, except that any action to suspend a judge, compensation commissioner or family support magistrate for any period shall require the concurring vote of seven of its members."

⁴ General Statutes § 51-51r provides in relevant part: "APPEALS, RULES. Any judge . . . aggrieved by any decision of the judicial review council may appeal the decision to the supreme court in accordance with such procedure for the appeal as the supreme court shall adopt by rule."

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ments to structures on the Soffer farm with the building and zoning codes; and (3) a complaint by Stuart Soffer about the compliance by the partnership with inland wetlands regulations. In his capacity as counsel to the partnership, Judge Zoarski attended at least two court-ordered inspections of the partnership and the Soffer family farm properties at which members of the Soffer family, including Stuart Soffer, were present and identified as family members. Judge Zoarski, as counsel, also attended an inland wetlands hearing at which Stuart Soffer identified himself by name, and by relationship with other members of the Soffer family, as the person challenging the impact of the partnership's development on wetlands in the area.

On July 30, 1990, the Branford police submitted to Judge Zoarski an arrest warrant that charged Stuart Soffer with littering. The affidavit accompanying the warrant recited that the alleged littering consisted of drippings of chicken manure and feathers from a "Soffer poultry farm truck" onto a public road. The affidavit also described the location of the Soffer poultry farm. The maximum fine for the charge of littering was \$250. Judge Zoarski signed the arrest warrant and, *sua sponte*, added a bond of \$1000.⁵

On the basis of this factual record, the council determined that there was clear and convincing evidence that Judge Zoarski, when he signed the warrant, "knew or should have know[n of] the history of contentious relations and litigation with the Soffers and their poultry farm." He was, therefore, required "to disqualify himself from any participation in the Soffer arrest." Further, "[t]he respondent also knew or should have known that the requirement of the \$1000 bond would have required Stuart Soffer to spend some time in the Branford jail pending arrangements for the bond."

⁵ The charges against Stuart Soffer were subsequently dismissed.

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The council concluded that Judge Zoarski's failure to disqualify himself had placed his impartiality and judgment into question and that he had thereby subjected himself to a claim of prejudice. The council unanimously held that, in the circumstances of this case, Judge Zoarski's failure to disqualify himself was "conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute."⁶ General Statutes § 51-51i (a) (1). Accordingly, the council ordered his suspension for fifteen days.

Judge Zoarski challenges the validity of his suspension on six grounds. He maintains that the council: (1) lacked sufficient evidence to support a finding of judicial misconduct with respect to either of the charges against him; (2) lacked the authority to render a judgment of judicial misconduct without the presentation of expert evidence about the relevant standards; (3) was compelled to dismiss the proceedings against him because Stuart Soffer, in violation of the confidentiality requirement of General Statutes § 51-51l (a),⁷ had publicly discussed the charges that the council was considering;

⁶ In light of the council's unanimous determination of misconduct under this charge, we need not decide whether the council would have had the authority to suspend the respondent with respect to his alleged misconduct under the first charge, which only six members of the council found to have been proved. See General Statutes § 51-51m.

⁷ General Statutes § 51-51l provides in relevant part: "INVESTIGATION OF CONDUCT OF JUDGE, COMPENSATION COMMISSIONER OR FAMILY SUPPORT MAGISTRATE. (a) . . . Any investigation to determine whether or not there is probable cause that conduct under section 51-51i has occurred shall be confidential and any individual called by the council for the purpose of providing information shall not disclose his knowledge of such investigation to a third party prior to the decision of the council on whether probable cause exists, unless the respondent requests that such investigation and disclosure be open, provided information known or obtained independently of any such investigation shall not be confidential. . . ."

The respondent in this proceeding did not request "that such investigation and disclosure be open."

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(4) violated Judge Zoarski's due process rights by adjudicating the charges against him without first having enacted comprehensive regulations as required by General Statutes § 51-51k (i);⁸ (5) improperly permitted portions of Judge Zoarski's testimony at the probable cause hearing to be received into evidence in the public hearing; and (6) violated Judge Zoarski's due process rights by having the same council members determine probable cause and thereafter adjudicate the complaint against him. We disagree.

I

Judge Zoarski's first contention is that the council did not have clear and convincing evidence to support its finding that he had engaged in judicial misconduct. Although he challenges the sufficiency of the evidence on both of the charges against him, we need only decide the sufficiency of the evidence to sustain the second charge, i.e., that he had engaged in conduct that, in violation of § 51-51i (a) (1), was "prejudicial to the impartial and effective administration of justice [so as to bring] the judicial office in disrepute."⁹

Well established principles govern this court's review of a decision of the council that a Superior Court judge has engaged in misconduct warranting judicial discipline. "[O]ur review is not de novo. We cannot assess the credibility of witnesses. . . . Nonetheless, our review must take into account the risk that unfounded

⁸ General Statutes § 51-51k provides in relevant part: "JUDICIAL REVIEW COUNCIL. . . .

"(i) REGULATIONS. The judicial review council shall adopt regulations in accordance with the provisions of chapter 54 to establish rules and procedures for the council in the discharge of its duties under this chapter and to provide standards for the identification of and procedures for the treatment of conflicts of interest for council members, which standards shall require that any professional or ethical codes of conduct shall apply to any professional member of the council subject to such codes of conduct."

⁹ See footnote 6.

