(No. 14-CC-2 Respondent Drazewski suspended; Respondent Foley censured.)

In re CIRCUIT JUDGE SCOTT D. DRAZEWSKI
CIRCUIT JUDGE REBECCA S. FOLEY
of the Circuit Court of the Eleventh Judicial Circuit, Respondents

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Courts Commission Secretary

Order entered March 11, 2016.

Sidley Austin LLP, of Chicago, for Judicial Inquiry Board.
Much Shelist, P.C., of Chicago, for Respondents.

Before the COURTS COMMISSION: KARMEIER, Chairperson, AUSTRIACO, EGAN, FRANKLAND, GOLDENHERSH, McBRIDE, and WOLFF, commissioners. ALL CONCUR.

ORDER

Respondents, Scott D. Drazewski and Rebecca S. Foley, were both charged in a complaint filed by the Judicial Inquiry Board (JIB) on July 21, 2014, with conduct prejudicial to the administration of justice and conduct that brings the judicial office into disrepute. The complaint contends that respondents violated the Code of Judicial Conduct—Illinois Supreme Court Rules 61 and 62 (eff. Oct 15, 1993). Additionally, respondent Drazewski is charged with violating Illinois Supreme Court Rule 63, Canon 3(C)(1) (eff. Apr. 16, 2007); and respondent Foley is charged with violating Illinois Supreme Court Rule 63, Canon 3 (B)(3)(a) (eff. Apr. 16, 2007).

The Courts Commission conducted a contested hearing on October 26-27, 2015, at which the JIB and respondents presented multiple witnesses, entered into several stipulations and introduced numerous exhibits. After the presentation of evidence and final arguments, the matter was taken under advisement. The Courts Commission now concludes the JIB has proven the allegations of the complaint and violations of the Code of Judicial Conduct by clear and convincing evidence. Respondent Drazewski is suspended from office for four months without compensation effective May 1, 2016. Respondent Foley is censured.

THE COMPLAINT

The Complaint charges both respondents with violations of the Code of Judicial Conduct arising from allegations that, beginning on or about December 5, 2010, and continuing through February 16, 2011, respondents Drazewski and Foley engaged in an undisclosed extramarital affair, during a time period in which respondent Drazewski presided over a number of pending cases in which respondent Foley's husband, Joseph Foley, represented various parties. Not until Mr. Foley confronted his wife about the affair and demanded that she advise respondent Drazewski to recuse himself from the cases, did respondent Drazewski do so. In subsequent meetings with Chief Judge Elizabeth Robb, respondent Drazewski did not reveal that he had presided over Mr. Foley's cases while the affair was ongoing and failed to disclose the actual reason for his subsequent recusals from Mr. Foley's cases.

The Complaint further alleged that after the affair began, respondent Foley was aware that respondent Drazewski was presiding over a jury trial in which her husband represented one of the parties and at no time during the pendency of that trial did she disclose her ongoing extramarital relationship to her husband, any of the parties, or Chief Judge Robb. The Complaint also alleged that the relationship between respondents Drazewski and Foley became a matter of public knowledge and concern to, among others, the legal community, judges, and court staff. The Complaint charges that both respondents failed to maintain high standards of conduct so that the integrity and independence of the judiciary may be preserved; failed to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the judiciary; failed to avoid impropriety and the appearance of impropriety in their judicial activities; and allowed their family, social, and other relationships to influence their judicial conduct and judgment. More specifically to respondent Drazewski's conduct, the complaint alleged he failed to

disqualify himself in a proceeding in which his impartiality might reasonably be questioned. As to respondent Foley's conduct, the complaint charged that, having knowledge that respondent Drazewski's conduct was in direct violation of the Canons, she failed to initiate appropriate disciplinary measures.

Respondents both answered, admitting many factual allegations contained in the Complaint, but both specifically denying that their respective conduct violated the Code of Judicial Conduct.

FACTS

Respondent Drazewski's testimony before the Commission revealed the following. After practicing law for several years in Bloomington, Illinois, respondent Drazewski was appointed an associate Judge in 1997. He was elected a circuit judge in 2004 and was serving in the Law Division of the Eleventh Judicial Circuit, McLean County in December 2010. At that time he was married to Shirley Drazewski, with whom he has two children.

Respondent Drazewski became familiar professionally with respondent Foley and her husband sometime around the year 2000. Mr. Foley was an attorney with a firm that concentrated in insurance defense matters. Respondent Foley was an attorney and became a judge in the Eleventh Judicial Circuit, McLean County in 2004.

As of December 5, 2010, respondent Drazewski was the assigned Law Division judge for several pending cases in which Mr. Foley represented one of the parties. In particular, those cases included, *Roderick Jordan v. Matthew Burton*, 07 L 135; *Timothy Barnes v. Janet Wendling*, 09 L 147; *William Dagner and Elena Dagner v. Justin Johnsen*, 09 L 164; *In re Francis Leary*, 10 P 299; *Larry Ridenour v. Gregory Lopeman*, 07 L 161; *Joseph Yaros v. Amanda Starkey*, 10 L 80; *Laura Buchna v. Alice Hale*, 07 L 194; and *Lamps v. Naffziger*, 10 L

41.[1] The *Jordan* case was a negligence action in which Mr. Foley represented the defendant and the plaintiff was represented by attorney, Hal Schlicksup. On November 30, 2010, respondent Drazewski set the matter for a jury trial to begin on December 13, 2010.

On December 5, 2010, respondents Drazewski and Foley attended a conference in Washington D.C., where they began an extramarital affair. Respondent Drazewski described the relationship as sudden and intense, but also something that had been building for years. He said that their professional relationship had grown for some time and they had become good friends. Between December 5, 2010, and February 17, 2011, there was a romantic relationship between them, and, during a portion of that time frame, their relationship had been sexually intimate.

On December 13, 2010, respondent Drazewski began to preside over the *Jordan* matter, which lasted three days. During the trial, respondent Drazewski ruled on evidentiary issues, on challenges for cause during jury selection, and on Mr. Foley's oral motion for a directed verdict. Respondent Drazewski made judicial rulings on a number of different issues that arose during the trial, including a denial of Mr. Foley's motion for a directed verdict. Respondent Drazewski also entered judgment on the approximately $40,000 verdict against Mr. Foley's client. Respondent Drazewski testified that there was no sexual intimacy between the respondents during the three-day jury trial.

During the ten-week period of their romantic and intimate relationship, respondents communicated regularly by text messages. On December 11 and 12, 2010—the Saturday and Sunday before the *Jordan* trial began—respondents texted each other a total of 123 times. On December 13, 2010—the first day of the *Jordan* trial—they exchanged 105 text messages. Over the next two days, December 14 and 15, the respondents exchanged 43 and 44 text messages,

[1] The case numbers and full names of the parties come from the JIB's complaint.

respectively. According to respondent Drazewski, the communications were related to matters concerning their respective lives, and what they were doing at work. He claimed, however, that there were no discussions about particular cases.

Respondent Drazewski testified that he was generally familiar with Rule 63 and the requirement of a judge to disqualify or recuse himself under certain circumstances, and had previously recused himself when, in his determination, he might not be able to be impartial in a case.

When testifying before the Commission, respondent Drazewski was asked whether or not he should have disqualified himself from the *Jordan* case, and he responded that he did not believe he was "professionally" required to recuse. He testified that he had a personal or moral obligation to notify Mr. Foley of the relationship, but did not believe he was required under the Canons to disclose the relationship at the time that he was presiding over the *Jordan* trial. During the *Jordan* trial, respondent Drazewski did not know whether Mr. Foley was aware of his relationship with respondent Foley, but he believed only he and respondent Foley knew of their relationship and admitted that he did not tell Mr. Foley about it. He did not disclose to the parties anything about his personal relationship with respondent Foley and testified that would only be necessary if he "was seeking remittal of disqualification." When asked whether he thought he should have advised the parties involved in the jury trial that he was having an affair with the wife of one of the parties' attorneys, respondent Drazewski replied that, "I had made the determination previously that I could be fair and impartial to the parties and the attorneys who appeared before me."

Respondent Drazewski conceded that when he testified on a prior occasion in March 2014, before the JIB, his opinion was different. While giving that prior testimony, respondent

Drazewski agreed that Mr. Foley had a right to know that he was having an affair with Mr. Foley's wife when he was presiding over the *Jordan* trial. Respondent Drazewski also admitted that he had previously testified that he should have done something different with respect to the *Jordan* proceedings, that he was slow to react, that he should have disclosed, and that he should have removed himself from the case under Canon 3(c)(1). He conceded that he had not previously made any distinctions between a moral and personal obligation to disclose and a "judicially ethical[ ] obligation" to disclose. Respondent Drazewski also admitted that he had previously testified that while he had no personal bias or prejudice against Mr. Foley, he understood how his impartiality might be questioned.

Respondent Drazewski explained that his answers to the same areas of inquiry were different before the Commission because he was more familiar with case law and authority than he was at the time of his previous testimony. His present opinion came about as a result of conversations, advice from counsel, additional authority and/or citations with respect to this issue. He said that as he looked back upon the situation, he had a personal and moral obligation to disclose the relationship to Mr. Foley, because Mr. Foley found out about the relationship through means other than either respondent being "direct" with him.

Respondent Drazewski did not recall whether he had any conversations with respondent Foley regarding the ethical issues that were implicated by the fact of their affair between December 2010 and February 2011.

Respondent Drazewski acknowledged that Mr. Foley filed a motion for a new trial in the *Jordan* matter, and that in January 2011, respondent Drazewski entered an order in another case in which Mr. Foley was an attorney, setting the case for a jury trial. Additionally, another pending case, *Lamps v. Naffziger*, was heard on February 3, 2011, and Mr. Foley appeared

before respondent Drazewski for a case management conference. In January 2011, respondent Drazewski also addressed an emergency motion to modify a protective order in a case in which Mr. Foley appeared as the attorney for one of the parties. Mr. Foley objected to the motion, but it was granted over his objection.

As of February 16, 2011, respondent Drazewski was presiding over approximately eight cases in which Mr. Foley was the attorney for one of the parties. On February 17, 2011, respondent Drazewski met with respondent Foley in the early morning hours at the courthouse where they both worked. She told respondent Drazewski, "that her husband was aware of [their] relationship and that there was a confrontation about it that morning." Two days later, respondent Foley informed respondent Drazewski that Mr. Foley "was requesting that [he] recuse [him]self from [Mr. Foley's] cases." Respondent Foley also told respondent Drazewski that "that if [he] didn't, [Mr. Foley] was going to notify [Mrs. Drazewski]." On February 22, 2011, respondent Drazewski began recusing himself from Mr. Foley's cases. He testified that he recused himself at that time because Mr. Foley asked him to, and because Mr. Foley should not have been required to file a motion to substitute judge for cause or otherwise.

Respondent Drazewski reported the recusals to Chief Judge Elizabeth Robb. He cited several reasons for the recusals but did not mention the fact that Mr. Foley had requested he recuse himself after learning of the affair. Specifically, respondent told Judge Robb that during the *Jordan* trial, the plaintiff's attorney, Mr. Schlicksup, became aware of, and showed a visible reaction to, the fact that Mr. Foley was married to another judge at the court house. Respondent Drazewski explained that respondents were both responsible for the "speciality" or "problem solving" courts and they had frequent interaction with one another. Respondent Drazewski testified that he may have mentioned something about attending the conference in Washington,

D.C. with respondent Foley. Respondent Drazewski told Judge Robb that he and respondent Foley had been co-chairs of the local Law Day activities for years, they were both mentoring an Associate Judge, and the respondents would also have more interaction relative to a grant the Eleventh Judicial Circuit had received. Respondent Drazewski also told Judge Robb that he and Mr. Foley had played golf together on one or two occasions.

Respondent testified that each reason he provided to Judge Robb for the recusal on the *Jordan* case was true. Respondent Drazewski thought he was being truthful with the Chief Judge, but he did omit the ongoing relationship he had with respondent Foley from their conversation. He said that this lack of complete disclosure was "probably a moral failure." Respondent Drazewski added that the primary reason that he did not tell Judge Robb about the relationship was because he thought it was "a matter of privacy" and it would be resolved by the action taken, specifically, his recusals.

In April 2011, respondent Drazewski met with Judge Robb to discuss an anonymous letter that had been sent to her. Although they talked briefly, he did not disclose any information to her about the "extramarital affair" at that time.

Later, during an August 2011 meeting, Chief Judge Robb informed respondent Drazewski that she knew that he and respondent Foley had been involved and she wanted to know if it was "over." Respondent Drazewski told Judge Robb that he did not feel that the administration of justice or his ability to perform his functions and duty as a judge had been impacted. Judge Robb told him that she "wished" he would have come forward with this information in February or March, and added that "it was a good thing" there was just one trial. However, Judge Robb told him that she would not be reporting them, as she had been advised by legal counsel that it was not a reportable violation.

Respondent Drazewski testified that he did not think his relationship with respondent Foley became a matter of public knowledge and concern to, among others, the legal community, judges and court personnel, and he did not believe his handling of Mr. Foley's cases and his conduct with Judge Robb brought the judicial office into disrepute. When specifically asked whether he violated the Canons, respondent Drazewski replied: "Under the Code of Judicial Conduct, I do not believe that I did."

Judge Elizabeth Robb testified that she served as a judge for 22 years in the Eleventh Judicial Circuit before retiring from the bench on December 31, 2014, and she was the Chief Judge from 2005 until the end of 2014. She has known respondent Drazewski for about 30 years, and respondent Foley for about 20 years. Both respondents were her friends and Judge Robb mentored respondent Foley.

Judge Robb was advised in February 2011 by respondent Drazewski that he was recusing himself from numerous cases in which Mr. Foley was the attorney. Respondent Drazewski reported that the opposing attorney on one of those cases had expressed concern to him for "handling a case because that attorney was unaware that Joe Foley was married to Judge Foley." Respondent Drazewski also told Judge Robb and that he and respondent Foley were involved in problem-solving courts together and also chaired Law Day Committee, and that the "attorney was uncomfortable with Judge Drazewski hearing that case." Respondent Drazewski did not advise her at that time about any "personal relationship" with respondent Foley, and Judge Robb found nothing significant about the recusal at that time.

In April 2011, Judge Robb received an anonymous letter which indicated that respondent Drazewski may have been involved in a relationship with a member of the court staff. She met

with respondent Drazewski about the letter, and he suggested that the letter may have been submitted because a court clerk was unhappy, or had a problem, with him.

Judge Robb actually learned of the affair from Mrs. Drazewski in July 2011. Judge Robb then contacted an attorney, and thereafter spoke with respondent Foley on August 12, 2011, and on a subsequent date with respondent Drazewski. Judge Robb advised respondent Foley that she had consulted with an attorney to determine her obligation to report the affair to the JIB. Respondent Foley told Judge Robb the affair was over, and that her husband had consulted with an attorney who had determined that there were no ethical violations involved. At the end of the meeting Judge Robb said she was considering reassigning both respondents.

After her meeting with respondent Foley, Judge Robb was under the impression that there had not been an ongoing extramarital affair between the respondents during the jury trial in which Mr. Foley was the attorney and which was presided over by respondent Drazewski. Judge Robb was only advised that there was an ongoing affair between respondents during the *Jordan* trial when Mr. Gallo, the attorney for the JIB, advised her of that fact sometime in May 2014. She stated that had she known that then, she "would have reported that conduct to the Judicial Inquiry Board," and that her opinion was that "it creates an appearance of impropriety at the least."

Judge Robb met with respondent Drazewski on August 19, 2011. She told him that she was concerned about her obligations to report the relationship, but that an attorney informed her that she had no obligation to report at that time. Judge Robb told respondent Drazewski that she did not appreciate his failure to tell her of the affair in April when the letter came up. He apologized and told her that "his conduct was unprofessional and he regretted it." Judge Robb also chastised respondent Drazewski for his failure to disclose the "true nature of why he was

recusing himself from cases involving Joe Foley" instead of his statements to her about the attorney on the opposite side of the case, working together with Judge Foley in the problem solving courts and their Law Day Committee work.

Judge Robb testified that she met with Mr. Foley to make sure that respondent Drazewski was not hearing any of his cases, and she was assured that he was not.

Judge Robb also had a meeting with Judge Bauknecht. During that meeting, Judge Bauknecht expressed concern about the relationship between the respondents. Judge Robb also testified that two other judges came to her to discuss rumors they had heard about the relationship between respondents. In December 2013, Judge Robb abruptly ended an Eleventh Circuit Court judges' meeting when she thought Judge Pacey, who was retiring at the time, was about to publicly divulge the circumstances of respondents' relationship.

Although Judge Robb thought the affair was a private, personal matter in 2011, 2012, and 2013, had she known then that the respondents were engaged in an extramarital affair while respondent Drazewski presided over a jury trial in which Mr. Foley represented one of the parties, and where respondent Drazewski did not disclose the affair to anyone nor recuse himself, Judge Robb would have reported that information to the JIB. Judge Robb's prior opinion that she did not have an ethical obligation to report changed when she became aware of those facts. Judge Robb also confirmed that for a period of time her own conduct related to the respondents' conduct was being examined by the JIB.

Respondent Foley testified before the Commission that she was elected an Eleventh Judicial Circuit Judge in 2012, serving in McLean County. Before that, she was appointed an associate judge in 2004, and was licensed as an attorney in 1995. Her practice had focused primarily upon insurance defense. Respondent Foley married Joe Foley in 1995, and they have

three children together. They worked together at two different law firms before respondent Foley was appointed to the bench.

Respondent Foley became familiar with respondent Drazewski when she began practicing law. Prior to December 5, 2010, they had a "good, collegial professional relationship". She confirmed that relationship changed on December 5, 2010, when they had a "sexual encounter" in Washington. D.C. During the days and months that followed the Washington D.C. trip, they exchanged numerous communications via text messages, and their romantic relationship continued through February 17, 2011.

From 2004 and 2010, respondent Foley and her husband talked about his practice. She knew the counties he traveled to and what judges were assigned to his various cases. Although respondent Foley was not sure whether she knew Mr. Foley was to begin a jury in front of respondent Drazewski on December 13, 2010, she became aware of that fact "for certain when the trial was ongoing." Respondent's best recollection was that she became aware of the fact from "Joe and from Judge Drazewski, both." She was aware her husband lost the *Jordan* trial, had filed a motion for a new trial, and at some point she was "possibly" aware that he had other cases pending in front of respondent Drazewski.

On February 17, 2011, Mr. Foley confronted her about her relationship with respondent Drazewski. He asked her whether she was engaged in an extramarital affair with him and she confirmed that she was. Later that day, respondent Foley met with respondent Drazewski in person at the courthouse and told him that Mr. Foley knew about their relationship. According to respondent Foley, on February 19, 2011, Mr. Foley "insisted that Judge Drazewski recuse himself from [Mr. Foley's] cases." She related that conversation to respondent Drazewski in a text message.

Respondent Foley testified that she was called to a closed-door session with Chief Judge Robb on August 12, 2011. At that time Judge Robb had becòme aware of the "romantic or extramarital relationship" she had with respondent Drazewski. Respondent Foley told Judge Robb that their " physical relationship *** had ended [but] [w]e did e-mail on occasion or talk with one another on occasion." According to respondent Foley, Judge Robb told her that she had sought a legal opinion and, to respondent Foley's relief, she would not be reporting respondent Foley to the JIB. Respondent Foley believed Judge Robb was aware of the fact that there was an ongoing relationship at the time respondent Drazewski was presiding over Mr. Foley's cases, but agreed, however, that nothing specific, like the *Jordan* case, was ever mentioned during this meeting.

Respondent Foley testified that she should have encouraged respondent Drazewski to recuse himself from her husband's cases out of a "marital duty" to her husband. She believed, however, that her failure to do so until after her husband insisted was not a violation of the Judicial Canons. When asked specifically whether she had an obligation under the Canons to report respondent Drazewski if he did not recuse himself from her husband's trial, respondent Foley said, "My opinion today? *** No." She elaborated that after consulting with counsel, and reviewing cases, she had "not come up with any provisions in the Canons that require a judge to proactively stop another judge from doing something." She acknowledged her previous testimony before the JIB on April 11, 2014, in which she had stated that her conduct did have ethical implications and agreed her opinion had changed over time. Specifically, at that April hearing, she had previously testified that she "should have encouraged Judge Drazewski at a minimum to recuse himself, yes," and, "I still likely had an obligation to report and did not."

Respondent Foley testified that, on more than one occasion, she considered the ethical obligations she might have had in light of her relationship with respondent Drazewski, specifically with regard to "the potential for the appearance of impropriety." However, she did not recall having conversations about this obligation with anyone. When asked whether she would have an ethical obligation to report respondent Drazewski if she was aware of conduct violating the Canons, respondent Foley said, "If Judge Drazewski's conduct violated the Canons, if I had a belief that it violated the Canons and I was aware of it, then I would have a duty to report it, yes."

William Scanlon testified before the Commission that he has served as the Trial Court Administrator for the Eleventh Circuit for almost 19 years. In that capacity, he manages the non-judicial personnel, court reporters, grant programs, budgeting, technology projects and back office of the Circuit Court. Between 2010 and 2014, Mr. Scanlon reported to then Chief Judge Robb.

Mr. Scanlon has known the respondents for a number of years and has worked with both of them on different court matters. He would see each of them on an almost daily basis.

Between 2004 and 2010, Mr. Scanlon observed the respondents together as much as any other pair of judges. However, beginning in 2011, Mr. Scanlon noticed that the respondents were spending a lot more time together in each other's chambers, frequently behind closed doors. He explained: "If you wanted to find Judge Drazewski and you asked his judicial secretary where he was, she would say, you know, you can find him in Judge Foley's office and vice versa." Mr. Scanlon specifically recalled that on occasion, when he needed to speak with one of the respondents, the door would be closed to one of the chambers.

Mr. Scanlon also noticed a change in how the respondents behaved towards each other. At the monthly judges' meetings during 2012, Mr. Scanlon observed what appeared to be texting back and forth between the respondents. Mr. Scanlon testified, "[w]hen one would finish texting a message and put their phone down or wait as you would, the other would immediately pick up their phone, respond, and when they finished the other one would pick up their phone." He also observed that the respondents "sat next to each other frequently, engaged in private conversations, you know, in what appeared to be inside jokes, made each other laugh, that sort of thing. But that coupled with the time they were spending together in each other's chambers began to change my opinion of their relationship."

Mr. Scanlon began to suspect the respondents were having an affair. He subsequently shared his suspicions with his wife who was acquainted with the respondents and who had previously worked with Shirley Drazewski, respondent Drazewski's wife. Mr. Scanlon also spoke to court staff, specifically, Martha Hollice, respondent Drazewski's judicial secretary; Sandy Hoffman, the administrative assistant to the Chief Judge at the time; and Judges Bauknecht and Travers about the relationship. Two or three private attorneys—lawyers who did not work for the County—and a couple of other court personnel approached Mr. Scanlon about the topic of a relationship between respondents Drazewski and Foley. These individuals initiated the conversations with him on 10 or 12 occasions, over the course of a year.

Mr. Scanlon was present at the December 2013 monthly judges' meeting which was to be the last one attended by Judge Pacey before the judge retired. When Judge Pacey launched into a monologue "about when two judges start a relationship that's going to affect the rest of us," Judge Robb stood up and, just before leaving the meeting room, said "I'm not going to allow

anyone to speak poorly of judges who are going to continue their service." Judge Pacey did not finish his remarks and the meeting ended.

Judge Jennifer Bauknecht testified that she has served as a resident circuit judge in Livingston County located in the Eleventh Circuit since 2008. She was an Associate Judge from 2005 until 2008 and was a practicing attorney for about ten years before being appointed to the bench. She has known respondents Drazewski and Foley for about 10 years. She described her relationship as a "business relationship" and would see them at the monthly judges' meetings.

Judge Bauknecht testified that she considered the respondents' relationship with each other as business-like until May 2011, at a Law Day Event sponsored by the McLean County Bar Association and co-chaired by the respondents. She testified that her impression of their relationship changed that day, because "their conduct in the way they acted *** was improper. It embarrassed me as a member of the judiciary. They were flirtatious with each other. And I left the Law Day very upset." Judge Bauknecht also recalled that on her way out of the event, another Judge from the Eleventh circuit, Judge Fellheimer, made a comment about the respondents' behavior.

After May 2011 and into 2012, Judge Bauknecht attended monthly judges' meetings during which she again observed what she thought was flirting between the two respondents. Judge Bauknecht saw that the respondents would send notes back and forth and that respondent Drazewski would lean in close to respondent Foley. Judge Bauknecht also noticed the respondents texting each other during meetings while they sat across from each other. She stated that one respondent would "press[] buttons, look up at the other one, the other one would look at their phone, read it, press buttons and so on."

Judge Bauknecht talked with other judges, specifically Judges Travers and Fellheimer, about what she observed at these meetings, and, in the spring of 2012, Judge Bauknecht believed that respondents were having an affair.

Sometime in the spring of 2012, attorneys began talking about a relationship between the respondents. Judge Bauknecht testified that "typically the attorneys would make comments either in between court hearings when nobody else was in the courtroom or if I had a conference if they came back to my office for some reason, but they were just side, offhand comments ***." Judge Bauknecht identified several attorneys by name who made statements at that time regarding the respondents' relationship. She stated that she had concerns that the comments reflected "poorly on the judiciary" and that the situation was "a black eye." Judge Bauknecht testified that she did not think the respondents' conduct was "appropriate" and "it made all of us look bad, not only because it was going on, but because it wasn't being addressed by anyone." She had concerns about how respondent Drazewski was assigned to cases in which Mr. Foley was a lawyer, about retention, and about "how this reflected in the public and increased distrust with the judiciary."

Judge Bauknecht referenced the Code of Judicial Conduct in her testimony and stated:

> "[J]udges are to maintain the highest degree of professionalism and conduct both inside and outside their professional lives, and in central Illinois it's still a big deal when somebody has an affair. And these were judges that were having an affair *** everybody knew about it, ** [a]nd I think the public lost confidence in the judiciary."

Judge Bauknecht shared her concerns with Judge Robb and other judges. She also contacted the JIB in the spring of 2013 because she was concerned about whether she had an

obligation to report what she thought was improper conduct. Without identifying herself by name, Judge Bauknecht told the JIB that she

> "was aware that there was an affair going on between two of the judges in my Circuit and that it had been going on for some time and everybody was talking about it, and I wasn't sure if that was something that needed to be reported, that I was concerned about—I believe I would have mentioned the fact that Joe's cases were being heard by Judge Drazewski or at least assigned to him initially."

Judge Bauknecht was informed by someone at the JIB that "they already knew about it." Judge Bauknecht testified that she believed "what was happening between the two of them was a violation of the code." However, Judge Bauknecht did not know if she had a duty to report or not because "I didn't think it [went] to the level of criminal conduct, and that's primarily why I called. I don't know if I had a duty to report it or not." Judge Bauknecht testified that she was not sure if taking or initiating appropriate disciplinary measures had to be done by the Chief Judge, and she waited until the summer of 2013 to call the JIB because she thought it was being addressed by the Chief Judge.

Through a stipulation the following testimony was presented to the Commission. Robert Travers, an Associate Judge in the Eleventh Judicial Circuit, presiding in Livingston County attended the Law Day event in McLean County in May of 2010 or 2011. At that event, respondents' behavior suggested to Judge Travers that "they were attracted to each other." Another Associate Judge, Judge Fellheimer, who also was present, asked Judge Travers if he

thought the respondents were having an affair to which he responded "that it appeared so." The two judges shared their observations with Judge Bauknecht that day.

During the monthly judges' meetings in McLean County, Judge Travers believed the respondents were texting each other based upon the timing of the texts and the respondents' eye contact with each other. This behavior further suggested to him that the respondents were involved in an affair.

In February 2012, Judge Travers, with Judge Fellheimer present, was advised by Mr. Scanlon that respondents "were involved in a romantic relationship." Judge Travers was concerned that he and the other judges aware of the relationship had an obligation to report the matter. However, Judge Travers did not report the matter because the Chief Judge was aware of the relationship and he thought Judge Robb would raise it at a monthly meeting. Additionally, he was concerned that if an associate judge raised the "issue of the affair" that judge would not be retained for another term by a majority of the circuit judges. Although Judges Travers, Fellheimer and Bauknecht discussed the respondents' conduct and determined it was reportable, they decided it would be best if a circuit judge reported the matter to the Board.

Judge Travers was also frustrated because the issue was not raised at a judges' meeting before the Eleventh Circuit judges voted on the retention of respondent Foley as an associate judge without knowing that "she and Judge Drazewski had engaged in an extramarital relationship."

On several occasions during the second half of 2013, Judge Travers overheard conversations between attorneys which indicated to Judge Travers that those attorneys were aware that respondents had been romantically involved and had an affair. There was no question

in his mind that prior to 2014, the respondents' relationship became known to both lawyers and judges in the Eleventh Circuit.

Judge Robert Freitag testified before the Commission that he was appointed an associate judge in December 2000, elected a circuit judge in 2008, and has been serving as the Presiding Judge of the Criminal Division in the McLean County Circuit Court since 2009. Judge Freitag worked and interacted with respondents on a daily basis, and characterized their conduct towards each other as "professional, appropriate." He never observed respondents engage in any flirtatious behavior or inappropriate physical contact with one another. Judge Freitag had attended the McLean County Bar Association Law Day events and was of the opinion that the respondents' presentation was "effective and entertaining." He was not of the opinion that they were involved in an illicit affair.

Judge Freitag routinely attended the monthly judges' meetings in McLean County and believed that the respondents' conduct at these meetings was also "professional and appropriate." He described respondent Drazewski as a fair, committed, hard-working, and exceptional trial court judge. As his supervisor, Judge Freitag had not received any complaints about respondent Drazewski.

Judge Freitag also supervised respondent Foley for a period of time when she was assigned to the Criminal Division. Judge Freitag described her as a very compassionate, dedicated, very fair and hard-working judge. In Judge Freitag's mind, respondent Foley's integrity was "unquestioned." He never received any complaints about her while she was assigned to the Criminal Division. When asked how the allegations made in the complaint changed his impression or opinion of the respondents, Judge Freitag said, "Professionally it has

not changed it at all." Judge Freitag did not believe that the "personal actions of respondents affected the business or reputation of the court in any way."

The Commission also received stipulations from Judges Thomas W. Funk and J. Brian Goldrick. Judge Funk stated that on two occasions, he heard others suggest that the respondents were involved in a relationship. He, however, never observed any inappropriate behavior from them, and never heard anyone complaining about their ability to be fair and impartial. Judge Goldrick also averred that on two occasions he had brief discussions about the respondents and whether they were involved in an extramarital affair. One of those discussions occurred prior to becoming a judge and was with another attorney, and the other discussion occurred after he became a judge and was with another judge.

Joseph W. Foley, the former husband of Rebecca Foley, was called to testify by respondents. Mr. Foley testified that he is a licensed attorney, whose primary area of practice was insurance defense. For months, Mr. Foley had growing suspicions that his wife was having an affair, and on February 17, 2011, he confronted her about it. When respondent Foley admitted that she was involved with respondent Drazewski, Mr. Foley said: "[Y]ou're having an affair with a judge presiding over my cases. I went on to say, including the trial that I had. And she proceeded to say, a jury decided that case." Mr. Foley demanded that respondent Foley get respondent Drazewski "off [his] cases immediately." While other matters beside the *Jordan* trial were pending, Mr. Foley decided that he would not permit respondent Drazewski to preside over any of those cases.

Mr. Foley recalled another conversation with respondent Foley about the affair later that week. At that time, respondent Foley told him that "Scott Drazewski wants to know what reason he should give for his recusals." Mr. Foley told her that he did not care what reason he gave.

At Mr. Foley's prompting, respondent Drazewski began recusing himself from those cases. Mr. Foley filed a motion for a new trial in the *Jordan* case before the disclosure of the relationship and challenged only the issue of damages and not the issue of liability. At the time he filed the motion for a new trial he was not certain there had been an ongoing affair and that nothing in particular stood out in his mind about respondent Drazewski's rulings. After the recusal, the motion for a new trial was not amended by Mr. Foley and was eventually heard by another judge in March. Other attorneys in Mr. Foley's firm continued to appear before respondent Drazewski after February 2011.

Mr. Foley agreed that it was "fair to say" that if he had any evidence that respondent Drazewski acted with prejudice towards his client, he would have amended the motion and sought appropriate relief. When asked by respondents' counsel whether respondent Drazewski acted with any prejudice towards Mr. Foley or any of his clients between December 5, 2010, and February 22, 2011, Mr. Foley responded, "only your clients would know that."

ANALYSIS

With all of the evidence outlined above, we review the charges against respondent Drazewski first. Because of the grave nature and serious consequences attendant to charges of judicial misconduct, the Judicial Inquiry Board is required to prove its allegations by clear and convincing evidence. *In re Karns, Jr.*, 2 Ill. Cts. Com. 28, 33 (1982).

The evidence presented demonstrates, without any question, the following. Respondent Drazewski was engaged in an extramarital affair with respondent Foley at the same time he presided over the *Jordan* trial in which respondent Foley's husband, Mr. Foley appeared as an attorney. Mr. Foley had no knowledge during the jury trial that his wife was engaged in an affair with the judge presiding over that lawsuit, and respondent Drazewski failed to disclose the

ongoing relationship and continued to preside over the matter and make numerous rulings. Specifically, after the *Jordan* jury trial, respondent Drazewski entered a judgment order on the verdict in the amount of $40,336.65 against Mr. Foley's client. Thereafter, respondent Drazewski continued to preside over other matters in which Mr. Foley was an attorney, including *In re Francis Leary*, and *Dagner v. Johnson*, in which respondent Drazewski filed two orders over Mr. Foley's objections. Despite presiding over these various matters during the affair, respondent Drazewski failed to recuse himself until he was forced to do so when Mr. Foley learned of the relationship. Because a reasonable person might question respondent Drazewski's ability to rule impartially under these circumstances, he was required to either disclose the relationship or recuse himself from any proceedings involving Mr. Foley. Respondent Drazewski did neither in a timely fashion. We conclude that his failure to recuse himself from that trial and the other proceedings establishes a violation of Illinois Supreme Court Rule 63, Canon 3 (C)(1) which provides that a judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned.

We find respondent Drazewski's subjective opinion in his testimony before the Commission that he had decided he could be fair and impartial, and that his participation in the proceedings would not be impacted in any way, shape or form, to be of no moment. Whether a judge's impartiality might reasonably be questioned is judged by an objective standard, not by the judge's subjective opinion. See *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 176 (2008) ("the test stated in Rule 63(C)(1) imposes an objective, reasonable person standard."). Instead, we believe that the JIB is correct when it argued that respondent Drazewski's conduct in the *Jordan* trial violated the Code of Conduct because respondent Drazewski's impartiality might reasonably be questioned under these facts. His conduct in failing to recuse himself from the

Jordan trial raised serious concerns of possible bias, improper influence, and partiality. Any objective onlooker with knowledge of the facts could reasonably question whether respondent Drazewski would have been inclined to rule unfavorably toward Mr. Foley due to his ongoing relationship with Mr. Foley's wife. Likewise, an objective onlooker could also suspect that respondent Drazewski would be motivated to rule favorably toward Mr. Foley out of guilt, at respondent Foley's request, or in an attempt to preemptively thwart a later claim of judicial bias. These scenarios, which need not be established here, nonetheless support the fact that respondent Drazewski's impartiality could reasonably be questioned. Under the evidence presented, Respondent had an obligation to recuse himself from the proceedings involving Mr. Foley and did not do so.

Respondent Drazewski's testimony before the Commission also establishes a clear violation of Canon 3 (C)(1). Respondent Drazewski conceded that his conduct in the *Jordan* trial was, at a minimum, a moral failure, but opined that it did not amount to a violation of the Code of Conduct. Although respondent Drazewski put great weight on this characterization, and we would agree that it was a moral failure, it was also an ethical failure under these circumstances. More importantly, he admitted that he had previously testified under oath before the JIB that he understood how his impartiality might be questioned and that he should have removed himself from the case under Canon 3(C)(1). Respondent Drazewski had also previously testified that Mr. Foley had a right to know that he was having an affair with Mr. Foley's wife when he was presiding over the *Jordan* trial. Respondent Drazewski also previously testified that he should have done something different with respect to the *Jordan* proceedings, that he was slow to react, that he should have disclosed and that he should have recused himself. Although he retracted that testimony claiming that he was uninformed at the time he gave it and was now more familiar

with case law and authority, we conclude his former testimony is more believable than the testimony he later presented to the Commission. Moreover, we note that Judge Robb testified that during the August 19, 2011, meeting, respondent Drazewski admitted that his conduct in failing to tell her of the affair in April when the letter came up "was unprofessional, and he regretted it."

In addition to his conduct during the various proceedings involving Mr. Foley, we find respondent Drazewski's subsequent conduct significant to our decision. According to Mr. Foley, respondent Foley told him that respondent Drazewski had asked "what reason he should give for his recusals." Thereafter, when respondent Drazewski eventually began entering recusal orders on Mr. Foley's cases, he gave many reasons for the recusals to the Chief Judge, but omitted the key, and likely the only true, reason for his recusal—that Mr. Foley had demanded his recusal after becoming aware of the respondents' relationship.

Later, in April 2011 when Judge Robb approached him about an anonymous letter she had received, respondent Drazewski actively misled Judge Robb, blaming the letter on a disgruntled court employee. Respondent Drazewski's deception continued in August 2011, when Judge Robb confronted him about her knowledge of the respondents' relationship. At that point, he acknowledged that there had been an affair, but failed to disclose to Judge Robb that he had continued to preside over Mr. Foley's cases and rule on substantive matters while the affair was ongoing. Judge Robb testified that had she known the true nature of respondent's conduct at that time, she would have reported it to the JIB because the conduct created, at the very least, the appearance of impropriety.

Additionally, the testimony from other witnesses, which included judges and court personnel, established that the respondents' affair not only became a matter of public knowledge

and the subject of comment among members of the legal community, but was a matter of ethical concern to several judges, and court staff in the Eleventh Judicial Circuit. All of this additional evidence clearly and convincingly establishes the charged violations against respondent Drazewski.

Respondent Drazewski relies on *In re Spurlock*, 4 Ill. Ct. Com. 74 (2001) to argue that his conduct is not a violation of the Code of Judicial Conduct. In *Spurlock*, the JIB alleged, among many other violations, that the respondent had maintained a romantic relationship with a female employee of the State's Attorney's Office who interviewed victims of domestic violence, and filled out forms for petitions and orders of protection. *Id.* at 77. While the young woman was involved in cases presented by assistant state's attorneys and sometimes sat at the State's Attorneys' table in the respondent's courtroom, the Commission characterized her role as "clerical *** with modest responsibility and little discretion." *Id.* The Commission recognized that the relationship may have given rise to the appearance of impropriety and could undermine public confidence in the integrity and impartiality of the judiciary, but also noted that the respondent's conduct did not appear to alter or otherwise influence the disposition of cases. *Id.* The Commission stated that the respondent's romantic involvement with the young woman "was an error in judgment deserving of criticism, but *in the limited circumstances of this case*, did not create the appearance of impropriety." *Id.* at 83 (emphasis added). The Commission concluded that "in these specific circumstances" there was no violation of the Code of Judicial Conduct. *Id.* at 77.

Respondent Drazewski relies on *Spurlock* to claim that there must be actual evidence demonstrating that he acted with bias or prejudice before a violation of the Canons may be established. He claims that his relationship with respondent Foley did not impact his ability to

impartially judge Mr. Foley's cases, and, therefore, there can be no sanctionable conduct. We disagree. Our Code of Judicial Conduct recognizes the importance of not just the integrity and impartiality of the judiciary, but the public's confidence in the judiciary. Ill. S. Ct. R. 62 (A) (eff. Apr. 16, 2007). Accordingly, a judge must avoid both actual impropriety and the appearance of impropriety, and he must disqualify himself where his impartiality has been compromised and "where it might reasonably be questioned." Ill. S. Ct. R. 62; 63; see e.g., *In re Gerard*, 631 N.W. 2d 271, 278 (La. 2001) ("It is immaterial that the judge's [relationship with the State's attorney appearing before him] may not have had a detrimental impact on the defendants appearing before him. The key concern of [Canon 2(A)] is the appearance of impropriety"); *In re Adams*, 932 So. 2d 1025, 1027 (Fla. 2006) (holding that even in the absence of evidence that the judge's romantic relationship influenced his judgment, the judge's authority "necessarily suffers [and] the judge necessarily depletes the single most important source of his or her authority—the perception of the legal community and public that the judge is absolutely impartial in deciding cases."). Respondent Drazewski's proposed interpretation of *Spurlock* as requiring proof of actual bias or prejudice before a violation can be proven, would render the Canon 2 obligation for judges to avoid the "appearance of impropriety" meaningless. We do not read *Spurlock* to have such an expansive holding.

As shown above, the Commission in *Spurlock* explicitly, and repeatedly, recognized that its determination was premised on the specific facts of that case. *Spurlock*, 4 Ill. Ct. Com. at 77, 83. We conclude that the facts of this case are significantly distinguishable from the facts in *Spurlock*, and that there was a violation of the Code in these circumstances. The clerical worker in *Spurlock* cannot in any meaningful way be compared to Mr. Foley, and his role as an attorney appearing before respondent Drazewski.

The claim that the relationship between respondents was a personal and purely private one that did not affect the judicial proceedings must also be rejected. As the court in *Gerard* acknowledged:

> "We recognize that this was intended to be a private relationship between consenting adults. Although both were married to other people, we normally would be loathe to interfere in such personal matters. In this case, however, the private aspects of the affair are secondary to the public problems it has created." *Gerard*, 631 N.W. 2d at 277.

The court concluded that "[t]his secret relationship, upon discovery, did contribute to diminished public confidence in [the] judicial system" and "suggests to the reasonable onlooker that [the judge's] impartiality was affected.

Finally, we disagree with respondent Drazewski's argument that Canons 1 and 2 are aspirational because of the use of the word "should" as opposed to "shall." Respondent Drazewski has cited no specific authority in support of this contention. Respondent Drazewski previously raised this claim in a motion to dismiss, which relied on the following language from the Scope section of the 2011 edition ABA Model Code: "Where a Rule contains a permissive term, such as 'may' or 'should,' the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion." Although respondent Drazewski's motion to dismiss was denied, he referenced the motion to dismiss at oral argument in these proceedings, and continued to maintain that the language of the Canons indicate that they are merely suggested, but not required.

The 2011 version of the Model Code on which respondent Drazewski bases his argument is different from the one that is in force in Illinois. The 2011 edition of the ABA Model Code is based on the 2007 version of the Model Code, as amended in 2010 whereas the Illinois' Supreme Court rules governing judicial conduct are derived from the 1972 Model Code, with certain additional changes derived from the 1990 Model Code and elsewhere.

The Committee Commentary preface to Illinois' current Code addresses the relationship between the ABA Canons and the version ultimately adopted in Illinois. Significantly, the Commentary references with approval the *Reporter's Notes to the Code of Judicial Conduct* (ABA1973), written by E.W. Thode, the Reporter for the Committee which developed the ABA's 1972 version of the Model Code.

Like Canons 1 and 2 of the Illinois Code, the 1972 version of the Model Code used the word "should" rather than "shall." Under the 1972 Model Code, these standards were meant to be mandatory. E.W. Thode, *Reporter's Notes to the Code of Judicial Conduct* 43 (1973); Alfini, *Judicial Code and Ethics* 1-8, fn. 23 (4th ed. 2007). Indeed, it has been recognized that if the use of the word "should" in the 1972 version of the Model Code were viewed as an indication of a discretionary rather than obligatory standard, the entire Model Code would have been discretionary. Holland, 2 *Geo. J. Legal Ethics* 725, 729 (1989). Such an interpretation is obviously contrary to the Code's intention. *Id.*

Finally, respondent Drazewski's argument fails because it overlooks Supreme Court Rule 71 (Ill.S.Ct. R. 71 (eff. Jan. 1, 1987)), which expressly provides that "[a] judge who violates Rule 61 through 68 may be subject to discipline by the Illinois Courts Commission." Canons 1 and 2 are among these rules, and many recent decisions by the Commission imposing discipline have been predicated on a violation of at least one of those two Canons. See *In re Polito*, 12-CC-1

(2013); *In re Simpson*, 11-CC-14 (2011); *In re Brim*, 13-CC-1 (2014). We thus reject respondent Drazewski's claim that Canons 1 and 2 are aspirational, and not mandatory.

Respondent Drazewski's failure to timely recuse himself from Mr. Foley's cases, his continuing failure to honestly disclose the facts of his conduct to the Chief Judge, and the impact of his relationship with respondent Foley on the judicial office established by clear and convincing evidence that respondent Drazewski also violated Rules 61 and 62. Respondent failed to personally maintain and failed to observe high standards of conduct so the integrity and independence of the judiciary may be preserved. Respondent Drazewski failed to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. And finally, respondent Drazewski allowed his family, social or other relationships to influence his judicial conduct and judgment. We conclude that respondent's conduct was prejudicial to the administration of justice and brought the judicial office into disrepute.

Turning to the charges against respondent Foley, we first consider the charge that respondent Foley violated Canon 3(B)(3)(a)—specifically that, having knowledge of a violation of the Canons by respondent Drazewski, she failed to take or initiate any appropriate disciplinary measures. Here too, we conclude the Board has met its burden by clear and convincing evidence.

As outlined above, respondent Foley began an extramarital affair with respondent Drazewski on December 5, 2010. About one week later, respondent Drazewski began presiding over the *Jordan* trial, a jury trial in which respondent Foley's husband appeared as an attorney for one of the parties. Respondent Foley admitted that she knew "for certain" that her husband was trying a case in front of respondent Drazewski, and that she became aware of this fact from both her husband and respondent Drazewski. In addition to the *Jordan* trial, respondent Foley

acknowledged that she was aware that respondent Drazewski was continuing to preside over other matters in which Mr. Foley was representing a party. Although respondent Foley obviously knew of the affair, her husband, Mr. Foley, was not aware of the ongoing relationship during his several proceedings before respondent Drazewski. Respondent Foley also knew of respondent Drazewski's continuing failure to recuse himself when she admitted the affair to Mr. Foley on February 17, 2011. As a judge and an active participant in the undisclosed affair, respondent Foley had knowledge that a violation of the Canons had occurred, because, to any objective observer, respondent Drazewski's conduct in continuing to preside over Mr. Foley's cases under these circumstances had, if nothing less, the appearance of impropriety. We conclude further, that under the circumstances where a judge presides over a trial involving the attorney/spouse of a person with whom that judge is having an undisclosed marital affair, and the judge does not disclose or recuse, that conduct not only has the appearance of impropriety, but is an impropriety. Because we have already concluded that respondent Drazewski's misconduct was a clear violation of the Code, we also determine that respondent Foley, having full awareness and knowledge of the relevant facts, had an obligation under Canon 3 (B)(3)(a) to "take or initiate appropriate disciplinary measures."

Respondent Foley's testimony also supports this conclusion. When she appeared before the Commission on October 27, 2015, she was asked whether she should have encouraged respondent Drazewski to recuse himself from her husband's cases prior to her husband insisting upon it, and she responded, "Out of a marital duty to my husband, yes, I should have done that." She claimed, however, that at the time of her testimony before the commission, she did not believe that her failure to encourage respondent Drazewski to recuse himself violated the Judicial Canons. She admitted that she considered her ethical obligations relating to the appearance of

impropriety, and that she likely had some of these concerns during the jury trial. However she never discussed these thoughts with anyone, nor did she react or take action in any way. Respondent Foley also admitted that her testimony had changed and that she had previously testified before the JIB in April 2014 that she "should have encouraged Judge Drazewski at a minimum to recuse himself," and that she "still likely had an obligation to report and did not." When discussing the change in her opinion, respondent explained that she had since consulted with counsel, reviewed cases and concluded that she could not find anything in the provisions of the Canons requiring her to proactively stop another judge from doing something. Respondent Foley summarized her understanding of the Canon as the following: "If Judge Drazewski's conduct violated the Canons, [and] if I had a belief that it violated the Canons and I was aware of it, then I would have a duty to report it, yes."

Despite respondent Foley's unwillingness to recognize her own obligation to take or initiate appropriate disciplinary measures before the Commission, we conclude her failure to take any disciplinary measures violated Canon 3 (B)(3)(a). The specific rule at issue requires that a judge, having knowledge of a violation of these Canons on the part of another judge, "shall take or initiate appropriate disciplinary measures." Ill. Sup. Ct. R. 63, Canon 3 (B)(3)(a) (eff. Apr. 16, 2007). Although respondent Foley had knowledge of respondent Drazewski's misconduct and his continuing failure to recuse himself from matters involving Mr. Foley, she did not act. She did not disclose the affair to Mr. Foley or insist that respondents reveal their relationship. She did not urge respondent Drazewski to recuse himself, seek help or advise the Chief Judge of the facts. In sum, she did not take or initiate any disciplinary measures when she had an ethical obligation under Canon 3 to do so. Although respondent Foley admitted that she was having an affair after being confronted by her husband on February 17, 2011, the admission came months after the

affair began and after respondent Drazewski had already presided over a number of different matters involving Mr. Foley.

There is also testimony from other judges who believed that respondent Drazewski's failure to recuse was a violation of the Code. Specifically, Judge Robb testified that respondent Drazewski's conduct under the circumstances created at the very least the appearance of impropriety. Judge Robb testified that, had she known the true circumstances as they existed when respondent Drazewski presided over the *Jordan* trial, she would have been required to report his conduct to the JIB. In addition to Judge Robb's testimony, Judge Bauknecht testified that she believed the conduct of both respondents was violative of the Code. She based her opinion, in part, upon the fact that Judge Drazewski was the assigned judge for some of Mr. Foley's cases. Following months of conflict and debate about whether the respondents' conduct was required to be reported by these other judges—specifically Judges Bauknecht, Travers, and Fellheimer—Judge Bauknecht notified the JIB. The three judges decided it would be best if a Circuit Judge reported the matter to the Board.

While the facts show that a number of judges struggled with whether to report respondent Drazewski's conduct to the JIB, it is without question that respondent Foley—as the one other judge who had full knowledge of the extent of respondent Drazewski's conduct—had an obligation to take or initiate disciplinary measures under Canon 3 (B)(3)(a) .

Respondent Foley's conduct in the months following respondent Drazewski's recusals further demonstrates her failure to act. Although she was not as deceptive as respondent Drazewski, she was certainly not forthright. Specifically, in their August 2011 meeting, respondent Foley never advised Judge Robb that respondent Drazewski had presided over the *Jordan* jury trial a week after the affair started. In fact, after that meeting, respondent Foley left

Judge Robb with the impression that there had not been an ongoing extramarital affair during that time. Judge Robb did not become aware of the fact that respondents were involved in an affair during the jury trial until she was advised of those facts in 2014. Respondent Foley, however, had personal knowledge of the facts because she was engaged in the relationship with respondent Drazewski. Based upon the evidence presented by the JIB we conclude respondent Foley violated Canon 3 (B)(3)(a).

Respondent Foley's failure to take or initiate appropriate disciplinary measures with knowledge of all the circumstances surrounding respondent Drazewski's continuing failure to recuse, and her relationship with respondent Drazewski in terms of its impact on the judicial office, established by clear and convincing evidence violations of Supreme Court Rules 61 and 62, or Canons 1 and 2 respectively. By her conduct and her complete failure to act, respondent Foley allowed her family, social or other relationships to influence her judicial conduct or judgment, and failed to maintain and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. She also failed to conduct herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Based upon all of the above, we conclude respondent Foley's conduct was prejudicial to the administration of justice and brought the judicial office into disrepute. The previously filed Motion to Dismiss the complaint against respondent Foley, which was taken under advisement is denied.

SANCTIONS

In *Spurlock*, we previously considered the following nonexclusive factors to determine the appropriate sanctions for judicial misconduct: (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his or her private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his or her conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his or her position to satisfy his personal desires. *Spurlock*, 4 Ill. Cts. Com. at 82, citing *In Re Deming*, 736 P.2d 639, 659 (1987).

We first consider respondent Drazewski's misconduct and discuss the factors listed above. To begin, although the nature of respondent's misconduct was limited to cases involving Mr. Foley, this misconduct evidenced his failure to recuse himself from multiple cases over a period of several months. Moreover, his misconduct continued, and he engaged in a pattern of deceptive conduct as he attempted to hide the affair from Judge Robb during a number of conversations. While one could argue that the affair was related to the respondents' private lives, respondent Drazewski allowed the affair to extend into his official capacity when he chose not to recuse himself from Mr. Foley's cases and later attempted to mislead Judge Robb as to his prior misconduct. The sanction we impose is not because of the extramarital affair itself, but because that affair influenced respondent Drazewski's conduct in his judicial role, when he chose to conceal the affair rather than recuse himself—as he was required to do—from cases involving

respondent Foley's husband. While respondent Drazewski has acknowledged the facts of the affair, he has not acknowledged to this Commission that the Code of Conduct was violated when he did not recuse himself until Mr. Foley demanded that he do so.

As the facts above show, there was considerable comment about the extramarital relationship between the respondents for a long period of time in the Eleventh Judicial Circuit. Judges, attorneys and court personnel were concerned about the respondents' relationship, and it was a distraction to the administration of justice in McLean and Livingston County. We conclude that the respondents' relationship which led to the judicial misconduct here, has had a negative effect upon the integrity of, and respect for, the judiciary.

In mitigation, respondent Drazewski has been a judge since 1997 and there have been no prior complaints about his conduct. He has taught and written on the law, and has helped develop a specialty drug court in McLean County. Many respected jurists testified before this Commission regarding respondent Drazewski's dedication, his capability as a judge, his competence on the bench, his bar and law related activities related to the improvement of the administration of justice and the legal profession. Moreover, some of the witnesses who testified in regards to his misconduct in these proceedings—including Judge Robb and Mr. Scanlon—extolled his otherwise exemplary work ethic and dedication.

Respondent Drazewski apologized for the pain, suffering, and humiliation he caused his family as a consequence of the relationship he formed with respondent Foley, and for the public comments and criticism that followed. Respondent Drazewski recalled an email he sent to his fellow judges in which he apologized for the fact that his actions could or might subject them to scrutiny that they did not deserve.

At the same time, we must consider that many judges in the Eleventh Judicial Circuit struggled with their own ethical obligations as a direct result of respondent's misconduct. In particular, we note that Judge Robb, who has since retired, was pulled into an ethical quandary and became the subject of a JIB investigation about her own conduct—not because of anything she did—but because she was continually misled by respondent Drazewski.

The misconduct engaged in by respondent Drazewski was egregious. The ethical dilemma he faced was one of his own making. The decision to disclose or recuse was an easy and obvious choice to make, but was eschewed for personal and selfish reasons, and his continued deception cannot be ignored. Respondent Drazewski is suspended without pay for a period of four months to begin May 1, 2016.

Turning to respondent Foley, we conclude that the most significant aspect of her misconduct was the failure to take or initiate appropriate disciplinary measures in the face of respondent Drazewski's obvious misconduct. Her failure to act came about as a result of a relationship she chose to enter into with another judge before whom her husband, an attorney, regularly appeared. Respondent Foley knew that judge did not recuse himself from several cases where her husband was representing a party and that her husband was unaware of her relationship during that period of time. This misconduct continued over a period of several months. Although respondent Foley gave some thought to her ethical obligations, she chose to ignore them and did nothing to resolve those issues at any time before this complaint was filed. Respondent Foley's misconduct occurred out of the courtroom but related to judicial proceedings that occurred in a courtroom. While she too has acknowledged the fact of the affair or relationship, she has not acknowledged any violation of the Canons to the Commission.

For the reasons also discussed above, respondents' extramarital affair was the subject of much comment and discussion by judges, attorneys and court personnel. It was a distraction and fodder for gossip that continued for a considerable period of time in the Eleventh Judicial Circuit. Judges are held to a higher standard of conduct than ordinary citizens. Respondent Foley's misconduct has had a negative effect upon the integrity and respect for the judiciary.

In mitigation, respondent Foley has been a judge since 2004, and there have been no other complaints made concerning her conduct. Many respected judges testified positively about her performance as a judge. She is respected by lawyers and judges alike for her hard work, dedication, competence, legal knowledge and ability. Respondent Foley has been involved in the implementation of a mental health court in her circuit, and has taught, written and presented on law related topics to both judges and lawyers. She is a member of various bar associations, has served for several years as co-chair of the Law Day events in the Eleventh Circuit, and has served on several law-related committees. Respondent Foley is a member of the Illinois Association of Problem-Solving Courts, and is active in her community.

Respondent Foley testified that she was "not proud of the fact that [she] engaged in an extramarital relationship." She regretted the pain and humiliation she has caused Mr. Foley, her children, her parents, her colleagues, and respondent Drazewski's family.

We conclude that respondent Foley's misconduct—her failure to take or initiate appropriate disciplinary measures—was certainly less egregious than respondent Drazewski's misconduct, but, nonetheless, it was substantial. In addition to the aggravating circumstances cited above, her conduct embroiled many of her own colleagues into an ethical quagmire, and her lack of candor with Judge Robb contributed to Judge Robb being made the subject of a JIB investigation.

For all of the foregoing reasons, respondent Foley is censured.

Respondent Drazewski suspended without compensation for four months commencing on May 1, 2016.

Respondent Foley censured.