

JUDICIAL REVIEW COUNCIL

In re: The Honorable Harold H. Dean
Hartford, Connecticut, September 15, 1997

MEMORANDUM OF DECISION

Underlying Proceedings

On April 16, 1997, the Judicial Review Council, on its own motion, initiated an investigation concerning the Honorable Harold H. Dean, respondent, a judge of the Superior Court of the State of Connecticut.

The investigation included a confidential hearing on July 16, 1997, at which the respondent appeared, was represented by counsel, examined and cross-examined witnesses. Upon completion of the confidential hearing, the Judicial Review Council found probable cause that certain conduct of the respondent did violate Canon 1 and Canon 2 of the Code of Judicial Conduct and Section 51-51i of the Connecticut General Statutes.

Following timely publication of notice, and pursuant to Section 51-511 (c) of the Connecticut General Statutes and Council regulations, a public hearing was held on September 10, 1997, on the following charges:

Charges

The Honorable Harold H. Dean wilfully failed or refused to pay periodic payments ordered by the Connecticut Superior Court in satisfaction of a judgment, which conduct resulted in violation of Canon 1 and Canon 2 of the Code of Judicial Conduct and Section 51-51i of the Connecticut General Statutes.

The respondent attended the public hearing, was represented by counsel, examined and cross-examined witnesses, submitted evidence, and was fully heard.

Finding of Facts

The following facts are found by clear and convincing evidence:

1. The respondent was, at all relevant times, an active judge of the Connecticut Superior Court.
2. On April 28, 1987, the respondent, along with others, signed a promissory note in favor of Bankmart, a financial institution. Each signee agreed to pay Bankmart \$75,000 plus interest upon demand.
3. Subsequent to April 28, 1987, the note was acquired by DAP Financial Management Company.
4. In 1994, Attorney Edward Botwick was engaged to attempt collection on the note.
5. Suit was commenced against the respondent by writ dated November 15, 1994, under the title *DAP Financial Management Company vs. Harold Dean, et al.* in Superior Court for the Judicial District of Fairfield, at Bridgeport.
6. A default judgment against the respondent was entered on January 17, 1996, for a total of \$129,500 including principal, interest, and attorney's fees. At the time of judgment, an order of payment of \$15 per week was entered, effective February 9, 1996.

7. On February 9, 1996, the office of Attorney Botwick received a check from, or on behalf of, the respondent in the amount of \$780, representing one year of \$15 payments.
8. On August 7, 1996, upon motion of DAP, the court, after a hearing attended by and contested by the respondent and counsel, increased the amount of weekly payments to \$250 per week.
9. The last line of the court's memorandum of decision reads, "The defendant is ordered to pay to the plaintiff the sum of \$250 per week until said judgment is paid in full."
10. The \$780 check received on February 9, 1996, paid the \$15 per week order through August 2, 1996, and the \$250 per week order for August 9, 1996. Further, the sum of \$140 was applied to the \$250 payment due on August 16, 1996.
11. The balance of \$110 due on August 16, 1996, was never paid. None of the weekly payments of \$250 were made from August 23, 1996, to March 31, 1997.
12. The respondent made the \$250 per week payments from March 31, 1997, to July 11, 1997, when he filed for bankruptcy.
13. The respondent claims the \$250 per week order was terminated when a wage execution was issued on October 23, 1996, and was revived on March 5, 1997, when the wage execution was revoked.
14. The respondent failed, wilfully, to pay periodic payments ordered by the Superior Court from August 16, 1996, to October 23, 1996.
15. The conduct examined by the Council did not affect his judicial duties or responsibilities.

Decision

The intentional and wilful failure of the respondent to make weekly payments ordered by the Connecticut Superior Court between August 16, 1996, and October 23, 1996, resulted in his failure to observe high standards of conduct so that the integrity of the judiciary might be preserved, and resulted in his failure to act at all times in a manner that promotes public confidence in the judiciary, all in violation of Canon 1 and Canon 2 of the Code of Judicial Conduct and Section 51-51i of the Connecticut General Statutes.

On motion duly made and seconded, on a vote of eleven to one, the Judicial Review Council finds the respondent guilty of the charges.

Hugh F. Keefe

Chair

Memorandum of Dissent In re: Harold Dean

September 16, 1997

The basic charge against Judge Dean is that:

"The Honorable Harold H. Dean wilfully failed or refused to pay periodic payments ordered by the Connecticut Superior Court in satisfaction of a judgment, which conduct resulted in violation of Canon 1 and Canon 2 of the Code of Judicial Conduct and Section 51-51i of the Connecticut General Statutes."

Findings:

1. Paragraphs 1 through 13 are hereby adopted and incorporated in paragraphs 2 through 14 of the Findings of the undersigned member of the Council.

15. No evidence to the contrary having been produced, the testimony in reference to the nature of a judgment is credible, reliable, and persuasive which defines a judgment as a determination by a court of an amount of money found to be owed arising out of a suit upon a note between the parties to said note.
16. The stated order of payments originally, and modified is unenforceable against any debtor without further action by a creditor.
17. The rights and protections afforded to creditors and debtors are defined in C.G.S. 52-356d which provides:

When a judgment is rendered against a natural person the judgment creditor or the judgment debtor may move the court for an order of installment payments. After hearing . . . the court may order installment payments reasonably calculated to facilitate payment of the judgment. Section 52-356d (a) . . . Compliance with the installment payment order . . . , shall stay any property execution or foreclosure pursuant to that judgment. . . . an installment order shall not be enforced by contempt proceedings, but on a judgment debtors default. . . . the judgment creditor may apply for a wage execution.

18. Any debtor is legally entitled to the statutory protection.
19. Judge Dean of the time of judgment was substantially indebted to other creditors.
20. Creditors are entitled to seek installment payments, move to modify any such order, seek a wage or property execution, file judgment liens and foreclose same on any of the assets of the debtor, should the debtor fail to pay any order. However, no contempt proceedings to enforce an installment order is allowed by law.
21. Accordingly, there are no sanctions or penalties available to enforce payment.
22. The respondent elected to terminate installment payments, allowing the creditor to exercise its options under the statute.
23. The judicial proceeding vacating the wage garnishment resulted in massive media attention which clearly disseminated inaccurate and erroneous allegations resulting in the appearance of unethical practices by Judge Dean.
24. The Council, without reservations, stated that there were no questions of Judge Dean's competence and ability as a Judge and that the allegations were determined to have no affect upon his judicial performance.
25. Attorney Botwick testified that he had no knowledge of the considerations paid for the FDIC assignment of the note to DAP. However, Attorney Richard Ziesler testified that no more than "10 to 12 cents on the Dollar," was the consideration paid for what he termed, the Vulture Trade.

CONCLUSION

The Code of Judicial Conduct specifically provides that "judges may invest as long as the investment does not interfere with their judicial duties by bringing people before them who are involved." Canon 5C.

This member finds that Judge Dean did no more or less than any debtor was legally entitled to do. Legally, the proof against Judge Dean is unpersuasive as the language of the statute is clear and unambiguous. Accordingly, the charge must fail.

The general purposes of the Council state in part: The Council also has a responsibility to judges. . . . whose careers can be damaged by false and inaccurate charges. . . . The Council makes every effort to act in the public interest while safeguarding individual rights and reputations of judges, from unfounded accusations.

Judge Dean's judicial position unfairly projected his difficulties into the public eye by the inaccurate and relentless treatment of the media. Accordingly, this member dissents as the charge was false, inaccurate and unfounded.

G. Sarsfield Ford
