

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

FILED
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ARDC Clerk

In the Matter of:)		
)		
DAVID PETER PASULKA,)		
)	Commission No.	2020PR00052
Attorney-Respondent,)		
)		
No. 6187912.)		

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorneys, Christine P. Anderson and Sharon D. Opryszek, pursuant to Supreme Court Rule 753(b), complains of Respondent, David Peter Pasulka, who was licensed to practice law in the State of Illinois on November 16, 1984, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

FACTS COMMON TO ALL COUNTS

1. Respondent was admitted to the Illinois bar in 1984. At all times related to the allegations in this complaint, Respondent was the sole principal of the law firm entitled, "David P. Pasulka & Associates, P.C." (hereinafter, "the firm"), which concentrates solely in the area of divorce and family law matters. The firm typically employed one to two associates and three support staff members. Respondent also regularly practiced with three to four "of counsel" attorneys.

2. At all times related to the allegations in this complaint, Respondent served as a chair or committee member for numerous legal organizations, contributed to and authored several articles for legal journals, was well known in the family law community and had been

invited to give speeches at several bar associations and law schools in the Chicago area about various topics involving family law.

COUNT I
(Assault, Battery, Unlawful Restraint, Criminal Sexual Assault
and Criminal Sexual Abuse of an Employee-Jane Doe 1)

3. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-3, which provides, “Battery. (a) A person commits battery if that person intentionally or knowingly without legal justification and by any means, (1) causes harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.”

4. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-1, which provides, “Assault. (a) A person commits an assault when, without lawful authority, that person engages in conduct which places another in reasonable apprehension of receiving a battery.”

5. At all times of the alleged acts in this complaint, there was in effect a criminal statute in 720 Illinois, ILCS 5/10-3, which provides, “Unlawful restraint. (a) A person commits the offense of unlawful restraint when that person knowingly without legal authority detains another.”

6. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/11-1.2, which provides, “Criminal sexual assault. (a) A person commits criminal sexual assault if that person commits an act of sexual penetration and (1) uses force or threat of force.”

7. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/11-1.5, which provides, “Criminal sexual abuse. (a) A person

commits criminal sexual abuse if that person (1) commits an act of sexual conduct by the use of force or threat of force.”

8. On April 1, 2011, Jane Doe 1 began employment as an associate at the firm. At the time of her hiring, Jane Doe 1 was 26 years old and had been admitted to the Illinois bar for approximately five months. Her employment at the firm was her first full-time job as a licensed Illinois attorney.

9. As Jane Doe 1’s employer, Respondent maintained a position of power over her, in that she was financially dependent upon her job at the firm as her only source of income. In addition, during the duration of her employment, Respondent routinely told Jane Doe 1 about his connections in the family law field, including connections with judges, attorneys, and bar associations and implied his ability to affect her professional success.

10. In March 21, 2012, Respondent was scheduled to appear before the Illinois Supreme Court to give oral argument in a pending matter. Prior to that scheduled appearance, Respondent and Jane Doe 1 agreed that she would also travel to Springfield with him to help him prepare for the argument. When later discussing the trip, Respondent stated to Jane Doe 1 that he would be reserving one hotel room for them to share. After hearing Respondent’s statement, Jane Doe 1 became anxious about the trip. Thereafter, and prior to the trip, Jane Doe 1 learned that two rooms had been booked for the stay in Springfield.

11. On March 20, 2012, the day that Respondent and Jane Doe 1 traveled to Springfield for the appearance before the Illinois Supreme Court, Respondent drove a rented vehicle and Jane Doe 1 was sitting in the front passenger seat. During the trip, Respondent, using one hand, began touching Jane Doe 1’s shoulders, arms and legs. Jane Doe 1 repeatedly

told Respondent to stop touching her and moved his hand away. Respondent responded by momentarily stopping but would again continue the unwanted touching.

12. At no time did Jane Doe 1 give her consent to Respondent to touch her in the manner described in Paragraph 11, above.

13. When they arrived at the hotel in Springfield, Respondent requested adjacent rooms for Jane Doe 1 and himself. The following morning, Respondent used a second key to enter Jane Doe 1's room unannounced while she was getting ready for the day. Jane Doe 1 was surprised by Respondent's appearance in her room and advised him that she needed more time to get ready, expecting Respondent to leave. Respondent did not leave her room, so she gathered her suitcase and clothes and finished getting dressed and ready in the bathroom of her hotel room.

14. At no time did Jane Doe 1 consent to Respondent's actions, as described in Paragraph 13, above.

15. After the March 2012 trip to Springfield, described in Paragraphs 11 and 13, above, and until September 2018, when Jane Doe 1 left her employment at the firm, Respondent, on almost a daily basis when both were present at the office, pressed his body against hers, pushed Jane Doe 1 against a wall so that she was pinned between him and the wall and, while doing so, forcibly kissed her face and/or neck and forcibly placed his hands on top and underneath her clothing and touched her pelvic and vaginal and breast areas; and/or, while pressing his body against hers, forcibly penetrated her vaginally with his fingers; and/or repeatedly walked up behind her chair while she was seated at her desk and forcibly placed his hands on top and/or underneath her clothing and touched her breasts; and/or, while pressing his

body against hers, forcibly bent her over the counter in the firm's kitchen and touched her body, including her neck and/or legs and/or pelvic and/or breast areas.

16. At no time did Jane Doe 1 consent to Respondent's actions, as described in Paragraph 15, above.

17. Respondent's conduct, as described in Paragraph 15, above, often took place in Respondent's personal office at the firm when Jane Doe 1 entered to discuss cases and also in Jane Doe 1's office after Respondent entered and closed the door to her office. Also, during his conduct, Respondent used obscene and vulgar language and requested Jane Doe 1 to speak to him in the same manner but she refused. Respondent repeatedly told Jane Doe 1 she was "hot," that potential male clients would hire the firm because she was cute and that male clients wanted to "sleep with her." In addition, Respondent would request car rides from Jane Doe 1 from the office or from his home to attend meetings at the North Suburban Bar Association and, while she was driving, would touch her legs, arms, shoulders and/or breasts.

18. At no time did Jane Doe 1 consent to Respondent's actions, as described in Paragraph 17, above.

19. In addition to Respondent's conduct, described in Paragraphs 11, 15 and 17, above, between April 6, 2012 and June 30, 2014, on at least four occasions at the firm and in Respondent's personal office, Respondent, while pressing his body against hers, forcibly pulled Jane Doe 1's panties away from her body and forcibly penetrated her vagina with his penis. The final time this occurred was on June 30, 2014, after Jane Doe 1 announced to the other office employees and Respondent, that she had become engaged to be married over the previous weekend.

20. At no time did Jane Doe 1 consent to Respondent's actions, described in Paragraph 19, above.

21. On September 5, 2018, Jane Doe 1 advised Respondent that she was leaving the firm and forming a private practice with M.B., an attorney who rented office space from Respondent at the firm and who had been of counsel in some of the firm's client matters.

22. As a result of the conduct set forth above, Respondent has engaged in the following misconduct:

- a. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing battery, in violation of 720 ILCS 5/12-3, by conduct including forcibly touching Jane Doe 1's arms, legs, face, neck, pelvic, vaginal and breast areas; forcibly pushing Jane Doe 1 against a wall and forcibly bending Jane Doe 1 over a counter;
- b. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing assault, in violation of 720 ILCS 5/12-1, by conduct including forcibly touching Jane Doe 1's arms, legs, face, neck, pelvic, vaginal and breast areas; forcibly pushing Jane Doe 1 against a wall; forcibly bending Jane Doe 1 over a counter and forcibly moving her clothing about her body;
- c. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing unlawful restraint, in violation of 720 ILCS 5/10-3, by conduct including forcibly pushing Jane Doe 1 against a wall while pressing his body against hers, forcibly bending her over a counter while pressing his body against hers; and touching her shoulders arms, legs, face, neck, pelvic, vaginal and breast areas while pressing his body against hers;

- d. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing criminal sexual assault, in violation of 720 ILCS 5/12-1.2, by conduct including forcibly penetrating Jane Doe 1's vagina with his fingers and penis; and
- e. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing criminal sexual abuse, in violation of 720 ILCS 5/11-1.5, by conduct including forcibly touching Jane Doe 1's pelvic, vaginal and breast areas.

COUNT II

(Assault, Battery, Unlawful Restraint and Criminal Sexual Abuse of an Employee-Jane Doe 2)

23. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-3, which provides, "Battery. (a) A person commits battery if that person intentionally or knowingly without legal justification and by any means, (1) causes harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual."

24. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-1, which provides, "Assault. (a) A person commits an assault when, without lawful authority, that person engages in conduct which places another in reasonable apprehension of receiving a battery."

25. At all times of the alleged acts in this complaint, there was in effect a criminal statute in 720 Illinois, ILCS 5/10-3, which provides, "Unlawful restraint. (a) A person commits the offense of unlawful restraint when that person knowingly without legal authority detains another."

26. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/11-1.5, which provides, “Criminal sexual abuse. (a) A person commits criminal sexual abuse if that person (1) commits an act of sexual conduct by the use of force or threat of force.”

27. On February 23, 2015, Jane Doe 2 began employment as an associate at the firm. At the time of her hiring, Jane Doe 2 was 25 years old and had been admitted to the Illinois bar for three months. Her employment at the firm was her first full-time job as a licensed Illinois attorney.

28. As Jane Doe 2’s employer, Respondent maintained a position of power over her, in that she was financially dependent upon her job at the firm as her only source of income. In addition, Respondent routinely told Jane Doe 2 about his connections in the family law field, including connections with judges, attorneys, and bar associations and indicated his ability to affect her professional success.

29. Beginning in approximately May, 2015, and continuing until Jane Doe 2’s departure from the firm, in October 2017, Respondent, on a periodic basis, while pressing his body against hers, forcibly kissed her neck; and/or, while pressing his body against hers, forcibly pushed her against a credenza so that she was pinned between him and the credenza and, while doing so, forcibly touched Jane Doe 2’s body both on top and underneath her clothing, including touching her legs, pelvic and breast areas; and/or forcibly placed his hands under her dress to touch her legs while she was on speakerphone discussing work-related matters with clients, other attorneys and court representatives; and/or forcibly pulled her onto his lap during work-related conference calls; and/or walked up behind Jane Doe 2’s chair while she was seated and forcibly placed his hands on top and/or underneath Jane Doe 2’s clothing and touched her breasts.

30. At no time did Jane Doe 2 consent to Respondent's conduct outlined in Paragraph 29, above.

31. Respondent's conduct, described in Paragraph 29, above, took place in Respondent's personal office at the firm with the door shut and during business hours while other employees were at the firm.

32. During Respondent's actions, described in Paragraph 29, above, Respondent told Jane Doe 2 that he was looking for a "team player" and that she should be a "team player" and "you're saying no when you should be saying yes." On at least one occasion Respondent stated to her, "Your friend, [Jane Doe 1], does not say no."

33. As a result of the conduct set forth above, Respondent has engaged in the following misconduct:

- a. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing battery, in violation of 720 ILCS 5/12-3, by conduct including forcibly kissing Jane Doe 2's neck, forcibly touching her legs, pelvic and breast areas and forcibly pushing Jane Doe 2 against a credenza and forcibly pulling her onto his lap;
- b. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing assault, in violation of 720 ILCS 5/12-1, by conduct including forcibly kissing Jane Doe 2's neck, forcibly touching Jane Doe 2's legs, pelvic and breast areas; forcibly pushing Jane Doe 2 against a credenza; and forcibly moving her clothing about her body;
- c. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing unlawful restraint, in violation of 720 ILCS 5/10-3, by conduct

including forcibly pushing Jane Doe 2 against a credenza while pressing his body against hers and forcibly pulling her onto his lap; and

- d. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing criminal sexual abuse, in violation of 720 ILCS 5/11-1.5, by conduct including forcibly touching Jane Doe 2's pelvic and breast areas.

COUNT III

(Assault, Battery, Unlawful Restraint and Criminal Sexual Abuse of an Employee-Jane Doe 3)

34. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-3, which provides, "Battery. (a) A person commits battery if that person intentionally or knowingly without legal justification and by any means, (1) causes harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual."

35. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-1, which provides, "Assault. (a) A person commits an assault when, without lawful authority, that person engages in conduct which places another in reasonable apprehension of receiving a battery."

36. At all times of the alleged acts in this complaint, there was in effect a criminal statute in 720 Illinois, ILCS 5/10-3, which provides, "Unlawful restraint. (a) A person commits the offense of unlawful restraint when that person knowingly without legal authority detains another."

37. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/11-1.5, which provides, "Criminal sexual abuse. (a) A person

commits criminal sexual abuse if that person (1) commits an act of sexual conduct by the use of force or threat of force.”

38. In early November 2016, Jane Doe 3 began employment as a paralegal at the firm. At the time of her hiring, Jane Doe 3 was 27 years old and her employment at Respondent’s firm was her first job in the legal field. Jane Doe 3 had intentions to eventually attend law school and she advised Respondent of her plans.

39. As Jane Doe 3’s employer, Respondent maintained a position of power over Jane Doe 3, in that she was dependent upon her job at the firm, both in a financial sense and in providing her with valuable training and experience prior to going to law school. In addition, Respondent would routinely tell Jane Doe 3 about his connections in the family law field, including connections with judges, attorneys, and bar associations and indicated his ability to affect her professional success.

40. Beginning in December 2016, and continuing until she departed the firm in October 2018, Respondent, on an almost daily basis, while forcibly pressing his body against hers, pushed Jane Doe 3 against a wall of the office elevator, pinning her between himself and the elevator wall and, while doing so, forcibly kissed her face and neck; and/or, while forcibly pressing his body against hers, forcibly placed his hands both on top and underneath her clothing and touched her legs, pelvic, vaginal and/or breast areas; and/or, while forcibly pressing his body against hers, penetrated her vagina and anus with his fingers; and/or walked up behind Jane Doe 3’s chair and forcibly placed his hands on top and/or underneath Jane Doe 3’s clothing and touched her legs and/or thighs and/or breasts. On multiple occasions, Respondent exposed his genitals to Jane Doe 3, and on one occasion he gestured for her to perform oral sex upon him, which she refused to do.

41. At no time did Jane Doe 3 consent to Respondent's conduct described in Paragraph 40, above.

42. Respondent's conduct, described in Paragraph 40, above, took place in the elevator and Respondent's personal office with the door shut and during business hours while other employees were at the firm. In addition, during Respondent's conduct, he routinely used obscene and vulgar language and requested that Jane Doe 3 speak to him in the same manner but she refused.

43. In addition to Respondent's conduct, described in Paragraph 40, above, in or about September 2017, Respondent, while riding in the back seat of a taxi cab with Jane Doe 3, forcibly placed his hand under her dress and began touching her legs and upper thighs.

44. At no time did Jane Doe 3 consent to Respondent's conduct described in Paragraph 43, above.

45. In addition to Respondent's conduct, described in Paragraphs 40 and 43, above, on or about Thanksgiving week 2017, after the firm's annual employee holiday dinner at the firm, Respondent called Jane Doe 3 into his office and forcibly and aggressively pushed his body on top of her body, touched her breasts, legs, thighs, removed her panty hose and proceeded to perform oral sex upon her.

46. At no time did Jane Doe 3 consent to Respondent's conduct described in Paragraph 45, above.

47. During Respondent's conduct, described in Paragraphs 40, 43 and 45, above, Respondent made statements to Jane Doe 3, including, "Jane Doe 1 is doing great here. I know you want to do great here, also," and "I know so many people that can help you out."

48. In or about October 2018, due to Respondent's ongoing unwanted conduct, Jane Doe 3 left her employment at the firm and took a job outside the legal field.

49. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing battery, in violation of 720 ILCS 5/12-3, by conduct including forcibly pushing Jane Doe 3 against an elevator wall and forcibly kissing her neck and face while forcibly pressing his body against hers and touching her legs, pelvic, vaginal and breast areas and forcibly pressing his body against hers and forcibly touching her legs, pelvic, vaginal and breast areas;
- b. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing assault, in violation of in violation of 720 ILCS 5/12-1, by conduct including forcibly pushing Jane Doe 3 against an elevator wall and forcibly kissing her neck and face while forcibly pressing his body against hers and touching her legs, pelvic, vaginal and breast areas and forcibly pressing his body against hers and forcibly touching her legs, pelvic, vaginal and breast areas and forcibly moving her clothing about her body;
- c. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing unlawful restraint, in violation of 720 ILCS 5/10-3, by conduct including forcibly pushing Jane Doe 3 against an elevator wall while pressing his body against hers and forcibly pressing his body against hers while touching her legs, pelvic, vaginal and breast areas;
- d. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois

Rules of Professional Conduct, by committing criminal sexual assault, in violation of 720 ILCS 5/12-1.2, by conduct including forcibly penetrating Jane Doe 3's vagina with his tongue and finger and forcibly penetrating her anus with his finger; and

- e. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing criminal sexual abuse, in violation of 720 ILCS 5/11-1.5 by conduct including forcibly touching Jane Doe 3's pelvic, vaginal and breast areas.

COUNT IV

(Assault and Battery of a Party While Appointed Guardian *Ad Litem*-N.E.)

50. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-3, which provides, "Battery. (a) A person commits battery if that person intentionally or knowingly without legal justification and by any means, (1) causes harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual."

51. At all times of the alleged acts in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-1, which provides, "Assault. (a) A person commits an assault when, without lawful authority, that person engages in conduct which places another in reasonable apprehension of receiving a battery."

52. On or about August 30, 2016, Respondent was appointed Guardian *Ad Litem* for the two minor children of N.E. and her husband who had filed for dissolution of marriage in the Circuit Court of Cook County.

53. As the Guardian *Ad Litem* in N.E.'s dissolution of marriage matter, Respondent maintained a fiduciary role and had a position of power over N.E., in that he would make recommendations to the court regarding custody and parenting time of her two minor children.

54. On March 15, 2017, a meeting was scheduled at the firm in which N.E., her attorney, Anthony Calzaretta ("Calzaretta), her husband and his attorney were present with Respondent and Respondent's associate, Jane Doe 2, to discuss parenting and custody issues of the couple's children. While N.E. was waiting to meet with Respondent and Jane Doe 2, Calzaretta was called away into another office at the firm.

55. After her attorney was called away, at Respondent's direction and with Calzaretta's permission, N.E. was escorted into Respondent's private office by Jane Doe 2. Calzaretta was not present. As they discussed N.E.'s dissolution case, Respondent stated to N.E. that it appeared that she was becoming agitated and that she needed to breathe. Respondent and Jane Doe 2 proceeded to speak with N.E. about the case. N.E. explained that she did not feel that 50/50 parenting time as ordered by the court was in the best interests of the children. Respondent advised N.E. that the animosity between N.E. and her husband would likely make shared custody impossible. Respondent expressed concerns regarding text messages from N.E. to her husband in which she used profane language.

56. At a point during the meeting in Respondent's office, described in Paragraph 55, above, Respondent instructed Jane Doe 2 to leave the room and start a meeting with N.E.'s husband and his attorney. Respondent informed Jane Doe 2 that he would join the meeting soon. Jane Doe 2 subsequently left Respondent's office and closed the door.

57. After Jane Doe 2 left Respondent's office to meet with N.E.'s husband and his attorney, and for the next 5 to 10 minutes, Respondent continued to tell N.E. that he didn't think

he would be able to recommend shared custody of her children to the court and that custody would likely be awarded to one parent. Respondent then forcibly placed his hand under N.E.'s neck scarf and began touching her breasts both on top and underneath her clothing. Respondent continued to talk about N.E.'s text messages to her husband and forcibly placed his hand under her dress and began stroking her legs.

58. At no time did N.E. consent to Respondent's conduct described in Paragraph 57, above.

59. During Respondent's conduct, described in Paragraph 57, above, Respondent stated to N.E. that, in order to receive his support in recommending that she receive sole custody, she only had to "do a little extra something" and that she was a "smart girl" and that if she really wanted her children, he could "do that" for her if she would have sex with him. N.E., upset and concerned about custody of her children, got up from Respondent's couch and told him that she would consider his offer but needed time. N.E. then left Respondent's office and joined Calzaretta, Jane Doe 2, her husband and his attorney.

60. On March 15, 2017, after the conclusion of the meeting at the firm, N.E. described Respondent's conduct to Calzaretta who advised her that he would need to withdraw from her case due to the possibility that he may be a witness to an assault. Calzaretta subsequently withdrew from N.E.'s case and arranged new counsel for her. The case later settled with N.E. and her husband agreeing to a 50/50 custody arrangement of their children, as originally ordered by the court.

61. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in

other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing battery, in violation of 720 ILCS 5/12-3, by conduct including forcibly touching N.E.'s legs and breast areas; and

- b. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct, by committing assault, in violation of in violation of 720 ILCS 5/12-1, by conduct including forcibly touching N.E.'s legs and breast areas; and
- c. engaging in conduct involving sexual relations with a client, in violation of Rule 1.8(j) of the Illinois Rules of Professional Conduct, by forcing unwanted touching and sexual relations with N.E. when meeting with her as the appointed GAL about the custody of her children.

COUNT V

(2017 DUI and Dishonesty, Fraud, Deceit or Misrepresentation Relating to Manipulation of Alcohol Testing Device)

62. On March 16, 2017, while at his downtown Chicago office, Respondent consumed between one half and one pint of vodka. Respondent left his office at approximately 6:30 p.m. and began driving to his home in Glenview, Illinois, by way of the Kennedy Expressway.

63. While on the Kennedy Expressway, Respondent collided with another vehicle which was driving in the same lane in front of Respondent's vehicle. Respondent did not stop his vehicle after the collision to view any damage caused by the collision or to provide his identification or insurance information to the other driver, nor did Respondent call the authorities to report the collision.

64. After the collision, described in Paragraph 63, above, Respondent exited the Kennedy expressway. Respondent drove his vehicle to a Starbucks located at 7161 N.

Milwaukee Avenue in Niles (“Starbucks”) and struck the curb and the Starbucks building near the drive-thru lane. After hitting the Starbucks building, Respondent proceeded to drive away.

65. Shortly after the collision at the Starbucks, the Niles Police Department received a report of a hit and run crash at the Starbucks. The caller, a Starbucks employee, advised that a vehicle had struck the curb and building and had then left the scene. The caller was able to provide a license plate number and a Niles police officer was dispatched to the scene.

66. On the way to the Starbucks, the responding officer observed Respondent’s vehicle heading eastbound on Touhy Avenue and also observed that Respondent’s vehicle had front end damage. After following Respondent and confirming Respondent’s license plate number with the information provided by the Starbucks employee and observing Respondent’s vehicle drifting back and forth towards the center lane marker, the responding officer stopped Respondent.

67. During his traffic stop of Respondent, the officer questioned Respondent regarding his whereabouts prior to the traffic stop. Respondent stated that he was on his way from work to an Alcoholics Anonymous meeting and denied having gone to the Starbucks. Respondent would not answer any questions regarding the front end damage to his vehicle.

68. The reporting officer could smell a strong odor of alcohol on Respondent’s breath and asked Respondent if he had been drinking. Respondent stated that he drank “five vodkas.”

69. Respondent refused to submit to a portable breath test during the traffic stop and indicated impairment after submitting to standardized field sobriety tests.

70. Respondent was arrested and charged with driving under the influence of alcohol, in violation of 625 ILCS 5/11-501(a)(2), failure to provide information-striking property, in violation of 625 ILCS 5/11-404 and improper lane use, in violation of 625 ILCS 5/11-709. The

matter was docketed by the Clerk of the Circuit Court of Cook County as *People v. David Pasulka*, YE-199-875, 876 and 877, respectively.

71. On May 17, 2017, Respondent pled guilty to driving under the influence, a class A misdemeanor, and was sentenced to twelve months of court supervision in YE-199-875. The remaining charges were *nolle prossed* by the prosecutor.

72. At no time did Respondent report his guilty plea to the Administrator.

73. On February 28, 2018, the Administrator initiated an investigation regarding Respondent's arrest and conviction, which was docketed as Commission No. 2018IN00839.

74. On November 2, 2018, Respondent executed an Affidavit Pursuant to Commission Rule 108. By signing the Affidavit, Respondent agreed that the Inquiry Board would defer prosecution of Commission No. 2018IN00839, and that Respondent would abide by certain conditions set forth in the Affidavit, including as follows:

- a. Respondent shall abstain from the usage of alcohol and any unprescribed controlled substances;
- e. Respondent shall maintain a sponsor in the Alcoholics Anonymous program and is to provide the name, address and telephone number of the sponsor to the Administrator. Respondent shall request that the sponsor communicate with the Administrator in writing every three months regarding Respondent's participation and progress in Alcoholics Anonymous and report any lapses in sobriety or usage of controlled substances to the Administrator within 72 hours of his/her knowledge of that usage;
- f. Affiant shall purchase and utilize a Soberlink alcohol monitoring device or similar device approved by the Administrator, and shall submit to such testing three times a day, seven days a week, at times determined by the Administrator. The results of the tests shall be reported to the Administrator. Respondent shall pay any and all costs of such testing; and

- h. Respondent shall report to the Administrator any lapse in his sobriety or usage of any controlled substances within 72 hours of that usage.

75. On December 19, 2018, Inquiry Panel C of the Inquiry Board of the Commission agreed to defer Commission No. 2018IN00839 for a period of two years, with the conditions outlined in Paragraph 74, above, along with other conditions.

76. On February 13, 2019, Respondent met with the Commission's Director of Probation Services and the Commission's probation officer to discuss proper usage of the Soberlink device, which was provided to him on that date, along with his testing schedule. Specifically, Respondent was advised that he would be required to test three times each day which included a morning, afternoon and evening test. Respondent was further advised that the device had a camera which would take his picture during each testing.

77. On Friday, September 20, 2019, Respondent sent the Commission's probation officer an email at 11:54 p.m. stating that he had relapsed that evening. During a subsequent discussion with the Commission's probation officer, Respondent reported that he had gone to a liquor store and purchased two "airplane" bottles of vodka and made a drink. The Soberlink device returned a .061 positive result that evening at 8:45 p.m. Respondent denied drinking any more than the two airplane bottles of vodka even though the Soberlink device detected alcohol the following morning and returned a .013 positive result at 7:30 a.m. and a .014 positive result at 1:27 p.m.

78. Following the relapse, described in Paragraph 77, above, Respondent advised the Administrator that he intended to attend daily AA meetings, would meet more often with his sponsor and become more involved in community activities. Respondent's psychologist and AA sponsor communicated their belief that Respondent was committed to sobriety.

79. Beginning on or before February 8, 2020, Respondent relapsed and began drinking alcohol, specifically vodka, on a daily basis.

80. At no time did Respondent report his relapse, which occurred on or before February 8, 2020, to the Administrator as required by his Rule 108 Affidavit.

81. On February 11, 2020, a Soberlink representative contacted the Commission's probation officer and advised that Soberlink had received an "artificial error" report from Respondent's device in relation to his testing on Saturday, February 8, 2020 at 10:18 p.m. The representative further explained that the testing device used by Respondent detects "non-human" results. In this case, the device had detected a below human breath temperature and a breath pressure that was not consistent with human breath pressure, causing Soberlink to flag the test as a possible tamper attempt. The Soberlink photo results revealed that Respondent tested with two tubes in his mouth on that date, instead of only the one tube provided with the device.

82. On February 11, 2020, after speaking with the Soberlink representative, the Commission's probation officer called Respondent's cell phone and left a message requesting that he contact her.

83. At no time between February 11, 2020 and February 17, 2020, did Respondent contact the Commission's probation officer

84. On February 17, 2020, Respondent's counsel emailed the Commission's probation officer and the Commission's probation attorney and advised that Respondent had relapsed the previous night and had admitted himself to the detox unit at Lutheran General Hospital in Park Ridge, Illinois. Respondent was discharged from the hospital on February 19, 2020.

85. After his release from the hospital detox on February 19, 2020, Respondent admits that he drank “slightly more than a shot” of vodka which remained in a bottle that was still in in his house. During his Soberlink testing on that evening, Respondent again tested with two tubes in his mouth, instead of only the one tube provided with the device

86. On February 20, 2020, a Soberlink representative contacted the Commission’s probation officer and advised that Soberlink had received another artificial error notice in relation to Respondent’s testing on the evening of February 19, 2020. The Commission’s probation officer once again accessed Respondent’s Soberlink account and reviewed the pictures taken of him testing the previous evening at 9:09 and 9:32 p.m. In each picture, Respondent had two tubes in his mouth, one from the Soberlink device and an additional tube in the side of his mouth.

87. Later in the day on February 20, 2020, Respondent called the Commission’s probation officer and stated that he began drinking approximately one and a half weeks prior thereto and spaced his drinking between Soberlink testings. Respondent stated that he did not recall the amount he drank each time but that his drinking severely increased on Sunday, February 17, 2020. When questioned about the two tubes used during testing with the Soberlink device, Respondent admitted to connecting an air compressor from his garage to the Soberlink device in order to alter the testing results, including on the previous evening after being released from the detox unit.

88. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(a)(3) of the Illinois

Rules of Professional Conduct, by driving under the influence, in violation of 625 ILCS 5/11-501(a)(2); and

- b. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct, by conduct involving his attempt to conceal his alcohol use by manipulating the Soberlink device during his Commission Rule 108 deferral.

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/Christine P. Anderson
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