

MAR 27 2014

STATE COURT ADMINISTRATOR

BEFORE THE STATE OF IOWA
COMMISSION ON JUDICIAL QUALIFICATIONS

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) JQC Case No. 12-049
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Inquiry Concerning) Application to the Supreme Court to
Emily Dean) Discipline a Judicial Officer Pursuant to Iowa
District Associate Judge) Code § 602.2106
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Considered by: Jacqueline K. Samuelson, chair; the Honorable Tom Bice; Mark Brownlee; Duane Cottingham; Sandy Blodgett; Stephanie Netolicky; and the Rev. Henry Thomas.

PROCEDURAL BACKGROUND

On May 9, 2012, the Commission on Judicial Qualifications received a complaint from Chief Judge Mary Ann Brown of the Eighth Judicial District reporting that District Associate Judge Emily Dean had reported to the Henry County Courthouse for her assigned court session intoxicated and unable to take the bench. After an emergency meeting, the Commission issued an Order pursuant to Iowa Code Section 602.2104(4) and Iowa Court Rule 52.18(2), suspending Judge Dean from performing judicial duties until further notice. The Commission also requested that the Iowa Attorney General's office conduct an investigation regarding Judge Dean's conduct.

On July 17, 2012, the Commission issued an Order continuing Judge Dean's suspension and requiring that Judge Dean undergo, and have her physician submit a report regarding, a comprehensive physical and mental health evaluation, including a substance abuse evaluation to be conducted by the supervising physician for her outpatient treatment program at Great Rivers Medical Center in Burlington, Iowa. The report was to address, among other things, her fitness to resume her judicial duties and a plan for supervision and support of Judge Dean to ensure her continued sobriety. After receiving a one page letter from Judge Dean's family physician in response to its Order for Evaluation, the Commission amended its Order on August 14, 2012 to require that Judge Dean be evaluated at, and provide a report from, one of four identified programs specializing in treatment of substance abuse. Judge Dean chose to be evaluated by the Professionals Program at Elmhurst Memorial Healthcare in Illinois.

On August 3, 2012, the Iowa Commission on Judicial Qualifications served a Notice of Charges and Hearing on Judge Emily Dean. Judge Dean was charged with substantial violations of the Iowa Code of Judicial Conduct, including specifically, violation of:

Canon 1: A Judge should uphold the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 51:1.2. Promoting confidence in the judiciary.

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Canon 2: A Judge shall perform the duties of Judicial Officer impartially, competently, and diligently.

Rule 51:2.5. Competence, Diligence, and Cooperation.

(A) A judge shall perform judicial and administrative duties competently and diligently.

On or about August 27, 2012, Judge Dean answered the Complaint, admitting the violations. A hearing on the appropriate sanction for Judge Dean's violations was conducted on October 31, 2012. Deputy Attorney General Thomas H. Miller and Assistant Attorneys General Grant K. Dugdale and Rob Sand represented the State. Judge Dean was represented by her attorney, Carl Saunders.

FINDINGS OF FACT

Emily Dean was appointed to serve as a District Associate Judge in the Eighth Judicial District in 2006. Judge Dean has a family and personal history of alcohol abuse. She was able to perform her judicial duties, but as of Thanksgiving weekend in 2011, she was drinking at a level that caused her to have a grand mal seizure due to withdrawal after having spent a weekend with family members and without alcohol. In December 2011, Judge Dean took paid leave for undisclosed medical reasons to undergo a four week in-patient treatment program at the Hazelden facility in Minnesota. After leaving the Hazelden program, Judge Dean resumed her judicial duties. She relapsed shortly after returning from the program. Judge Dean contacted Hugh Grady, Director of the Iowa Lawyers' Assistance Program of the Iowa State Bar Association, for assistance in February 2012 and they met in March 2012. At that time, Mr. Grady believed that Judge Dean was in denial regarding her alcoholism and was not committed to treatment.

In the spring of 2012, Judge Dean had personal and family difficulties related to her alcohol consumption. An assistant county attorney who appeared before Judge Dean in February and March of 2012 noticed that she sometimes appeared disheveled and disoriented. Judge Dean's court reporter, Janet Vance, noted that she was "not herself" at the court house in early 2012. On one occasion with lawyers and litigants in court, Judge Dean took the bench and asked "Why are you all here?" Ms. Vance contacted Judge Dean's father, Mr. Saunders, who picked her up before she had completed her judicial duties for the day. Shortly thereafter, Judge Dean took another paid leave to attend a three-week in-patient treatment program at The Abbey in Bettendorf, Iowa. Judge Dean did not, however, complete the program. She returned home April 21, 2012 and resumed work, and also resumed drinking.

In April or May of 2012, while on the bench, Judge Dean occasionally appeared giddy. On one occasion, she pressed the panic button on the bench, that is intended for use in the event of a security incident in the courtroom, claiming she wanted to "test it." There was no emergency. The false alarm took law enforcement personnel who were summoned to respond away from other duties. On May 4, after her child's athletic event, Judge Dean drove home while under the influence of alcohol and stopped en route to relieve her bladder in the street. A member of the public followed Judge Dean and reported her license plate, that belonged to Judge Dean's husband's car; her destination, her mother's residence; and her erratic driving and behavior. A police officer contacted Judge Dean. During that conversation, Judge Dean admitted driving, but denied the other allegations. No charges were filed.

On May 8, 2012, Judge Dean presided over traffic court in Fort Madison. She performed her duties appropriately, but appeared to be ill. When questioned by Ms. Vance, Judge Dean said that she felt fine, but was on day four of sobriety and was tired and weak. Later that day, Judge Dean's husband advised Ms. Vance that the judge's family was planning an intervention for Judge Dean that evening.

The next morning, May 9, 2012, Ms. Vance met Judge Dean at the Fort Madison courthouse to travel together to their assignment at the Henry County Courthouse in Mount Pleasant. While Ms. Vance drove them to Mount Pleasant, Judge Dean drank from a plastic water bottle, and eventually fell asleep. While walking into the courthouse, Judge Dean began to sway. Ms. Vance took Judge Dean's arm and led her into the women's restroom. Judge Dean had difficulty standing. Judge Dean denied that she had been drinking. Ms. Vance sought assistance from Deb Wellman, who works in the Henry County Attorney's Office. When Ms. Vance and Ms. Wellman returned to the restroom, Judge Dean was still unsteady on her feet. When Ms. Wellman asked Judge Dean, "What am I smelling," Judge Dean continued to deny that she had been drinking. It was obvious that Judge Dean was intoxicated and unable to perform her judicial duties. Ms. Wellman and Ms. Vance helped Judge Dean back into Ms. Vance's car. On the ride back to Fort Madison, Judge Dean continued to drink from the water bottle. Judge Dean's docket

was rescheduled. Judge Dean later acknowledged that she was in a black out state the morning of May 9 and does not recall the events.

Upon her return to Mount Pleasant on May 9, Judge Dean's father took her to the emergency room at the Great River Medical Center in Burlington, IA, where she was diagnosed with severe alcohol intoxication. Her blood alcohol content was [REDACTED]. Judge Dean was admitted to the Great River Medical Center on May 9, 2012.

Upon receiving notice of the situation on May 10, the Commission suspended Judge Dean from performing her judicial duties.

After she was discharged from the hospital, Judge Dean engaged in intensive outpatient counseling and treatment at Great River Medical Center. She began participating in Alcoholics Anonymous on a daily basis. After receiving an August 1, 2012 letter from Judge Dean's family physician indicating that she was able to resume her judicial duties, the Commission required that Judge Dean be evaluated at a facility specializing in treatment of substance abuse. She was evaluated at Elmhurst Memorial Healthcare on October 1, 2012 and found fit to resume her judicial duties.

Between May 9, 2012 and the time of the hearing in this matter, Hugh Grady met with Judge Dean on three occasions. He found her condition dramatically improved. While acknowledging that Judge Dean is and will remain at risk for relapse, he opined that she was competent to return to the bench subject to a monitoring agreement.

At the time of the hearing, Judge Dean continued to participate in the outpatient treatment at Great River, as well as the twelve-step program of Alcoholics Anonymous. She attended AA two times per day. Judge Dean also continued active participation in the Iowa Lawyers' Assistance Program for support in her recovery.

Based on the evidence presented at the October 31, 2012 hearing, the Commission found that Judge Dean was competent to return to her judicial duties. On November 2, 2012, the Commission reinstated Judge Dean and required that she participate in a monitoring agreement recommended by Mr. Grady that requires that she continue alcohol treatment and counseling, submit to periodic random blood and/or urine testing, and have her performance on these requirements monitored by the Iowa Lawyer Assistance Program (ILAP) for at least two years. Any failure by Judge Dean to meet the requirements in the Commission's order is to be reported by the Director of the ILAP to the Commission during the two year period. As of the date of this Application, the Commission has received no adverse report regarding Judge Dean's compliance with its Order or performance of her judicial duties.

ANALYSIS/RECOMMENDATION

Violation of the Iowa Code of Judicial Conduct must be established by a convincing preponderance of the evidence. *In re: Inquiry concerning Stigler*, 607 N.W.2d 699, 705 (Iowa 2000). Judge Dean acknowledges, and the Commission finds, that her conduct in late 2011 through May 2012 substantially violated Canons 1 and 2 of the Iowa Code of Judicial Conduct, including each of the specific rules specified in the charges against her. Since Judge Dean admitted the violations, the question before the Commission and the Court is the proper sanction for her conduct.

While the Commission recognizes that Judge Dean's alcoholism is an illness, it must nonetheless address her improper conduct in the courthouse and the public that unquestionably eroded confidence in the judiciary. See *In re Krake*, 942 So. 18, 22 (La. 2006); *In re Becker*, 834 P.2d 290, 296, 122 Idaho 288, 294 (1992). Judge Dean performed her judicial duties while intoxicated; appeared at the courthouse visibly intoxicated and had to be assisted by courthouse personnel; had to be removed from the courthouse by a family member; and was observed and reported to the police by a member of the community driving her vehicle while intoxicated and urinating in public. Such conduct impairs the integrity of and the public confidence in the judiciary. *In re Block*, 816 N.W. 2d 362, 364 (Iowa 2012); *in re Weaver*, 691 N.W. 2d 725 (Iowa 2004). Judge Dean's conduct also placed a burden on the litigants and attorneys who were scheduled to appear before her whose cases had to be rescheduled without prior notice. While there was no evidence before the Commission that Judge Dean committed errors in the cases over which she presided after drinking, there is ample evidence to call her competence at those times into doubt and to establish a lack of diligence. Judge Dean was also absent from her duties for almost eight months during 2011 and 2012.

The Commission is required to recommend to the Supreme Court the sanction that it believes is appropriate for Judge Dean's violations of the Code of Judicial Conduct. *In re Inquiry concerning Carstensen*, 316 N.W.2d 889 (Iowa 1982). This task is particularly challenging in this case where an otherwise competent and diligent jurist's alcoholism causes her to violate her professional responsibilities. Although the Commission applauds Judge Dean's apparently successful efforts to control her alcohol use since May 9, 2012, it remains cognizant that, in deciding the appropriate sanction for her conduct, it must keep in mind that the main purpose of judicial discipline is to restore public confidence in the judicial system and its judges, along with protecting the public and deterring other judges from engaging in similar unethical conduct. *In re Gerard*, 631 N.W.2d 271, 280 (Iowa 2001).

The court has previously addressed alcohol related conduct of two Judges who were convicted of OWI, 1st offense; see *In re Matter of Block*, 816 N.W.2d 362 (2012) and *In re Matter of Weaver*, 691 N.W.2d 725 (2004). Neither case involved intoxication at the courthouse or on the bench. In the *Block* case, the OWI was not only a first

offense, but the judge did not have a history of excessive alcohol consumption. In both cases, the court issued public reprimands. There are no Iowa Supreme Court cases specifically involving a judge who committed alcohol-related misconduct other than an OWI. In other jurisdictions, sanctions for alcohol-related offenses beyond OWI have ranged from public reprimands to removal from the bench, depending on the circumstances. See e.g., *In re Krake*, 942 So.2d 18 (La. 2006) (Judge suspended for six months due to appearing at public and bar events intoxicated, appearing hung over on the bench, and several extended absences from the bench during treatment. Judge was later suspended for the balance of his term for failure to comply with ongoing monitoring requirements. *In re Krake*, 976 So.2d 162 (La. 2008)); *In re Noecker*, 691 N.W.2d 440, 472 Mich 1 (2005) (Judge removed from office after motor vehicle accident, leaving the scene, and false statements to law enforcement about the incident.); *In re Doggett*, 874 So.2d 805 (La. 2004) (Judge removed from office due to persistent and severe intoxication on the bench and in chambers that adversely impacted his performance of judiciary duties); *In re Becker*, 834 P.2d 290, 122 Idaho 290 (1992) (Judge suspended for three months with conditions to maintain/monitor sobriety, due to use of alcohol while on duty and driving under the influence); *In re Kirby*, 354 N.W.2d 410 (Minn. 1984) (Judge publically reprimanded after he appeared intoxicated in public, took the bench with liquor on his breath, was habitually tardy, and was discourteous to female litigants).

In determining the appropriate sanction to address judicial misconduct, the Commission considers factors that may be aggravating or mitigating, including:

1. Whether the misconduct is isolated or a pattern of misconduct;
2. The nature, extent, and frequency of the acts of misconduct;
3. Whether the misconduct occurred in or out of the courtroom;
4. Whether the misconduct occurred in the judge's official capacity or in his or her private life;
5. Whether the judge has acknowledged or recognized the misconduct;
6. Whether the judge has made an effort to change or modify his or her conduct;
7. The length of service on the bench;
8. Whether there have been any prior complaints;
9. The effect of the misconduct upon the integrity of and respect for the judiciary; and
10. The extent to which the judge exploited the judicial office to satisfy personal interests.

In re Block, 816 N.W.2d at 362.

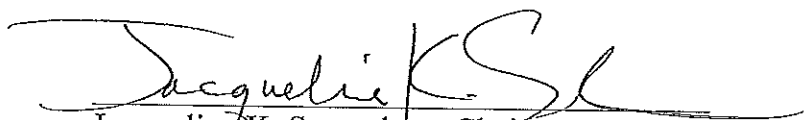
Judge Dean apparently performed her duties competently and without complaint prior to 2012. In 2012, however, she engaged in a pattern of conduct that included occasionally appearing intoxicated on the bench, in the courthouse, and in public. After two incomplete attempts to address her alcoholism, Judge Dean successfully completed a

program of treatment and has apparently remained sober and productive upon her return to the bench. She has acknowledged and taken responsibility for her conduct. While the Commission recognizes that Judge Dean's alcoholism is a disease, it must nonetheless address her conduct that undermined the integrity and respect for the judiciary.

Judge Dean's situation is somewhat similar to that addressed in *In re Becker*. Judge Becker struggled with alcoholism for several years; had been in treatment multiple times; was arrested for OWI; consumed alcohol during working hours; and appeared to be intoxicated while in his chambers and around the courthouse. *In re Becker*, 834 P. 2d at 291-293; 122 Idaho at 289-292. The Idaho Supreme Court suspended Judge Becker without pay for three months and required his compliance with an alcohol treatment program. *Id.* at 296, 294.

Given the serious nature of Judge Dean's conduct, combined with the prior public reprimands of Iowa judges whose alcohol related conduct occurred only outside the courthouse, the Commission recommends that Judge Dean serve a three-month suspension without pay. A three-month suspension will require other judicial officers in the Eighth Judicial District to carry Judge Dean's workload for another three months. Accordingly, the Commission recommends that the suspension be imposed in increments of no less than one week at times scheduled by the Chief Judge, in a manner that will least disrupt the work of the Eighth Judicial District. The entire three months suspension should be served during the one year period following the Court's Order. During the year during which her suspension is being served, Judge Dean should continue with the same monitoring plan as was required by the Commission's interim order, with any failure to do so to be reported to the Commission by the Director of the Iowa Lawyer's Assistance Program.

Dated 27th day of March, 2014.


Jacqueline K. Samuelson, Chair
Judicial Qualifications Commission