In re Robert John Hankes
Respondent-Appellee

Commission No. 2019PR00102

Synopsis of Review Board Report and Recommendation
(September 2021)

The Administrator brought a one-count complaint against Respondent, charging him with engaging in dishonest conduct in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct. The complaint alleged that he created false invoices, directed his firm's accounting department to credit payment on those invoices to an account that he controlled, and diverted those payments to himself by submitting false expense statements and reimbursement requests, all of which resulted in him receiving nearly $80,000 that rightfully belonged to his clients.

The Hearing Board found that Respondent had committed the charged misconduct, and recommended that he be suspended for 20 months and until he completes the ARDC Professional Seminar. The Administrator appealed, challenging the Hearing Board's sanction recommendation and asking this Board to recommend a three-year suspension.

A majority of the review panel recommended that Respondent be suspended for three years from the date of the Court's order imposing discipline and until he completes the ARDC Professionalism Seminar. A dissenting member agreed with the Hearing Board's recommendation that Respondent be suspended for 20 months and until he completes the ARDC Professionalism Seminar. He also recommended that any suspension run from the date Respondent voluntarily assumed inactive status in January 2020.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: **ROBERT JOHN HANKES,** Respondent-Appellee, No. 6288209.	Commission No. 2019PR00102

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a one-count complaint against Respondent, charging him with engaging in dishonest conduct in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct. The complaint alleged that he created false invoices, directed his firm's accounting department to credit payment on those invoices to an account that he controlled, and diverted those payments to himself by submitting false expense statements and reimbursement requests, all of which resulted in him receiving nearly $80,000 that rightfully belonged to his clients.

Following a hearing at which Respondent was represented by counsel, the Hearing Board found that he had committed the charged misconduct. It recommended that he be suspended for 20 months and until he completes the ARDC Professional Seminar.

The Administrator appealed, challenging the Hearing Board's sanction recommendation and asking this Board to recommend a three-year suspension.

For the reasons that follow, a majority of the review panel recommends that Respondent be suspended for three years and until he completes the ARDC Professionalism

Seminar. A dissenting member agrees with the Hearing Board's recommendation that Respondent be suspended for 20 months and until he completes the ARDC Professionalism Seminar.

BACKGROUND[1]

Respondent began working at Vedder Price P.C., a large international law firm, as a summer associate in 2005. After being licensed to practice law, he remained at Vedder Price, became a shareholder in 2014, and continued practicing until his termination in October 2019. One of his clients was Fortress Investment Group, which provides finance and leasing services to airlines. Under its contracts with its customers, Fortress could pass its expenses, including legal fees, onto its customers.

Between January 2018 and September 2019, Respondent created and sent nine invoices to Fortress customers, including Azur Havaciliki A.S. ("Azur") (a company that leased airplanes and had leasing agreements with Fortress), while knowing that those invoices sought payment for services in which Fortress already had paid. Based on those invoices, Fortress customers remitted almost $109,000 to Vedder Price. Those funds, Respondent admitted, belonged to Fortress.

As a part of his scheme, Respondent instructed the Vedder Price accounting department to reactivate a dormant account that had been assigned to his former client, the L. Martinez Construction Company; and he further instructed the accounting department to credit the payments made on the false invoices to the Martinez Construction account, which was done.

Around the same time, Respondent prepared a false invoice in the amount of $7,488 directed to another client, GA Tellesis, using the Martinez Construction account number on the invoice, which caused payment on the false invoice to be credited to that account.

As Respondent was creating and submitting false invoices, he sent requests to Vedder Price's accounting department seeking payment from the reactivated Martinez Construction account purportedly to reimburse him for expenses. For example, he requested reimbursement of $2,140.18 for fees related to a "client event" and a "race day" event (Adm. Ex. 5); $2,599.99 for the purchase of a crossbow, purportedly as a gift for someone with whom he had gone on a hunting trip (Adm. Ex. 10; R. 52); $13,772.43 for airfare (Adm. Ex. 13); and $16,986.46 for first-class plane tickets to Moscow, which he did not use and for which he received a credit to his personal credit card. (Adm. Ex. 12; R. 60-61.)[2] The reimbursement requests were fraudulent.

Based on those false reimbursement requests, Respondent personally received at least $79,790.43 in funds that belonged to Fortress and GA Tellesis.

HEARING BOARD'S FINDINGS, CONCLUSIONS, AND RECOMMNENDATION

The Hearing Board found that Respondent created multiple false invoices, arranged for payments on those invoices to be credited to a formerly dormant account, and received funds from that account by submitting false expense reimbursement requests. It noted that "[a]n attorney who knowingly sends false billing statements and knowingly submits falsified expense reimbursement requests clearly engages in dishonest conduct." (Hearing Bd. Report at 4 (citing *In re Walsh*, 94 CH 653, M.R. 16705 (June 30, 2000)).) It thus concluded that, "[b]ased on the admitted facts and the evidence presented, the Administrator established that Respondent violated Rule 8.4(c)." (*Id*.)[3]

In aggravation, the Hearing Board found that Respondent's misconduct involved multiple dishonest acts over time, and that it benefitted him and harmed his clients and his firm. (*Id*. at 7.) It stated that he submitted false bills for more than $100,000 and, from payments on those bills, took nearly $80,000 that belonged to his clients and was reimbursed for travel and trips

that he never took. (*Id*. at 4.) Although Respondent's annual compensations exceeded $1 million in 2018 "[h]e provided absolutely no explanation for his conduct, which he clearly knew was wrong." (*Id*. at 4, 8) The Hearing Board "found these circumstances additionally troubling, as suggesting Respondent assumed his position would enable him to get away with this reprehensible behavior." (*Id*. at 8.)

In mitigation, the Hearing Board found that Respondent admitted his misconduct when confronted by Vedder Price's general counsel, self-reported his conduct to the ARDC, and cooperated in his disciplinary proceedings. (*Id*. at 4-5.) The Hearing Board stated that "Respondent acknowledged that his conduct was intentional and that the money he received did not belong to him." (*Id*. at 5.) It also found Respondent's testimony "forthright and candid," and his expressions of remorse "genuine and sincere." (*Id*. at 8.) It noted that this was significant to its sanction recommendation, as the Hearing Board was convinced that "Respondent does not present a risk of repeating his misconduct." (*Id*.) The Hearing Board also found that Respondent presented favorable character testimony, which reinforced its conclusion that Respondent's behavior was an "aberration and not likely to recur." (*Id*.) It further noted that Respondent has no prior discipline, and has a long history of significant *pro bono* legal work and volunteer activity. (*Id*.) Finally, it noted that Respondent made restitution on the eve of hearing, which it found reasonable, as restitution was included as part of the negotiations between Respondent and Vedder Price regarding the financial issues between them. (*Id*. at 9.)

In reaching its sanction recommendation, the Hearing Board specifically rejected the Respondent's request for a one-year suspension and the Administrator's request for a three-year suspension. It cited various cases in which the attorneys were suspended for one, two, or three years. (*See id.* at 9-10 (citing *In re Alpert*, 01 CH 13, M.R. 17749 (Nov. 28, 2001) (one-year

suspension); *In re Smith*, 04 CH 84, M.R. 23347 (Nov. 17, 2009) (two-year suspension); *In re Butler*, 09 CH 93, M.R. 23783 (May 18, 2010) (two-year suspension); *In re Nadell*, 96 CH 348, M.R. 12524 (May 28, 1996) (three-year suspension)).) It reasoned that Respondent's case required more than a one-year suspension, noting that, for more than one and one-half years, he engaged in a deceptive scheme, using his position at a major law firm to take nearly $80,000 that belonged to his clients. However, it further noted that punishment is not the purpose of a disciplinary sanction, and found that, given all of the circumstances, particularly Respondent's "full acceptance of responsibility and [its] assessment of his remorse and sincerity, the three-year suspension suggested by the Administrator would be unduly punitive." (*Id*. at 10.)

Thus, the Hearing Board recommended that Respondent be suspended for 20 months and until he completes the ARDC Professionalism Seminar. (*Id*.)

SANCTION RECOMMENDATION

On appeal, the Administrator argues that the Hearing Board's recommendation of a 20-month suspension is insufficient in light of the scope and nature of Respondent's misconduct. Rather, he argues, a suspension of three years is warranted and, contrary to the Hearing Board's reasoning, would not be "unduly punitive."[4] (*Id*.) We agree.

A Hearing Board's recommendation is advisory only, *In re Hopper*, 85 Ill. 2d 318, 325, 423 N.E.2d 900 (1981), and the Review Board considers the Hearing Board's recommendation independently. *In re Hartman*, 98 CH 75 (Review Bd., Dec. 30, 1999) at 11, *approved and confirmed,* M.R.16608 (March 22, 2000). *See also* Ill. S. Ct. R. 753(d)(3) (stating the "Review Board … may approve, reject or modify the [Hearing Board's] recommendation…"). In making our own sanction recommendation, we consider the nature of the proved misconduct, and any aggravating and mitigating circumstances shown by the evidence, *In re Gorecki*, 208 Ill.

2d 350, 360-61, 802 N.E.2d 1194, 1200 (2003), while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. *In re Timpone*, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993). Critically, we also consider the deterrent value of attorney discipline and "the need to impress upon others the significant repercussions of errors such as those committed" by Respondent. *In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994) (citing *In re Imming*, 131 Ill. 2d 239, 261, 545 N.E.2d 715 (1989)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, *Timpone*, 157 Ill. 2d at 197, while considering the case's unique facts. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991).

Our review of relevant authority persuades us that a 20-month suspension is insufficient to meet the goals of attorney discipline, given the calculated nature of Respondent's scheme to defraud, which continued for more than 18 months, involved multiple victims (including Fortress, GA Tellesis, Azur, L. Martinez Construction Co., and Vedder Price), entailed fraudulent billings through the U.S. mail and wire of more than $100,000, and resulted in Respondent receiving almost $80,000 of his clients' money. Moreover, as part of this scheme, Respondent admitted that he made at least 20 intentional decisions. (R. 161.) Vedder Price's General Counsel Michael Mulcahy testified that when he first confronted Respondent about possible fraudulent conduct in early October 2019, Mulcahy looked for a reason not to terminate him; however, Respondent provided no explanation for his conduct, and admitted double-billing. (R. 82-83.) In fact, throughout this meeting with Mulcahy, Respondent consistently failed to recall relevant details of his fraudulent actions or to provide explanations of his actions. (R. 41, 44, 46, 57, 60.) At the close of this meeting, Respondent was terminated for cause. (R. 83.)

Respondent took the same position before the Hearing Board, testifying that he had "no explanation" for his admittedly "abhorrent behavior." (R. 170.) But, as Administrator's trial counsel argued in closing, "[$]79,000 reasons" existed for Respondent to do what he did. (R. 188.) Whatever the reason for Respondent's actions, a suspension of only 20 months for repeated frauds against one's own firm and clients involving more than $79,000 sends the wrong message to lawyers and the public about the legal profession's ethical standards.

We agree with the Administrator that the totality of the circumstances in this matter are similar to those in cases in which the Court imposed a three-year suspension. In *In re Nadell*, 96 CH 348, *petition to impose discipline on consent allowed*, M.R. 12524 (May 28, 1996), the attorney submitted false reimbursement requests for expenses that he did not actually incur. These false reimbursement requests resulted in him receiving over $31,000 from 41 different clients over a five-year period. In mitigation, the attorney had no prior discipline, and cooperated in the Administrator's investigation by promptly acknowledging and accepting responsibility for his conduct. When his firm questioned him about his reimbursement claims, he admitted his misconduct and offered to resign from the firm; he finally resigned when the firm's audit of his reimbursement claims was complete. He expressed remorse for his conduct to his clients and firm colleagues, and made full restitution to the clients who were affected by his conduct. The three clients who collectively paid about three-quarters of the false reimbursement claims continued to refer legal matters to the attorney, despite knowing about his misconduct, and would have testified favorably about his character. He was suspended for three years.

In *In re Crain*, 92 CH 270, *petition to impose discipline on consent allowed*, M.R. 8397 (June 25, 1992), over a one-year period, the attorney prepared and submitted over 80 false reimbursement requests to her firm, purportedly for expenses she incurred on behalf of clients.

The firm billed and received payment from clients based on her false reimbursement requests, and she received approximately $3,400 to which she was not entitled. A three-year suspension was imposed, though the attorney had no prior discipline, cooperated in the proceedings, recognized the seriousness of her conduct, and made full restitution to the firm, which credited the clients for any improper charges.

In *In re Schmieder,* 92 SH 323, M.R. 11772 (Jan. 23, 1996), the respondent was convicted of wire fraud for his role in an insurance fraud scheme whereby respondent received checks from an insurance adjustor purportedly as payment for legal work, expert witness fees, and costs, but where no work was actually performed Respondent then funneled the money back to the insurance adjustor. The amount involved was approximately $60,000. In mitigation, respondent had no prior discipline in a 26-year distinguished career; 11 federal and state judges testified on respondent's behalf; he was candid and truthful in his testimony before the Hearing Board; he did not blame others and acknowledged his accountability for participating in the scheme, and expressed genuine remorse; he was neither the mastermind nor beneficiary of the scheme, and he had no pecuniary motive for participating in it. Similar to this case, the respondent there used the mails and wire to perpetrate his fraud over a 13-month period, resulting in the embezzlement of almost $60,000 from the insurance company; and he did not stop the fraud voluntarily, but stopped only when caught by the insurance company's investigators. He was suspended for three years and until further order, where the UFO was imposed because of respondent's alcohol abuse, stress, and other mental health conditions, which were found to have contributed to his conduct.

We find Respondent's misconduct, as a whole, to be as egregious as, if not more egregious than, the misconduct of the attorneys in the foregoing cases, and that, contrary to the

Hearing Board's reasoning, a longer suspension would serve the purposes of the disciplinary system." (*Cf.* Hearing Bd. Report at 7 (stating that a suspension of longer than 20 months would not serve the purposes of the disciplinary system).) In *Nadell* and *Crain*, as in this matter, the attorneys' fraudulent schemes resulted in them receiving client funds to which they were not entitled. Respondent's fraudulent scheme here, however, was more complex than merely submitting false reimbursement requests, as the attorneys did in *Nadell* and *Crain*. He actively took multiple steps to conceal his misconduct. He created false invoices; reactivated a dormant account; changed the billing address on the reactivated account (L. Martinez Construction Co.) to his home address, so to further conceal his fraud from Vedder Price and his friend and neighbor, Mr. Martinez; directed his firm's accounting department to credit payment on the false invoices to the reactivated account; and diverted most of those payments to himself by submitting false expense statements and reimbursement. In addition, the amount of money involved in Respondent's fraud was many times greater than in *Nadell* and *Crain*. Respondent submitted false bills for over $100,000 and, from the payments made on those bills, took nearly $80,000 that belonged to his clients by submitting false expense statements and reimbursement requests. In comparison, the attorney in *Nadell* received about $31,000 and the attorney in *Crain* received about $3,400 based on their false reimbursement requests.

Similarly, the $60,000 involved in the *Schmieder* case is less than that involved here. More importantly, the attorney in *Schmieder* was neither the mastermind nor beneficiary of the fraudulent scheme, and he had no pecuniary motive for participating in it. In contrast, in this matter, Respondent was the sole architect and beneficiary of his scheme, and his pecuniary motive is clear, given that he took for his personal use nearly $80,000 that belonged to his clients.

In short, we believe that the 20-month suspension recommended by the Hearing Board is clearly insufficient. Respondent's misconduct, which spanned 18 months, was calculated and deliberate, and resulted in him converting almost $80,000 of his clients' funds. Conversion is an egregious breach of an attorney's duties, *In re Uhler*, 126 Ill. 2d 532, 540, 535 N.E.2d 825 (1989), which brings the entire legal profession into disrepute, *In re Merriwether*, 138 Ill. 2d 191, 201, 561 N.E.2d 662 (1990), and when it involves client funds, is "particularly reprehensible and offensive because it destroys the foundation of the attorney-client relationship: trust." *In re Polito*, 132 Ill. 2d 294, 301, 547 N.E.2d 465 (1989). Importantly, in his Answer to the Complaint, Respondent admitted that the wrongful receipt of the funds in question constituted conversion. (C. 22.) Furthermore, Respondent undertook his fraudulent scheme as a handsomely compensated attorney and shareholder of a large international law firm, with an expertise in aircraft financing, a unique practice. (R. 24-25.)

While such egregious conduct could have been subject to disbarment, the Administrator's request for a suspension of three years is appropriate. The Hearing Board's recommendation of a 20-month suspension fails to signal to the profession, consumers of legal services, and the public at large that the type of deceptive and self-serving scheme Respondent deliberately perpetuated is reprehensible and should not be tolerated. Accordingly, the Hearing Board's sanction recommendation is rejected. *See* Ill. S. Ct. R. 753(d)(3).

Finally, the dissent argues, and we recognize, that cases can be cited wherein sanctions for less than three years were imposed. However, as the Hearing Board correctly noted, "Each case is unique, and the sanction must be based on the circumstances of the specific case at issue." (Hearing Bd. Report at 9 (citing *In re Edmonds*, 2014 IL 117696, ¶90).) For the reasons

stated herein, we believe that the unique circumstances of this case are more analogous to the aforecited cases.

Accordingly, we recommend that Respondent be suspended for three years and until he completes the ARDC Professionalism Seminar for his admittedly "abhorrent behavior." (R170). We find this sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and necessary to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession. Consistent with the usual practice, we recommend that the three-year suspension run from the date of the Supreme Court order imposing discipline.

CONCLUSION

For the foregoing reasons, we recommend that, for his misconduct, Respondent be suspended for three years from the date of the Supreme Court order imposing discipline and until he completes the ARDC Professionalism Seminar.

Respectfully submitted,

Esther J. Seitz
Scott J. Szala

Scott J. Szala, specially concurring:

I join in Review Board Member Seitz's majority opinion, but I write separately to address the following additional points.

First, though I agree with many of the Hearing Board's statements,[5] in my view, it reached the wrong conclusion regarding the weighing of the evidence in the imposition of the sanction. Specifically, the Hearing Board, by its own words, unduly credited much of the testimony of Respondent and his character witnesses in rendering its recommendation, while not sufficiently crediting the testimony of General Counsel Mulcahy (R. 20–90), the 25 exhibits

introduced by the Administrator through Mr. Mulcahy's testimony (reflecting Respondent's fraudulent scheme and Vedder Price's actions in uncovering the lengthy deception) (*id*.; Adm. Ex. 1-25), and Respondent's Answer to the Complaint (C. 19-22) in the recommendation phase. For example, the Hearing Board accepted Respondent's testimony of "remorse" as being "sincere" (Hearing Bd. Report at 8), while acknowledging that (1) he provided "absolutely no explanation for his conduct, which he clearly knew was wrong" (*id*.); (2) it "found "these circumstances additionally troubling, as suggesting that Respondent assumed his position would enable him to get away with this reprehensible conduct" (*id*.); and (3) "[f]or over a year and a half, Respondent engaged in a deceptive scheme, using his position at a major law firm to enrich himself. . . [and he] created ten fraudulent invoices totaling roughly $115,000 and, from the payments made on those invoices, took nearly $80,000 which belonged to clients." (*Id*. at 10.)

Second, while the Hearing Board observed and credited the testimony of Respondent's character witnesses (*id*. at 6-8), its persuasive value is diminished by the cross-examination which revealed that some of Respondent's witnesses effectively supported the Administrator's position or did not fully appreciate the nature and scope of Respondent's misconduct. *See, e.g.,* D. Gerber (Respondent's former Vedder Price's group head and supervisor stating he was expressing his "personal opinion" and was "shocked" by Respondent's admissions) (R. 97-98); T. Garbaccio (Fortress subsidiary executive expressing his "personal opinion" and testifying that he never took hunting trips with Respondent and did not receive a crossbow from him (R. 112; *see generally* Adm. Ex. 10; R. 52); J. Lewis (Fortress executive testifying that the news of Respondent's actions "sucked the wind" out of him, Fortress General Counsel would probably not hire Respondent again, he did not know that Respondent had charged $30,000 of airfare and kept the money himself, and Respondent was not "stupid") (R. 117–120); T. Gill

(Respondent's counselor stating that did not know that Respondent created false documents as part of his wrongful activities) (R. 129-130); and M. Kim (Respondent's pastor testifying that he did not know that L. Martinez, another congregate, had his dormant account reactivated by Respondent) (R. 138).

Third, the Hearing Board's statements that "[r]estitution to the affected clients was not delayed" and that Vedder Price was fully paid back "less a year after the misconduct was discovered" (Hearing Bd. Report at 9) miss the mark. Obviously, the clients and Vedder Price were without those funds converted by Respondent until the wrongdoing was fully investigated and discovered by the law firm, overcoming the misrepresentations of Respondent. (*See* Respondent's Answer to the Complaint (admitting that he fabricated invoices, improperly took funds, and committed conversion) (C. 19-22).)

Fourth, the Hearing Board's statement that "[a]pparently, no client was charged for the fraudulent expenses for which Respondent billed" is perplexing. (Hearing Bd. Report at 5.) Respondent's scheme to defraud involved double-billing Vedder Price's clients and their customers allowing him to transfer those funds to the previously dormant, then reactivated Martinez Construction Co. account, and they were ultimately paid to his personal account. Respondent should not be given "credit" for failing to commit another wrongful act regarding these expenses (*i.e.*, billing certain wrongful expenses directly to the client), since it is uncontested that he prepared false Martinez invoices (including personal expenses), and as part of the cover-up, he removed the Martinez invoices from mailing before they were scheduled to be sent out, but nevertheless, he still sought payment for the improper business expenses.

Fifth, the Hearing Board's statement of "Respondent's full acceptance of responsibility" (Hearing Bd. Report at 10) is factually wrong. As of the date of the Hearing Board

hearing, Respondent had not informed Mr. Martinez – his client, neighbor, fellow church congregate, and builder of his home – that he had reactivated the company account (closed years earlier); charged false entertainment expenses to that account (including those involving Mr. Martinez and his wife); changed the company billing address to his Respondent's address; pulled the Martinez invoices so not to be sent to the company; and pocketed the money from that account. (*See* Adm. Ex. 20–25; R. 141-42, 159-60.)

Sixth, the Hearing Board did not fully credit the testimony of Mr. Mulcahy and the testimonial and documentary evidence of Respondent's consistent failure to explain his actions (Hearing Bd. Report at 5; R. 41, 44, 46, 57, 60, 82, 83), including his misuse of firm personnel (*e.g.*, the accounting department) and the damage to Vedder Price, a major international law firm. General Counsel Mulcahy underscored that the firm "lost business," suffered significant "harm" to its "reputation," experienced "internal strife," and experienced a "lack of trust among attorneys in the equipment finance group." (R. 85-86.) Moreover, Respondent is no longer "well-liked," "popular," or with a "good reputation" within the firm. (R. 86.)

Seventh, Respondent only became "remorseful" near the end of the two-and-one-half-hour meeting with Mulcahy, and apparently only after being confronted with the false documents and realizing that the fraud had been discovered by others. (R. 28, 61.)

Eighth, while citing *In re Edmonds*, 2014 IL 117696, ¶90, the Hearing Board, by recommending only a 20-month suspension, neglected to account for the "purpose of discipline," which is "to protect the public, maintain the integrity of the profession and protect the administration of justice from reproach." (Hearing Bd. Report at 7.)

Finally, after finding that the Administrator had met his burden of proof by clear and convincing evidence and proved that Respondent violated Rule 8.4(c), the Hearing Board then

concluded that it "was convinced that Respondent does not present a risk of repeating his conduct." (Hearing Bd. Report at 8.) Under the totality of the circumstances, involving a pattern of misconduct and cover-up with numerous victims totaling 18 months and involving large sums of money, and including Respondent's repeated failure to explain the reasons for his wrongful conduct to others (including Vedder Price, the Hearing Board, and his close friend, Mr. Martinez), the Hearing Board's statement in its "Recommendation" section that Respondent does not present a risk of repeating of his misconduct is speculative and not based on evidence in the record. Accordingly, it is against the manifest weight of the evidence. *See* Ill. S. Ct. R. 753(d)(3).

For the reasons stated, I reject the Hearing Board's recommendation of a 20-month suspension and conclude that, under the totality of the circumstances, a suspension of three years and until Respondent completes the ARDC Professionalism Seminar is an appropriate sanction. Moreover, if the Supreme Court adopts the majority opinion of the three-year suspension, I recommend that it run from the date of the Court Order. The 20-month suspension recommendation of the dissent would run from January 1, 2020, and enable the Respondent to practice law immediately (assuming he had completed the ARDC Professionalism Seminar). In my opinion, and respectfully, that would be contrary to the case law; send the wrong message to the public and the legal profession; and not protect the administration of justice from reproach. *See Edmonds*. 2014 IL 117696, ¶90.

J. Timothy Eaton, dissenting:

On the issue of an appropriate sanction for Respondent's misconduct, I respectfully disagree with my colleagues' recommendation of a three-year suspension. Rather, I agree with the Hearing Board's conclusion that a 20-month suspension is appropriate for the circumstances involved in this matter, and is consistent with sanctions imposed in similar cases.

Particularly compelling to me are the Hearing Board's findings, based on its observations of Respondent at the hearing, that his testimony was candid and forthright and that his expressions of remorse were genuine and sincere, and therefore that it did not believe that he would repeat his misconduct. *See In re Adams*, 05 CH 30 (Review Bd., Dec. 5, 2007), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 22150 (March 17, 2008) (noting that Hearing Board was uniquely able to assess demeanor of the witnesses, particularly respondent's demeanor and sincerity, and finding that Hearing Board based its sanction recommendation at least in part on its assessment of respondent's credibility and remorse, which deserved deference by the Review Board).

While I share my colleagues' concern that Respondent provided no explanation for his conduct, I defer to the Hearing Board's determination, based on testimony and other evidence, that Respondent does not present a risk of repeating his misconduct. In addition, I accept the Hearing Board's factual findings as to the character evidence that was presented, which "reinforced [its] conclusion that Respondent's behavior was an aberration and not likely to recur." (Hearing Bd. Report at 8).)

I also agree with the Hearing Board that precedent supports a 20-month suspension. For example, in *In re Butler*, 09 CH 93, *petition to impose discipline on consent allowed*, M.R. 23783 (May 18, 2010), the attorney fabricated billing records in which he falsely claimed that, over a 16-month period, he performed $100,000 worth of work on a case. In those billing records, he created descriptions of fictitious activities in which he plausibly could have been engaged, to conceal the fact that he was not actually engaging in those activities or expending the time he claimed to be expending. He knew that the false time he recorded would be billed to the firm's client, which later paid the entire amounts it was billed for. The firm credited the client the amount

for which it was billed, and Respondent paid about $98,000 in restitution to the firm. In mitigation, Respondent had no prior discipline, accepted responsibility and expressed remorse for his misconduct, participated in volunteer work, and would have presented character witnesses had his case proceeded to hearing. In aggravation, his conduct was intentional, harmed a client, and took place over a protracted period of time. He was suspended for two years.

In *In re Smith*, 04 CH 84 (Review Bd., July 23, 2009), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 23347 (Nov. 17, 2009), the attorney fraudulently billed two clients more than $200,000 by creating invoices that reflected over a thousand hours of work that he did not perform. He also engaged in other serious misconduct involving dishonesty. In aggravation, the Hearing Board considered evidence of additional instances where the attorney billed a client for work that had not been performed, as well as the harm or risk of harm caused to his clients. In mitigation, it found that Respondent had no prior discipline, cooperated in his disciplinary proceeding, and presented five-character witnesses. It also opined that the attorney would not repeat his conduct, which occurred over a 21-month period almost 12 years in the past. The attorney was suspended for two years and until he completed the Professionalism Seminar.

In *In re Smolen*, 2013PR00060 (Hearing Bd., Jan. 7, 2015), *approved and confirmed*, M.R. 27199 (March 12, 2015), over a five-year period, the attorney submitted over 800 receipts for cab rides he did not take, and received almost $70,000 in reimbursement from his firm for the falsified expenses. In addition, a forensic accounting consultant hired by the firm identified $379,000 of additional reimbursed expenses for which it could not identify a sufficient underlying basis, including restaurant gift cards, country club meals, air fare, and other entertainment expenses. The firm paid the forensic accounting consultant $258,000 to perform its investigation.

The Hearing Board found Respondent's conduct to be purposeful and intentional, and did not find credible his claim that he did not realize he was doing anything wrong. It also found other aspects of his testimony inconsistent and not credible. In aggravation, it found he engaged in a lengthy, systematic pattern of dishonest conduct from which he profited financially, and harmed his firm. In mitigation, it found he did not charge false expenses to clients, and paid $400,000 in restitution to his firm. It also found he admitted wrongdoing when confronted by his firm, cooperated in his disciplinary proceeding, had no prior discipline, presented positive character testimony, and engaged in volunteer and *pro bono* work. In observing his demeanor, it stated that he was genuinely remorseful, accepted responsibility for his misconduct, and did not present a risk of repeating his misconduct. He was suspended for one year and until he completed 12 months of psychiatric treatment.

On balance, the circumstances of this matter seem most similar to *Butler* and *Smith*, which involved the serious misconduct of fabricating invoices to reflect work the attorneys had not actually done, but also substantial mitigation of the same nature as that in this matter. In the *Smolen* case, the attorney was suspended for one year for conduct that was arguably more egregious than the conduct involved in this matter, in that the misappropriated amount was significantly higher than that involved here, and the attorney gave testimony that the Hearing Board found inconsistent and not credible.

I also agree with the Hearing Board's observation that punishment is not the purpose of a disciplinary sanction, and with its finding that, given all of the circumstances, particularly Respondent's "full acceptance of responsibility and [its] assessment of his remorse and sincerity," a three-year suspension would be unduly punitive. (Hearing Bd. Report at 10.)

Moreover, although the Hearing Board did not consider these facts, I find it noteworthy that Respondent stopped practicing law in late 2019, changed his registration status to inactive beginning in January 2020, and took a job making $18 per hour to support his family. (*See* R. 147, 162.) Therefore, I would also recommend that any suspension imposed run from the date on which he voluntarily assumed inactive status.

In sum, I believe that imposing a 20-month suspension from the date Respondent surrendered his license is a sufficient sanction, based on his misconduct and taking into account the significant mitigation in this matter.

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on September 21, 2021.

Michelle M. Thome

Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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[1] The parties do not challenge, and the Review Board accepts, the Hearing Board's findings of fact underlying its finding of misconduct. Thus, those findings are uncontested on appeal. However, a member of the review panel disagrees with some of the Hearing Board's findings and conclusions that impacted its sanction recommendation. Those findings and conclusions are addressed in the special concurrence, below.

[2] This Report and Recommendation uses the following formats to cite to evidence in the record: the Report of Proceedings is cited as "R. #," the Common Law Record is cited as "C. #," and the Administrator's Exhibits are cited as "Adm. Ex. #."

[3] Rule 8.4(c) provides: "It is professional misconduct for a lawyer to … engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Ill. R. Prof'l Conduct 8.4(c).

[4] The Administrator and Respondent agree with the Hearing Board's recommendation that any suspension continues until Respondent completes the ARDC Professionalism Seminar.

[5] *See*, *e.g.*, Hearing Board's discussion of Respondent's ten false invoices sent to Fortress customers (nine invoices) and GA Tellesis (one invoice) using the reactivated L. Martinez Construction Company account and citing to Respondent's Answer to the Complaint, Administrator's Exhibits, and transcript testimony. (Hearing Bd. Report at 3.)

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: **ROBERT JOHN HANKES,** Respondent-Appellee, No. 6288209.	Commission No. 2019PR00102

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by e-mail and regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601 on September 21, 2021, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellant by e-mail service.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Andrea L. Watson
By: Andrea L. Watson,
Senior Deputy Clerk

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FILED

September 21, 2021

ARDC CLERK