City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF	)	
	)	
George Nichols	)	
COMPLAINANT,	)	
AND	)	Case No. 96-E-31
	)	
City of Chicago Department of Sewers	)	
RESPONDENT.	)	

RULING DENYING REQUEST FOR REVIEW OF DISQUALIFICATION DECISION

This case comes before the Board of Commissioners of the Commission on Human Relations ("Commission" or "Board") upon Complainant George Nichols' Request for Review of the Hearing Officer's decision not to disqualify himself, pursuant to Commission Regulation 240.220. Complainant had filed a motion to disqualify Hearing Officer Steven Greenberger just after the Pre-Hearing Conference. Respondent responded to that motion and, on May 6, 1999, the Hearing Officer issued an order denying the motion. Nichols v. City of Chicago, CCHR No. 96-E-31 (May 6, 1999) ("Order"). On May 14, 1999, Complainant filed a Request for Review of the Order. In response, Respondent filed a Motion to Strike. The Commission reviewed all the relevant documents and, for the reasons set forth below, it affirms the Order and finds that the Hearing Officer should not be disqualified from this case.

I. Standards

As stated in Commission Regulation 240.210 and in the prior disqualification cases which have come before the Board, the Commission has adopted the following standard from Illinois

Supreme Court Rule 63(c) to use in evaluating disqualification issues:

> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
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> > (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

Ill.S.Ct. Rule 63(c)(1)(a) (West 1994); see Blakemore v. Starbucks Coffee Co., CCHR No. 97-PA-60 (Nov. 18, 1998); Shontz v. Milosavljevic, CCHR No. 94-H-1 (Jan. 29, 1997); and Richardson v. Chicago Area Council of Boy Scouts of America, CCHR No. 92-E-80 (Jan. 18, 1995).

The Commission has decided that it determines whether a hearing officer's impartiality "might reasonably be questioned" where "an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt that justice would be done in the case." Pepsico, Inc. v. McMillen, 764 F.2d 458, 461 (7th Cir. 1985) quoted in Blakemore, *supra* at p. 7; Shontz, *supra* at p. 2 and Richardson, *supra* at p. 4. Further, in its prior cases, the Board stated:

> Courts have held . . . that, "[u]nless conduct is substantially out of the ordinary, it is unnecessary to pursue the further question whether the conduct presents the appearance of impropriety -- although it is always possible to inquire into actual impropriety." United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985), cert. denied, 475 U.S. 1012 (1986).

Blakemore, *supra* at p. 7; Shontz, *supra,* p. 2 and Richardson, *supra,* p. 7.

The Commission has summarized the competing policy concerns surrounding disqualification as follows:

> The Commission "must carefully weigh the policy of promoting public confidence in the judiciary against the possibility that those questioning [the Administrative Hearing Officer's] . . . impartiality might be seeking to avoid the adverse consequences of [the Administrative Hearing Officer's] presiding over their case." In re Drexel Burnham Lambert, Inc., 861 F.2d 1307, 1312 (2d Cir. 1988), cert. denied, 490 U.S. 1102 (1989). "A judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is." Id.

Blakemore, *supra* at pp. 7 & 8 and Richardson, *supra,* pp. 5-6.

In addition, the Board ruled in Blakemore that a party's unhappiness or disagreement with a hearing officer's decisions in a case is not itself evidence of bias. "[I]t is axiomatic that a motion to recuse because of the appearance of partiality may not be based merely upon unfavorable judicial rulings regardless of the correctness of those rulings." Spangler v. Sears Roebuck and Co., 759 F. Supp. 1327, 1332 (S.D. Ind. 1991) (and cases cited therein), quoted in Blakemore, *supra* at p. 9. A party must normally show that the alleged bias comes from outside the proceedings. In fact, the United States Supreme Court has stated that, for the alleged bias to be disqualifying, it "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed.2d 778 (1966).

Finally, it is clear that: "In a motion for disqualification, the burden is on the moving party." Blakemore, *supra* at p. 7; Shontz, *supra* at p. 2 and Richardson, *supra* at p. 3. The moving party in this case is Complainant.

II. Procedural Background

In this case, the Administrative Hearing was originally set for November 6 and 10, 1998. Respondent filed a motion for extension of time (because it received the order setting the case for hearing well after it had been issued). Complainant's attorney filed his appearance in early November and asked for time to do discovery, as he had just been hired to work on the case. The Hearing Officer held a status conference with the attorneys on November 12. At that conference, the parties agreed to a discovery schedule as well as to new dates for the Pre-Hearing Conference and Hearing. Hearing Officer's Order of November 17, 1998.

Pursuant to that schedule, responses to discovery were due December 3, 1998, and the pre-hearing memorandum was due on January 27, 1999. Id. However, neither party responded to discovery by December 3 and neither filed the pre-hearing memorandum. On January 27, 1999, Complainant filed a motion for extension of time, a motion to compel and a motion for leave to file supplemental discovery, all, generally, based on the inadequate discovery response from Respondent. The next day, Respondent filed its response to Complainant's request for documents and, on February 2, filed its response to Complainant's motion to compel and its own motion to compel.

That means that, as of the February 3 Pre-Hearing Conference, the parties had not completed discovery by the dates to which they had agreed in November, Complainant had not responded to Respondent's discovery requests at all, and neither party had filed the pre-hearing memorandum.

III. Motion for Disqualification

The incident which led to the request to disqualify occurred at the Pre-Hearing Conference. According to Complainant's Motion to Disqualify and the attached affidavit of attorney Chester Blair ("Affidavit"), attorneys Blair and Andrew Muchoney appeared at the Pre-Hearing Conference. The Hearing Officer stated that he was "surprised that anyone had appeared" and said he did not think the "other side" would appear. Affidavit, ¶3. The Hearing Officer also "expressed concern" that certain papers had not been filed. Id. Blair notes that they had filed a motion for an extension of time the week before. Id.

Blair states that they told the Hearing Officer that a motion to extend time had been filed and that the reasons for it were set forth in that motion. Affidavit, ¶4. They also stated that they then had another motion to continue the hearing itself. Id. The Hearing Officer stated that he could not

understand why they could not be ready to proceed on the scheduled dates. Affidavit, ¶5. Blair explained that they had just finished an extended trial, which he identified. Id.

The Hearing Officer then pointed to Mr. Muchoney and said something about documents having been stuck under his door that morning or the night before. Affidavit, ¶6. He then picked up an envelope and handed it to Mr. Muchoney. Affidavit, ¶7. The Hearing Officer then asked Muchoney who he was in, Blair states, an "adversarial manner." Affidavit, ¶8. When Muchoney identified himself as co-counsel to Blair, the Hearing Officer interrupted, stating he could not continue without the other side being there. Id. The Hearing Officer then said he did not think the other side would appear; Blair states that it was then 25 minutes after the scheduled start of the Pre-Hearing Conference. Id.

Blair then states, "At this point, the hostility of the Hearing Officer was so apparent that Blair stood up and said to him, 'I understand you,' and proceeded to direct Mr. Muchoney out of the Hearing Officer's office." Affidavit, ¶9. He states that the Hearing Officer "then stood up and asked, in effect, 'You're leaving the room?!'" to which Blair responded that he was. Affidavit, ¶10. The Hearing Officer then asked him what "I understand you" meant and Blair responded it meant "just what the English language means." Id. They then left.

Blair contends that the Hearing Officer "took on a professorial manner" and treated them as if they were students, not litigants. Affidavit, ¶11. That is, he states, the Hearing Officer asked questions and did not wait for responses before asking more questions and then stating he could not discuss the case with them. Id. Blair states that, although the Hearing Officer had stated that he could not discuss the case with them, he acted as if they were doing something wrong when they began to leave. Affidavit, ¶12. Blair said it was as if the Hearing Officer was telling them they could not leave until he let them. Id.

Blair states that the Hearing Officer's conduct was "neither judicious nor administrative" and that he exhibited "prejudice" against them. Affidavit, ¶13. He concludes that neither he nor his client can have a fair hearing before this Hearing Officer. Id.

IV. Respondent's Response

The attorney for Respondent was not present for the conversation between Complainant's counsel and the Hearing Officer and so could not comment on what occurred between them. She did state that the envelope which was discussed (as being put under the Hearing Officer's door) was a filing of Respondent which had been delivered to the Hearing Officer's office the day before the Pre-Hearing Conference. Response, ¶5.

V. Hearing Officer's Order

On May 6, 1999, the Hearing Officer denied the motion to disqualify himself. He notes that the motion does not describe what conduct prejudiced Complainant[1] and merely contends that he was hostile and prejudiced without describing what the hostility and prejudice were. Order, ¶5. The Hearing Officer describes the conduct of Complainant's counsel as "remarkably unprofessional," but states that he is "nevertheless confident that he can and will render a fair and impartial decision based solely on the merits of the case." Order, n.1. The Hearing Officer then sets forth the appropriate standard concerning disqualification. Order, ¶6.

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[1] To the extent that this statement in the Hearing Officer's Order might be read to suggest that the moving party must show prejudice to his or her position to obtain disqualification, the Commission clarifies that it uses the standards set forth in Part I above. Nevertheless, it also finds that the Hearing Officer's Order both quotes and applies the appropriate standard.

The Order states, "As indicated above, aside from allegations as to the hearing officer's alleged demeanor, Complainant has not presented any basis for concluding that the hearing officer has a personal bias or prejudice against him or his lawyer. The hearing officer had never met any of the parties or their lawyers in this action prior to being assigned to the matter and there is nothing in the record to suggest a bias or prejudice." Order, at ¶7.

VI. Complainant's Request for Review

Complainant filed a Request for Review of the Hearing Officer's Order on May 14, 1999. With respect to the disqualification issue,[2] Complainant states that the Order "failed to refute the details of Mr. Blair's Affidavit setting forth specific indicia of prejudice displayed by Mr. Greenberger toward counsel for [Complainant]." Request for Review, ¶8. This includes stating that he did not think that the "other side" would appear and then stating he would not proceed with only one side present. Id. He also states that the Hearing Officer had accused them of "sticking" an envelope under his door and "berated" counsel for not filing timely pleadings despite their motions for extensions of time. Request for Review, ¶9.

Complainant states that the Hearing Officer's bias can be gleaned from the "inexplicable" three-month delay in ruling on the motion to disqualify; the fact that the order ruled against the Complainant on a variety of issues; and the Hearing Officer's behavior at the Conference. Request for Review, ¶11. He further points to the footnote in which the Hearing Officer refers to Blair as

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[2] Disqualification is the only issue about which a party may file an interlocutory request for review. Reg. 250.120. Therefore, the Board shall not address any of the other issues raised in Complainant's Request for Review at this time. The parties were reminded of this in the Commission's briefing order of May 17, 1999.

"remarkably unprofessional" which Complainant states demonstrates a "personal bias concerning a lawyer." Request for Review, ¶12.

Complainant cites to Illinois Supreme Court Rule 63(a)(3), which calls for judges to be "patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity." Request for Review, n.2. He also claims that not transferring the case will violate his due process rights. Request for Review, ¶16.

VII. Respondent's Response

Respondent filed a motion asking the Commission to strike the Request for Review. Respondent argued this because Complainant never served the Request for Review on Respondent, in violation of the regulations, and did not return calls about the case. Respondent asks for a ruling against the Request for Review if it is not stricken.

VIII. Analysis

A. Specific Statements and Conduct

The Board is charged with determining only whether the Hearing Officer should have recused himself because his impartiality might reasonably be questioned. As the starting point for this determination, the Board considers the particular comments and conduct to which Complainant objects. As shown below, the Commission finds that they do not indicate bias.[3]

[3] Although it appears that Complainant did not serve his Request for Review on Respondent, the Commission declines to strike it.

At the time of the Pre-Hearing Conference, the hearing schedule had already been delayed for three months and still the parties had not fully complied with the deadlines to which they had agreed. See Part II above. The Hearing Officer's comments about not understanding why papers had not been filed and why the parties were not prepared for the hearing are not extraordinary, given that. The fact that Complainant had filed a motion for more time is, in fact, an admission that he had not met the already-extended deadlines. Moreover, the mere filing of that motion does not preclude the Hearing Officer from being angry about the underlying lack of timeliness.

Further, although it is not clear, it appears that the Hearing Officer may have been confused about who was in attendance. He first stated to Blair that he thought the "other side" might not appear, suggesting that he knew Muchoney was with Blair. However, when he pointed at Muchoney and asked about "sticking" the envelope under his door, he obviously thought Muchoney represented Respondent (as that is who had put the document under his door). Nevertheless, it can be argued that his anger about that envelope detracts from Complainant's claim of partiality because the Hearing Officer was actually angry at Respondent, not him.

In addition, once the Hearing Officer determined that Muchoney was not representing Respondent, he was correct to end the discussion until Respondent arrived. Hearing Officers are generally not allowed to have *ex parte* discussions -- conversations with one party but not the other. Reg. 240.321. It was reasonable for him to wait to determine whether Respondent's counsel was going to arrive.

Complainant also points to the fact that the Hearing Officer was angry when Complainant's counsel left the Conference with his counsel stating, "I understand you." However, the requirements for and the nature of the Pre-Hearing Conference procedure show that his anger was not

inappropriate, let alone evidence of partiality. Both parties are required to attend the Pre-Hearing Conference; failing to attend subjects a party to sanctions. Reg. 240.120(b). It is similar to status conferences held in court, but it is not transcribed. The Conference is "conducted by" the Hearing Officer. Reg. 240.120(a). Although the Hearing Officer had stated that he could not talk to Complainant's counsel without Respondent yet in attendance, he had not stated that the Conference was over. Therefore, walking out before the Pre-Hearing Conference was adjourned was not proper and caused the Conference not to proceed.[4] The fact that "the Hearing Officer behaved as if they were doing something improper" when they left (Affidavit, ¶12), then, is not obvious evidence of bias; it reflects the reality that the Conference had not yet ended.

B. Negative Comments About or Conduct Towards Attorneys as Basis for Disqualification

It may be that the Hearing Officer was impatient and condescending during the Pre-Hearing Conference. Additionally, labeling Complainant's counsel's behavior as "remarkably unprofessional" (Order, n. 1) may be seen to demonstrate frustration, even anger. However, the Board's only charge is to determine whether that conduct indicates actual or apparent bias. Complainant provided the Commission with no guidance on this key issue; he cited almost no cases at all, and none which disqualify a judge for impatience or negative comments about an attorney's conduct. This omission may be explained by the fact that, as shown below, courts virtually never find negative, impatient or even inappropriate comments about the conduct of counsel to be evidence of judicial bias.

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[4] In fact, had Complainant not left, the Conference would have proceeded because Respondent's counsel did arrive. And, even if she had not arrived, the Conference could have gone forward after waiting for her as there was "notice and opportunity for all parties to participate" in the Pre-Hearing Conference. Reg. 240.321.

The decision in Spangler v. Sears Roebuck and Co., 759 F. Supp. 1327, 1332 (S.D. Ind. 1991), which the Commission cited previously (Blakemore, *supra*, p. 9), is quite helpful. The conduct of the judge in that case is similar to, though arguably even more explicit and more negative than, the conduct of the Hearing Officer in the instant case.[5] Similar to the instant case, in Spangler, the defendants asked the judge to disqualify himself because his conduct allegedly demonstrated "the appearance of partiality, hostility, lack of self-restraint, lack of judicial calmness, lack of dispassion, lack of impartiality in demeanor, bias and prejudice." Spangler, 759 F. Supp. at 1329. The gist of the defendants' concern was that, in a written order, the judge characterized the defendants' counsel's conduct as "egregious"; stated that the judge "intends to express no opinion concerning whether defense counsel's performance was intentionally deceptive or grossly negligent and in heedless disregard of the appropriate conduct of a member of the bar"; opined that statements made by defense counsel "bordered on misrepresentation"; and held that the "gross negligence or willful misrepresentations of defendants' counsel were not harmless." Id. at 1331.

The judge held, "A basic requirement of a successful recusal motion is that the alleged bias or appearance of partiality must have its origin in a source outside the judicial process." Id. at 1331 (citations omitted). The judge then discusses at length the fact that a "judge does not create questions of partiality merely by exercising his judgment." Id. at 1332. The court notes that remarks

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[5] The federal rule concerning disqualification does not list bias against an attorney as an independent reason for recusal. Nevertheless, Spangler and other cases still address comments made to and about counsel to determine whether disqualification is appropriate. The Commission recognizes that the Illinois rule it applies (Supreme Court Rule 63(c)) does call for recusal if bias is directed at counsel, not just the party. Nevertheless, the Commission did not find, and Complainant did not cite, any Illinois case in which a judge was disqualified for remarks to or about counsel. See pages 14-16 below (describing Illinois and federal disqualification cases caused by comments about counsel).

by a judge may be grounds for disqualification, but that occurs where there is "pervasive" actual bias shown through the comments and actions of the judge. Id. at 1333 and cases cited therein. He finds his written remarks do not meet that standard.

The judge admits that his statements demonstrate "dissatisfaction with the acts and omissions of defendants' counsel in carrying out counsel's responsibilities to this court." Id. at 1333. In fact, the judge repeats some of his criticisms of the attorney in his explanation about why his reproaches were necessary. Id. at 1334. The judge notes that the party who loses a decision, even a preliminary one, may feel that the judge was not sufficiently patient; however he quotes a prior appellate decision which holds that "[i]mpatience is not prejudice." Id. at 1334, quoting Pearce v. Sullivan, 871 F.2d 61, 63 (7th Cir. 1989). The court then lists several examples from other cases where the judge was not disqualified despite using stronger and sometimes more personal language to an attorney than what he had done (or what the Hearing Officer in the instant case has done). Id. at 1334-35 and cases cited therein (see pages 15-16 below).

Further, the court notes that even if it had been wrong about the deficiencies of counsel's actions, that is irrelevant. "The appropriate inquiry is whether this court had a reasonable basis for making the comments it did." Id. at 1335. The court also lists occasions when a judge imposed sanctions against an attorney for inadequate conduct but did not have to disqualify him- or herself, whether or not the judge was correct that the sanctions were appropriate. Id. at 1336 and cases cited therein. The Commission finds that the reasoning throughout Spangler is applicable to the instant case.

As noted above, other cases demonstrate that remarks made or conduct done by a judicial officer based upon what has occurred before him or her are almost never found to be evidence of the

appearance of bias. Such holdings include: "Prejudice such as will disqualify a judicial officer . . . refers to prejudgment based on information obtained outside the courtroom, rather than to rulings, even if hasty, or errant, formed on the basis of record evidence and other admissible materials and considerations." Pearce v. Sullivan, 871 F.2d 61, 63 (7th Cir. 1989), quoted in Blakemore, *supra* at p. 9; the federal disqualification rules "require recusal only if the bias or prejudice stems from an extra-judicial source and not from conduct or rulings made during the course of the proceedings." Toth v. Trans World Airlines, 862 F.2d 1381, 1388 (9th Cir. 1988) and cases cited therein; "[T]he alleged bias . . . 'must be shown to have stemmed from an extra-judicial source . . . .'" Alcantar v. Peoples Gas Light & Coke Co., 288 Ill. App. 3d 644, 649, 681 N.E.2d 993 (1st Dist. 1997), appeal denied, 174 Ill.2d 553, 686 N.E.2d 1157 (1998), quoting People v. Damnitz, 269 Ill. App. 3d 51, 57 (1994) and citing Liteky v. United States, 510 U.S. 540, 127 L.Ed.2d 474, 114 S.Ct. 1147 (1994) (judicial rulings alone almost never constitute a valid basis for a bias or partiality motion). Therefore, the fact that the Hearing Officer's relatively mild remarks concerned the attorney's conduct during the hearing process makes disqualification inappropriate.

Moreover, judges and hearing officers have made much stronger remarks than those objected to by Complainant without being disqualified. Below are a few examples in which disqualification was not necessary and in which the judge's behavior or statements are similar to and/or more disparaging than what Complainant states the Hearing Officer in the instant case did:

> * A hearing officer referred to the party (not just the attorney) as "uncooperative," expressed impatience with him and ultimately ruled against him in the underlying matter. The appellate court held, "Impatience is not prejudice. . . . Prejudice such as will disqualify a judicial officer (whether judge or hearing examiner) refers to pre-judgment based on information obtained outside the courtroom, rather than to rulings, even if hasty or errant, formed on the basis of record evidence and other admissible materials and considerations." Pearce v. Sullivan, 871 F.2d 61, 63 (7th Cir. 1989) (citations omitted). In fact, the Seventh Circuit's

opinion upholding the decision not to disqualify refers to the brief filed by the moving party's attorney as "execrable," (id. at 64), a more discourteous comment than anything said by the judge, or by the hearing officer in the instant case.

* A judge stated that the credibility of one of the party's attorneys was "about zero" and stated that that attorney had "been violating every court order" entered. The court found that those statements "arose from conduct during the judicial proceeding . . . thus, were legally insufficient [for disqualification]." Toth, 862 F.2d at 1388.

* Before joining the bench, a judge had filed a complaint against a law firm, which was now appearing before him, stating it had been negligent. Among other things, the judge noted that disqualification "requires an appearance of partiality, not just dislike of the attorneys. . . . An apparent antagonism towards an attorney must be of such character and apparent intensity to warrant a reasonable belief that the judge might not be able to impartially consider the arguments of that attorney in the case before the court." In re Forty-Eight Insulations, Inc., 84 B.R. 129, 132 (N.D.Ill. 1988). Further, the judge stated, "A judge need not have the highest opinion of the professional abilities of counsel to be fair to the parties. Otherwise, many judges would be forced to recuse themselves in many cases." Id. at 133.

* After a party had moved for the bankruptcy judge's disqualification, the judge stated that the party's attorneys had acted in an "unprofessional" or "unethical" manner (in making the request). Although the district court found those remarks to be "regrettabl[e]" and stated that the judge may have "overreacted," the court stated that "this alone would not be enough to justify disqualification since expressions of opinions on issues in a judicial context generally do not suffice to establish bias . . . ." In re X-Cel, Inc., 61 B.R. 691, 695 (N.D.Ill. 1986).

* Before briefing on the issue had been finished or the complete hearing held, the judge stated that he was strongly inclined to grant a motion to sanction the moving party. The appellate court found the judge did not have to step aside as his remark was based on "the evidence in the case and does not meet a threshold showing of prejudice." Alcantar, 288 Ill. App. 3d at 643-44.

* The Supreme Court of Illinois found a judge was correct in not disqualifying himself after he referred a party's counsel to the attorney's disciplinary commission. The court stated, "the fact that counsel's behavior displeased the judge, whether the displeasure was ultimately unfounded or not, cannot be used as an automatic basis for recusal. Our review of the . . . proceedings does not reveal evidence of bias towards [that attorney's client] based on the ARDC reporting incident." People v. Steidl, 177 Ill.2d 239, 165, 685 N.E.2d 1335 (1997).

* In Spangler, the court cites cases in which the various judges made the following remarks but did not have to be disqualified:

> The judge stated that counsel had "'misled' the jury by blowing 'cloak and dagger smoke' at it," Air-Sea Travelers, Inc. v. Air Asia Co., 880 F.2d 176, 191 (9th Cir. 1989), cert. denied, 110 S.Ct. 868 (1990);

> The judge called the attorney "a 'son-of-a-bitch' and a 'wise-ass' lawyer," In re Beard, 811 F.2d 818, 830 (4th Cir. 1987);
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> The judge, when handing counsel a document, stated, "I hope you choke on it," United States v. Gregory, 508 F. Supp. 1218 (S.D. Ala. 1980), appeal dismissed and mandamus denied, 656 F.2d 1132 (5th Cir. 1981);
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> The judge stated that the conduct of the attorney was "grossly improper" and twice stated that he was "shocked" by counsel's conduct, Smith v. Danyo, 441 F. Supp. 171, 179 (M.D.Pa. 1977), aff'd 585 F.2d 83 (3rd Cir. 1978).

Spangler, 759 F. Supp. at 1333.

The Commission found reference to only one case in which a judge had to step aside because of statements he made. In that case, the judge told the defendant party to "confess" and "beg forgiveness" before he had heard both sides and the judge *admitted* he was prejudiced. Gardiner v. A.H. Robbins Co., 747 F.2d 1180, 1186, 1192 (8th Cir. 1984) (emphasis added), cited in Spangler, 759 F. Supp. at 1333. The Commission finds that the comments in Gardiner are dramatically beyond what the Hearing Officer in this case said.

In sum, even if the Hearing Officer was impatient or angry, the cases described above show that his conduct does not demonstrate actual or apparent bias.

C. Complainant's Other Arguments

Respondent's other arguments can also be easily addressed. Complainant does not provide a single reason for believing that the Hearing Officer's delay[6] in issuing his Order shows bias against him. There is nothing inherent in the fact of the delay which indicates partiality. This is particularly

[6] Regulation 240.210 does not limit the time within which a hearing officer must issue an order on a motion for recusal. Therefore, although the Hearing Officer took a relatively long time to issue the Order (almost three months after briefing was complete), he did not violate the governing regulation.

true here in that Complainant himself had asked to postpone the hearing and did not file his discovery responses until mid-May (after the Order had been issued), so that a lack of speed is not obviously contrary to him.

Also without basis is Complainant's contention that the Hearing Officer's decisions against him concerning discovery issues provide a justification for disqualification. As stated above, the Commission and courts have made it clear that the fact that a judge makes decisions that makes one party unhappy -- as denying a motion to compel -- is not alone evidence of bias. E.g., Spangler, 759 F. Supp. at 1331-32; Alcantar, 288 Ill. App. 3d at 649; and Blakemore, *supra*, at p. 9.

Additionally, although it is true that Illinois Supreme Court Rule 63(a)(3) states that judges should be patient, dignified and courteous, failure to act accordingly is not listed as a reason for disqualification under Rule 63(c). Moreover, as the cases described above show, courts do not regularly require disqualification for such a failure.

Further, Complainant mentions (without citation) that there will be a violation of due process if this case is not assigned to another hearing officer. This is ill-founded. As the Commission noted in a prior case, the Seventh Circuit Court of Appeals has held, "The Supreme Court has never rested the vaunted principle of due process on something as subjective and transitory as appearance [of partiality]." Del Vecchio v. Illinois Department of Corrections, 31 F.3d 1363, 1371-72 (7th Cir. 1994), cited in Richardson, *supra*, at n. 7. The Del Vecchio decision reaffirms that "a litigant is not denied due process by either the 'appearance' of partiality or by circumstances which might lead one to speculate as to a judge's impartiality." Del Vecchio, 31 F.3d at 1372, quoting Margoles v. Johns, 660 F.2d 291, 296 (7th Cir. 1981).

Finally, the Hearing Officer specifically states that he is "confident that he can and will render a fair and impartial decision based solely on the merits of the case." Order, n.1. The Commission finds that Complainant has not shown that the Hearing Officer has done or said anything which casts doubt on that statement.

IX. Conclusion

For all the reasons set forth above, the Commission DENIES the Request for Review. The Commission holds that there is no reason to find that the Hearing Officer's "impartiality might reasonably be questioned" in this case. Accordingly, Steven Greenberger is to proceed as the Hearing Officer in this case.

For: Chicago Commission on Human Relations

By: Clarence N. Wood
Clarence N. Wood, Chairman

Dated: June 16, 1999