In re Paul Anthony Tanzillo
Attorney-Respondent

Commission No. 2020PR00056

Synopsis of Hearing Board Report and Recommendation
(December 2021)

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The Hearing Board found that Respondent failed to properly consult with his clients, failed to properly communicate with his clients, and improperly represented clients despite a conflict of interest. There was not clear and convincing evidence that Respondent made false statements to the Administrator. The Hearing Board recommended that Respondent be suspended for four months and required to successfully complete the ARDC's Professionalism Seminar.

FILED

December 16, 2021

ARDC CLERK

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

In the Matter of:

PAUL ANTHONY TANZILLO,

Attorney-Respondent,

No. 6192433.

Commission No. 2020PR00056

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Respondent represented a restaurant and four of its employees charged with violating a municipal ordinance, based on the employees' attire at work. Respondent entered pleas that the restaurant and the employees violated the ordinance, and the restaurant paid the fines. Respondent did not fully inform the employees of their rights and options or the disposition of the charges. The employees denied meeting Respondent. During the ARDC's investigation, Respondent stated that he met once with each employee and all of them authorized Respondent to act on their behalf.

The Hearing Board found that Respondent failed to properly consult with his clients, failed to properly communicate with his clients, and improperly represented clients despite a conflict of interest. There was not clear and convincing evidence that Respondent made false statements to the Administrator. The Hearing Board recommended that Respondent be suspended for four months and required to successfully complete the ARDC's Professionalism Seminar.

INTRODUCTION

The hearing in this matter was held by videoconference on August 16, 17 and 18, 2021, before a Panel of the Hearing Board consisting of William E. Hornsby, Jr., Chair, Laura K.

McNally and Jim Hofner. Melissa A. Smart represented the Administrator. Respondent appeared at the hearing and was represented by Stephanie L. Stewart and Samuel J. Manella.

PLEADINGS AND ALLEGED MISCONDUCT

The Administrator filed a two-count Complaint, alleging that Respondent failed to consult with clients, failed to adequately communicate with clients, improperly represented clients despite a conflict of interest, made false statements to the ARDC and engaged in dishonest conduct, in violation of Rules 1.2(a), 1.4(a), 1.4(b), 1.7(a), 8.1(a) and 8.4(c) of the Illinois Rules of Professional Conduct (2010). The charges arose out of Respondent's representation of a restaurant and its employees on charges that the employees' work attire violated a local ordinance, pleading the employees and the restaurant liable for violating the ordinance and telling the ARDC that he met individually with each employee, informed her of her options and obtained her consent to his actions.

EVIDENCE

The Administrator presented testimony from four witnesses and Respondent as an adverse witness. Administrator's Exhibits 1 through 15 and 18 were admitted into evidence.

Respondent testified on his own behalf and presented testimony from six additional witnesses. Respondent's Exhibits 1, 2 and 4 through 9 were admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In an attorney disciplinary proceeding, the Administrator has the burden of proving the misconduct charged by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence requires a high level of certainty, which is greater than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt. In re Santilli,

2012PR00029, M.R. 26572 (May 16, 2014). The Hearing Board determines whether the Administrator has met that burden. In re Edmonds, 2014 IL 117696, ¶ 35.

I. Respondent is charged with improperly representing a restaurant and its employees on charges that the employees' attire while working violated a local ordinance and with entering pleas that the restaurant and the employees violated the ordinance without sufficiently consulting with the employees or informing them of their options, in violation of Rules 1.2(a), 1.4(a), 1.4(b) and 1.7(a).

A. Summary

A local ordinance prohibited persons from exposing their buttocks while acting as a waiter, waitress or entertainer in a business with a liquor license. A restaurant retained Respondent to represent it and four of its servers on charges of violating that ordinance and agreed to pay any fines imposed on the servers if they were found to have violated the ordinance. Without fully informing the servers of their rights and options, Respondent entered pleas admitting that the restaurant and the servers violated the ordinance. Respondent thereby failed to properly consult with his clients concerning the objectives of the representation, failed to properly inform and explain matters to his clients, and improperly represented clients despite a conflict of interest.

B. Admitted Facts and Evidence Considered

Respondent has represented Front Burner Restaurants and its subsidiary, the Twin Peaks restaurant chain, over time. As part of that representation, Respondent represented a Twin Peaks location in Orland Park, Illinois on various matters, including obtaining its liquor license. (Ans. at pars. 3, 5; Tr. 216, 252-53).[1]

On February 10, 2017, Orland Park police visited Twin Peaks Orland Park in response to a complaint, from the mayor's wife, about the servers' attire. That weekend, servers were dressed in lingerie, consistent with instructions from local management. According to the officers, the lingerie left almost every employee's buttocks exposed. An Orland Park ordinance prohibited persons from exposing their buttocks while acting as a waiter, waitress or entertainer in a business

with a liquor license. Police did not issue any citations, but discussed the ordinance with managers Adrian Morales and Reina Enriquez and instructed them to ensure that all employees complied. When officers returned later that day, the servers were wearing shorts, which completely covered their buttocks. (Tr. 56-58, 129-30, 201-204, 259-60, 311-12; Adm. Exs. 2, 3).

Orland Park police returned on February 11, 2017. Morales was present. Police reported seeing four servers, Sarah, Briana, Kaitlin and Allison, dressed in a way that left most of their buttocks exposed. The servers put on additional clothing or otherwise covered their buttocks. However, police issued citations to Twin Peaks and those four servers. The citations directed the person cited to appear, on March 14, 2017, at a specified time and place. According to police, all persons cited were advised of the mandatory court date. (Adm. Ex. 4; Adm. Ex. 5).[2]

Twin Peaks general counsel John Gessner contacted Respondent regarding these citations. Gessner told Respondent that Twin Peaks would pay Respondent's fees for representing any of those employees who wanted his representation, as well as any fines levied against its employees in connection with this incident. (Tr. 416-19).

Thereafter, Respondent communicated with Gessner, kept Gessner apprised of all developments and spoke with Gessner about options for proceeding. Their discussions included the potential impact on the restaurant's liquor license. Neither Respondent nor Gessner thought these citations posed any significant threat to that license. (Tr. 294-95, 419-22, 430-31).

Alleged ordinance violations are heard before an administrative hearing officer. A violation is punishable by fine. (Adm. Ex. 2). Violations of the ordinance at issue would not be part of an individual's criminal record, but Orland Park keeps records of any such violations. (Tr. 83-87, 113-14, 189-90, 341-42; Resp. Ex. 1).

On March 14, April 11 and May 9, 2017, Respondent appeared before a hearing officer on behalf of the restaurant and the four servers. In the interim, he spoke with Orland Park village prosecutor Michael Huguelet about resolving the matter. Huguelet declined to dismiss the citations against the servers given the circumstances, including police warning the day before. Huguelet also informed Respondent that the village would keep a record of the violations, to use in case of any future violation. Respondent did not believe a defense would succeed and feared a higher fine if the cases went to hearing. Respondent accepted, on behalf of the group, a proposal he believed was Huguelet's best offer. (Ans. at pars. 18-22; Tr. 278, 289. 293-96, 494, 510-11).

Per that agreement, on May 9, 2017, Respondent pled Twin Peaks and the servers liable to the citations. The hearing officer found all five liable for violating the ordinance and imposed fines, of $250 on the restaurant and $100 on each server. The agreement also encompassed two citations arising out of two other, unrelated incidents, for which the hearing officer also entered findings of liable and imposed fines. Twin Peaks paid all the fines. (Ans. at pars. 24-25; Tr. 276-77; Adm. Exs. 12, 14).

Based on the testimony of Sarah, Briana and Allison, Morales or another manager collected their citations and told the servers they did not have to go to court. Management staff told the servers that Twin Peaks would take care of the situation and the servers would not have to deal with it. None of them ever met with Respondent or expected that anyone would admit to the charge on their behalf. Given the opportunity, Sarah, Briana and Allison each would have sought to present a defense. All three considered any violation the restaurant's responsibility, not hers, as she was dressed as her employer required. Further, Briana was unaware of the prior police warning. Sarah testified that management told the servers to wear the lingerie despite that warning. While Allison and Briana indicated otherwise, Morales believed that all servers were clad in

compliance with the ordinance, and Sarah denied that any portion of her buttocks was exposed. According to Morales, photographs of the servers with their buttocks covered depicted how they were dressed when police arrived on February 11, 2017. (Tr. 59-75, 110, 130-37, 141-43, 151, 176-78, 192, 223-25, 236-39, 317-24, 334-39; Resp. Ex. 6).

Sarah, Briana and Allison first learned that a plea of liable had been entered well after the fact. They were able to obtain information about the disposition of the citations. They were concerned about having any record of this violation and having to disclose the violation when applying for school or jobs in the future. (Tr. 80-93, 146-47, 152, 170, 173, 325-28).

Based on Respondent's testimony, he met with the servers on March 9, 2017, told them he represented Twin Peaks, and Twin Peaks authorized him to represent them, at no cost to them, if they did not want, or already have, another attorney. Respondent informed the servers of the March 14 court date, that there were citations against them individually and, if they wanted, they should get counsel to represent them. He told the servers they did not have to use him as their attorney. All agreed to have him represent them. (Tr. 279-83, 288-89, 512). Respondent did not inform the servers of the material risks of joint representation or advise them that they should consult with independent counsel. (Ans. at pars. 16, 17). Respondent did not believe there was any conflict of interest between Twin Peaks and the servers. He did not consider whether the servers might have a cause of action against the restaurant. (Tr. 283-86, 297, 509).

Respondent testified that, during the March 9 meeting, he told the servers that he would see if the village would dismiss the cases against them, but that would require an agreement from the village prosecutor. He recognized that was the servers' first choice. Respondent believed that no one had any viable defense or was apt to succeed if the case went to hearing, as the police report indicated that these servers all were dressed in a way that violated the ordinance and all covered

their buttocks after police issued the citations. Respondent understood that the photographs were taken after the citations were issued, not before. Respondent explained that to the servers. Respondent did not believe the servers had a defense to the citations based on lack of notice to them. While recognizing its potential as mitigation, Respondent was not certain whether the fact that the restaurant dictated the servers' attire might have been a legal defense to the citations against the servers. Respondent informed the servers that, if a plea had to be entered, Twin Peaks would pay any fine against them. Respondent saw that as the only real option, absent an agreement from the village prosecutor to dismiss the citations against the servers. Respondent noted that the servers were not familiar with the legal system. From his perspective, all the servers preferred to not spend money for an attorney and to avoid having to go to court or see him on an ongoing basis. Respondent thought he had the servers' authority to enter a plea on their behalf. (Tr. 280-88, 295-96, 510-11, 531-33, 542-43, 546-49).

Respondent did not communicate directly with any of the four servers after March 9, 2017. He relied on local managers, particularly Morales and Tony Gutierrez, to communicate with them. (Tr. 279, 288, 522-23). Respondent did not inform the servers of the status of the administrative hearings, Huguelet's refusal to dismiss the citations against them or his negotiations with Huguelet. (Ans. at par. 20; Tr. 297). Respondent did not inform the servers that he had pled them liable to the ordinance violation, what that plea meant or the time within which to appeal. Respondent sent copies of the disposition to Gessner, but not to anyone at Twin Peaks Orland Park. (Ans. at par. 27; Tr. 292-93, 530).

C. Analysis and Conclusions

1. Rules 1.2(a) and 1.4

The client has the right to decide the objectives of representation, with certain limitations not implicated here. Ill. Rs. Prof'l Conduct, R. 1.2(a). Consistent with this principle, a lawyer

must consult with the client as to the means by which the objectives of representation are to be pursued. Rule 1.2(a); see Ill. Rs. Prof'l Conduct, R. 1.4.

Rule 1.4 imposes an affirmative duty on lawyers to take the steps necessary to keep clients informed about their cases so the client can make intelligent choices as to the direction of the litigation. In re Smith, 168 Ill. 2d 269, 282-83, 659 N.E.2d 896 (1995). In particular, lawyers must promptly inform the client of any decision or circumstance as to which the client's informed consent is required, (Rule 1.4(a)(1)), reasonably consult with the client about the means by which the client's objectives are to be accomplished, (Rule 1.4(a)(2)), keep the client reasonably informed about the status of the matter, (Rule 1.4(a)(3)), and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Rule 1.4(b). Informed consent presupposes that the lawyer has given the client adequate information about the proposed course of action and sufficiently explained the material risks of and reasonably available alternatives to that course of action. Ill. Rs. Prof'l Conduct R. 1.0(e).

Even based solely on the admitted facts and Respondent's testimony, Respondent met with each server once, briefly, and outlined his impressions as to potential resolutions of the charges. At that point, Respondent had not had any discussions with Huguelet. Respondent did not communicate directly with any of the servers after March 9, 2017. Respondent never informed the servers that Huguelet would not agree to dismiss the charges against the servers or that Orland Park would keep a record of any finding that a server violated the ordinance. As a result, none of the servers had the opportunity to decide, based on full information, what to do about the charges against her. Respondent then pled each server liable to violating the ordinance, with no further discussion to confirm whether she in fact agreed to entering such a plea.

Respondent testified that he did not think the servers had a viable defense to the citation. That assessment, even if accurate, does not excuse Respondent's failure to communicate with the servers, inform them of Huguelet's position and determine how each server wanted to plead, given all relevant information. Respondent also did not consider whether the servers might raise any claim based on the conduct of the restaurant. Therefore, Respondent did not give the servers any information from which to consider whether to attempt to raise a defense to the citation against her, on the grounds that she was dressed for work as her employer required or lacked proper notice that her attire might violate the ordinance.

Decisions as to the disposition of a case are the client's decisions. Rule 1.2(a); see In re Daley, 98 SH 2, M.R. 17023 (Nov. 27, 2000). A lawyer cannot plead a client liable to a charge without consulting with the client and obtaining the client's consent. See Daley, 98 SH 2 (Hearing Bd. at 27-28). According to Respondent's testimony, he thought he had the servers' consent, given the brief March 9, 2017 discussion which he described. However, at that time, Respondent did not have, or give the servers, full information from which to make an informed decision. That was not sufficient to give Respondent clear direction as to any server's view on the ultimate disposition of the citation against her or informed consent to pleading her liable to violating the ordinance. See Rule 1.4, Comments [2], [3].

Based on Respondent's testimony, after March 9, 2017, he relied on Twin Peaks Orland Park managers to communicate with the servers. However, an attorney cannot rely on an intermediary to discharge the attorney's duties to communicate with clients. Daley, 98 SH 2 (Hearing Bd. at 28). The lawyer is responsible for communicating with clients. See Smith, 168 Ill. 2d at 282-83. The risk that information will be relayed inaccurately, or not at all, is simply too great. This is particularly true where, as here, the intermediary is a person with an interest in the

matter. Further, Respondent was obligated to inform his clients of significant developments affecting the representation. Rule 1.4, Comment [3]. Respondent never informed the servers of the disposition of the citations.

Therefore, the Administrator proved that, as charged in Count I, Respondent failed to:

a) consult with the client concerning the objectives of the representation and the means by which those objectives are to be pursed, in violation of Rule 1.2(a);

b) promptly inform the client of any decision or circumstance as to which the client's informed consent is required, in violation of Rule 1.4(a)(1);

c) reasonably consult with the client about the means by which the client's objectives are to be accomplished, in violation of Rule 1.4(a)(2);

d) keep the client reasonably informed about the status of the matter, in violation of Rule 1.4(a)(3); and

e) explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of Rule 1.4(b).[3]

2. Rule 1.7(a)

Generally, a lawyer may not represent a client if the representation involves a concurrent conflict of interest. Ill. Rs. Prof'l Conduct, R. 1.7(a). Conflicts are not analyzed according to whether parties' interests are compatible, or their ultimate goals align. See In re LaPinska, 72 Ill. 2d 461, 469-70, 381 N.E.2d 700 (1978). Rather, a conflict of interest exists whenever an attorney's independent judgment on behalf of a client may be affected by loyalty to another client, a third party, or the attorney's own interests. In re Kesinger, 2014PR00083, 2015PR00042 (cons.), M.R. 28530 (Mar. 20, 2017). While Rule 1.7(a) permits some exceptions, those exceptions require informed consent from each affected client. Ill. Rs. Prof'l Conduct, R. 1.7(b).

The Complaint charged that Respondent represented the restaurant and Sarah, Briana, Allison and Kaitlyn, without obtaining informed consent from the four servers. Informed consent requires that each affected client be aware of the relevant circumstances and of the material and

reasonably foreseeable ways that the conflict could adversely affect that client's interests. In re Cobb, 2016PR00066, M.R. 29225 (May 24, 2018). The attorney must ensure that the client knows and understands the conflict, the threat it poses to the attorney's objectivity and any other considerations material to the client's decision whether to accept representation from that attorney. In re Barrick, 87 Ill. 2d 233, 239, 429 N.E.2d 842 (1981). Respondent, admittedly, did not see any conflict of interest between the restaurant and its employees and did not see or advise the servers of any risks of joint representation. Clearly, informed consent was not present here.

A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client, (Rule 1.7(a)(1)), or if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. Rule 1.7(a)(2). The Complaint charged that Respondent's representation of the restaurant and its servers violated both subsections.

Typically Rule 1.7(a)(2) governs conflicts, like that here, involving simultaneous representation of parties on the same side of litigation whose interests may conflict. Rule 1.7, Comment [23]. A conflict under Rule 1.7(a)(2) is present if there is a significant risk that the lawyer's ability to consider, recommend or carry out an appropriate course of action for a client will be materially limited as a result of the lawyer's other responsibilities or interests. Rule 1.7, Comment [8].

That type of conflict clearly was present here. The only result beneficial to both the restaurant and the servers, dismissal of the citations, was unlikely at best. Huguelet's position effectively foreclosed that option. In a contested hearing, the restaurant's only possible defense was to claim the servers' buttocks were fully covered. However, the police report and some of the servers contradicted that claim. The restaurant might have faced higher fines, if found liable for

violating the ordinance after a contested hearing. The servers, however, were in a different position and might have been able to convince a hearing officer that they should not be held liable for personally violating the ordinance. Sarah, Briana and Allison expressed a desire to have presented a defense and articulated reasons, some of which involved the restaurant's behavior, why she did not believe she violated the ordinance. To the extent that Respondent considered defenses potentially available to the servers, he summarily dismissed them. Respondent also did not address with the servers what, if any, recourse they might have against the restaurant, for having them dress in a manner that, arguably, violated the ordinance. Instead, Respondent proceeded to dispose of all the citations, in a manner satisfactory to the restaurant.

The Complaint also charged that Respondent violated Rule 1.7(a)(1), by representing parties whose interests were directly adverse. Unlike the conflict under Rule 1.7(a)(2), the existence of a conflict under Rule 1.7(a)(1) is not clear.

Cases in which there is direct adversity of interests typically involve actual conflicts, rather than potential ones. See In re Williams, 04 CH 61 (Hearing Bd. Apr. 10, 2007) (complaint dismissed). For example, Rule 1.7(a)(1) violations have been found where a lawyer attempted to represent parties on opposite sides of a transaction, (e.g. In re Bilal, 09 CH 111, M.R. 26353 (Nov. 20, 2013)), gave legal advice to a client's co-defendant, who had been offered lenity in exchange for testifying against the other co-defendant, (e.g. In re Baril, 00 SH 14, M.R. 18162 (Sept. 19, 2002)), or represents one client who actually asserts a claim against another client. E.g. In re Gearhart, 00 SH 82, M.R. 20221 (Sept. 26, 2005). Rule 1.7(a)(1) is silent about potential adversity between clients. Williams, 04 CH 61 (Hearing Bd. at 30).

In the proceedings in which Respondent represented them, the restaurant and the servers were on the same side of the litigation. Arguably, the servers might have sought to reduce their

culpability based on the restaurant's conduct. However, it was not at all clear that a lack of notice to the servers or the restaurant's greater culpability would have constituted a defense to the charge that the individual servers violated the ordinance. Speculation as to what might occur between parties who are defendants in the same litigation does not provide an appropriate basis for finding direct adversity of interests in violation of Rule 1.7(a)(1). See In re Starr, 06 CH 78, M.R. 23127 (Sept. 22, 2009). The possibility that the servers might, in a separate proceeding, assert a claim against the restaurant also falls within that category.

The Administrator proved that Respondent violated Rule 1.7(a)(2). However, the Administrator did not prove that Respondent violated Rule 1.7(a)(1).

II. Respondent is charged with knowingly making false statements of material fact in a disciplinary matter and engaging in dishonest conduct, by representing to the ARDC that he met with each server and his description of their discussions, in violation of Rules 8.1(a) and 8.4(c).

A. Summary

In responding to the ARDC's initial inquiry letter and at his sworn statement, Respondent described meeting individually with each server and the substance of their discussions. Some evidence contradicted Respondent's statements, but there was not clear and convincing evidence that such meetings never occurred or that Respondent's description of the meetings was false. The Administrator did not prove the misconduct charged in Count II.

B. Admitted Facts and Evidence Considered

We consider the following admitted facts and evidence, in addition to that discussed in Section I B.

On June 15, 2018, Respondent responded in writing to the ARDC's initial inquiry in this matter. In that letter, Respondent stated that he met individually with Sarah, Briana, Allison and Kaitlyn regarding the February 11, 2017 citations, advised them of their initial court date and their

right to have an attorney represent them, explained that Twin Peaks authorized him to represent them on the citations and, if they chose to have him do so, Twin Peaks would pay for that representation, as well as any fines imposed. Respondent also stated that he sought and obtained Sarah, Briana, Allison and Kaitlyn's authorization to represent them on the alleged ordinance violations and to enter plea agreements on their behalf if necessary. (Ans. at pars. 33, 34).

On September 19, 2018, Respondent gave a sworn statement to the ARDC. At that time, Respondent stated that he met in person and individually with Sarah, Briana, Allison and Kaitlyn, for ten to fifteen minutes each. He informed them of the offer of his services, without cost to them, told them they could obtain other counsel and obtained each server's authorization to represent her and act on her behalf in relation to the alleged ordinance violation. (Ans. at pars. 37, 38, 39).

During the sworn statement, Respondent also stated that he obtained, from the Twin Peaks corporate offices, a "Roster Report," which listed the employees working at Twin Peaks Orland Park on March 9, 2017, to document why he chose that date and time for the meeting. Respondent wanted to avoid multiple trips to the restaurant. Briana, Kaitlyn and Allison were working that day and the managers agreed to ask Sarah, who was not scheduled to work that day, to come in so Respondent could interview all four servers. Respondent purposely arrived between the lunch and dinner shifts so he could see Briana, whose shift ended at 4:30, as well as two other servers whose shifts began at 4:30. (Ans. at par. 38; Tr. 364-67, 503-505). Documentation Respondent obtained from Twin Peaks was consistent with Respondent's description of the servers' work schedules on March 9, 2017. (Resp. Exs. 4, 5).

During his sworn statement, Respondent also stated that this was the only time he met with any of the servers. Respondent stated that, while he informed each server of her right to get her

own attorney, he did not ask the servers to waive any potential conflict, as he did not believe there was a conflict of interest between the restaurant and the servers. (Ans. at pars. 39, 40; Tr. 370-71).

At the hearing, Respondent testified in a manner generally consistent with his prior statements to the Administrator. Based on Respondent's testimony, the only reason he went to the restaurant was to interview the servers. He did not need to go to the restaurant to interview managers, as he had previously exchanged information with them. In describing his discussion with the servers, Respondent testified that he went over the police report with them, asked each server to identify herself in the photographs, and wrote their names on the backs of the photographs so that he could identify each individual later. Respondent testified that he met with each server for probably fifteen to twenty minutes, with the meeting with Allison possibly lasting longer because there were two citations involving her. (Tr. 280-88, 499-501; Resp. Ex. 6).

Although Respondent took notes at the March 9 meeting, those notes were very abbreviated and did not include any server's version of the events. (Tr. 501-503, 534-36; Resp. Ex. 7). Respondent did not have emails reflecting an effort to schedule a meeting with the servers. Respondent's billing statement described the March 9 meeting as a meeting with managers, not a meeting with servers. (Tr. 271-72; Adm. Ex. 15 at 3). Respondent's calendar entry for the meeting states: "TP Orland, meet with Adrian" and does not refer to meeting with the servers. (Tr. 274-75; Adm. Ex. 7). Respondent stated that he did not include further detail, as the calendar entry was just to remind him of the meeting and his bill did not need to list all the participants as he and Gessner had spoken previously about the meeting. (Tr. 506-508).

Respondent had told Gessner he wanted to meet with the employees involved. Gessner put together a schedule for Respondent to go to the restaurant for a meeting, with the goal of making

sure that everyone involved would be there. Given his discussions with Respondent, Gessner believed that Respondent had met with the employees and the managers. (Tr. 419, 421-22, 431).

Sarah denied ever meeting with Respondent or being told to come to the restaurant on a day she was not scheduled to work to meet with an attorney about the citation. Sarah testified that she never agreed to have Respondent represent her, never consented to anyone pleading her liable on the citation, and never was told she had the right to her own attorney. Sarah was never told that she should go to court, that Twin Peaks was hiring a lawyer for her or that she needed a lawyer. (Tr. 71-75, 110).

Sarah acknowledged that police explained to her the reason for the violation and gave her and the other servers their individual tickets. (Tr. 107). Sarah read a copy of her ticket and saw the statement as to the date, time and place of the hearing, as well as a statement: "(m)ust appear at hearing." (Tr. 109).

Sarah stopped working at Twin Peaks shortly after February 11, 2017. (Tr. 70). Sarah is a plaintiff in a federal sexual harassment suit against Twin Peaks, which includes allegations about the way Twin Peaks handled the February 11, 2017 incident and the citation. The attorney representing Sarah in that case requested that the ARDC investigate Respondent's conduct. (Tr. 97-98, 118-21).

Allison denied meeting or speaking with Respondent about the February 11, 2017 citation. To her knowledge, Respondent had never represented her in any legal matter. Allison never agreed to plead liable to the February 11, 2017 citation and never consented to anyone doing so on her behalf. (Tr. 144-45, 151, 192).

Allison testified that no one told her she was being separately cited. Even though she signed the citation issued to her, Allison did not recall police telling her she had a mandatory court

date. Allison did not believe she needed to hire a lawyer, because Morales told her Twin Peaks was handling it. Allison understood that Twin Peaks would get everything settled, but did not think they would plead guilty on her behalf. (Tr. 134-37, 141-43, 178).

On April 5, 2021, Allison signed an affidavit, in which she stated that she met and discussed the citation with an attorney at Twin Peaks Orland Park, individually and as part of a group. Allison did not remember the attorney's name, but he was older and tall. Allison understood that the attorney represented Twin Peaks and her individually for the citation. Allison knew that Sarah, Briana and Kaitlin also spoke with the attorney, because they talked about it afterwards. (Tr. 156-59, 193-94; Resp. Ex. 2). Respondent is a male, sixty years old, and 6'1" tall. (Tr. 482-83).

Kelly Rice, an investigator working with Respondent's attorneys, drafted the affidavit, after speaking with Allison a number of times. Allison told Rice she did not recognize Respondent's name or photograph and Respondent never contacted her or represented her. Before presenting the affidavit to Allison for signature, Rice read Allison a draft and modified that draft as Allison requested. Rice made additional changes, at Allison's request, before Allison signed the affidavit. (Tr. 152-65, 181-85; Resp. Ex. 2).

At the hearing, Allison testified that she began to question statements in the affidavit after she signed it. Allison did not contact Rice, but instead contacted Tamara Holder. Holder is the attorney representing Sarah in Sarah's lawsuit against Twin Peaks. Allison is not part of that lawsuit but spoke with Holder a couple of times. Based on their conversations, Allison believed she was not at work on March 9, 2017. (Tr. 148, 154-55, 162, 170-71, 185).

Allison was familiar with two other matters involving police at Twin Peaks Orland Park. One involved a patron charged with DUI that, according to Allison, occurred in late 2018 and was the only time she saw corporate personnel or attorneys at the restaurant. The other related to an

incident, on February 14, 2017, in which Allison received a citation for serving alcohol to a minor. That citation, as well as a citation against Twin Peaks for an incident on April 19, 2017, was disposed of with the citations issued on February 11, 2017. Allison was no longer employed at Twin Peaks. (Tr. 138-40, 276-77; Adm. Exs. 12, 14).

At the hearing, Allison testified that she never met or dealt with any attorneys before 2018 and that the meeting described in her affidavit related to the DUI incident. Allison also stated that the only incident involving herself and the three other servers was the February 11, 2017 incident and other portions of the affidavit did refer to the February 11, 2017 citation. Allison also stated that Holder was the attorney to whom she was referring in stating in her affidavit that she and the other servers met with an attorney. The affidavit used the word "he" to describe that attorney. Holder is female. (Tr. 166-69, 179-80, 186-88, 193-94; Resp. Ex. 2).

Briana testified that the servers were told that Twin Peaks had hired a lawyer regarding the citations, but she never met or spoke with that lawyer or with Respondent. Briana was told that the servers did not have to go to court, and everything was taken care of. It was Gutierrez, not a lawyer, who told Briana that Twin Peaks would pay any fines imposed. (Tr. 322-24).

Briana was not involved in any lawsuits against Twin Peaks. (Tr. 332). Briana signed the citation issued to her, but she did not remember police handing it to her. Briana did not recall reading the ticket or police telling her of a mandatory court date. Briana did not keep the citation. Briana did not remember who had it, but guessed it was a manager. (Tr. 316-18, 338-39).

Morales testified that he met with Respondent once, following prior communication to arrange a meeting at the restaurant. The meeting might have taken place on March 9, 2017, but Morales was not sure. Morales described the meeting as brief, between himself and Respondent. Respondent told Morales that he would contact Morales and Morales could arrange to go to court

with the servers. Morales testified he did not have any contact with Respondent after that date. (Tr. 213-22). Morales also stated that Respondent gave him updates, as Respondent told Morales he would do, with the understanding that Morales pass the information on to the servers. (Tr. 246). Morales's testimony suggests he spoke with the servers about going to court, but later told them not to worry, as they were not going to court. He did not recall who gave him that information. (Tr. 226-29).

Morales denied that Respondent or the corporate office contacted him to arrange a meeting with the individual servers or find a date when all four servers would be at the restaurant. Morales, however, acknowledged that Respondent or someone from the corporate offices might have asked him to arrange for Sarah to come to work on March 9, 2017 because she was not on the schedule that day. (Tr. 219-21). Morales did not recall whether Allison, Sarah or Briana was working on March 9, but recalled meeting with Respondent between the lunch and dinner shifts. (Tr. 245-46).

Morales testified that, after meeting with Respondent, Morales went back to work. According to Morales, Respondent declined Morales's offer to get the servers and left the restaurant. Morales did not see Respondent leave. He assumed Respondent left because he saw Respondent get up. Morales never saw Respondent meet with any of the four servers. None of the servers ever told Morales they met with Respondent. (Tr. 226, 247-48).

Twin Peaks terminated Morales's employment in March or April 2017. It is not clear whether that was a result of the February 11, 2017 incident or a separate incident in which Sarah served an intoxicated customer. Respondent was not involved in Morales's termination. (Tr. 142, 229-31).

C. Analysis and Conclusions

A lawyer shall not knowingly make a false statement of material fact in connection with a lawyer disciplinary matter. Ill. Rs. Prof'l Conduct R. 8.1(a). A lawyer who appears for a sworn

statement in the Administrator's investigation of the lawyer's conduct and knowingly testifies falsely about matters pertinent to the investigation violates Rule 8.1(a). In re Field, 2018PR00015, M.R. 30536 (Jan. 21, 2021). Rule 8.1(a) requires that the Administrator not only prove that the statement was false, but also that, when the statement was made, the attorney actually knew it was false. See Field, 2018PR00015 (Hearing Bd. at 8).

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Ill. Rs. Prof'l Conduct R. 8.4(c). A lawyer who violates Rule 8.1(a) also violates Rule 8.4(c). Field, 2018PR00015 (Hearing Bd. at 17).

The Administrator must prove the misconduct charged, by clear and convincing evidence. In re Harris, 2013PR00114, M.R. 27935 (May 18, 2016). In our role as trier of fact, we determine the sufficiency of the evidence, weigh the credibility of the witnesses and resolve evidentiary conflicts. In re Wick, 05 CH 66, M.R. 23942 (Sept. 22, 2010). We consider circumstantial evidence, draw reasonable inferences and need not be naïve or impractical in assessing the evidence. In re Isaacson, 2011PR00062, M.R. 25805 (Mar. 15, 2013). That said, clear and convincing evidence requires a high degree of certainty, a firm and abiding belief that it is highly probable that the proposition at issue is true. In re Czarnik, 2016PR00131, M.R. 29949 (Sept. 16, 2019).

Respondent testified that he met with each of the four servers and described the discussion at those meetings. The servers and Morales denied that such meetings occurred.

In order to prove that Respondent made false statements, as charged in the Complaint, the Administrator had to prove that the meetings Respondent described never occurred. After considering all the evidence, we were not convinced that the Administrator proved that critical fact, by the requisite clear and convincing evidence.

Certain factors caused us to question at least portions of the testimony from the servers and Morales. Sarah is a party in a pending lawsuit against Twin Peaks, which includes issues as to the way the restaurant handled the citation at issue here. Allison signed an affidavit which directly contradicted portions of her testimony. Her explanations for those contradictions were not credible. Briana impressed us as sincere, but her testimony suggested that she may not have accurately remembered all the circumstances. Morales may have been biased given Twin Peaks's termination of his employment, even though Respondent was not involved in that termination. In addition, there were inconsistencies in the testimony from these witnesses. For example, Morales stated that he never communicated with Respondent after March 9, 2017, but also stated that he received updates to pass on to the servers. The police report, and language on the citations, contradicted the servers' testimony that they were never informed of the March 14 hearing date or that they needed to appear.

Portions of the evidence provided some support for Respondent's version of the facts. For example, the information Respondent obtained from Twin Peaks corporate offices tended to corroborate his testimony that he went to the restaurant at a date and time when most of the servers were likely to be at the restaurant. Given Gessner's description of his discussions with Respondent, it made sense that Respondent would have met with the employees involved and offered them a defense. The fact Respondent admitted some damaging facts tended to suggest that he was not intentionally lying in other portions of his testimony. Certainly, there was some evidence that tended to contradict Respondent's testimony. However, the Administrator, not Respondent, bears the burden of proof. In re Landis, 05 CH 69, M.R. 22970 (Mar. 16, 2009).

The Administrator charged that Respondent violated Rule 8.1(a) and 8.4(c) by making false statements. As there was not clear and convincing evidence that Respondent's statements were false, the Administrator did not prove that Respondent violated either of these Rules.

EVIDENCE IN AGGRAVATION AND MITIGATION

Respondent was licensed to practice law in 1986. Respondent began his legal career as an Assistant State's Attorney. Over time, he represented municipalities and prosecuted ordinance violations. (Tr. 485-88, 491-92).

Respondent serves on the Board of Directors for two charitable foundations, which provide medical care to children, microloans and water filtration to persons in Honduras, and support for suicide prevention. He has also supported high school sports, including volunteering over time as an Illinois High School Association football official. (Tr. 517-21).

Five attorneys attested to Respondent's good character. They described Respondent as a person of the highest character and integrity, extremely honest and an exceptional lawyer who cares deeply about the interests of clients. (Tr. 436-42, 445-51, 454-58, 462-67, 472-79).

Respondent entered the pleas of liable as he believed he had the servers' authority to resolve the citations on their behalf and thought he had received Huguelet's best offer. In retrospect, Respondent recognized that he should have confirmed his understanding with the servers and not have relied on management to communicate with the servers. (Tr. 494-95, 511-13).

Prior discipline

Respondent has no prior discipline. (Tr. 656).

RECOMMENDATION

In determining the sanction to recommend, we consider the proven misconduct, as well as any aggravating and mitigating factors. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). We also consider the purpose of discipline, which is not to punish the attorney, but to protect the public, maintain the integrity of the profession and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. While the system seeks some consistency in sanctions for similar misconduct, each case is unique, and the sanction must be based on the circumstances of the specific case at issue. Edmonds, 2014 IL 117696 at ¶ 90.

Respondent engaged in serious misconduct. See In re Daley, 98 SH 2, M.R. 17023 (Nov. 27, 2000). Respondent represented clients despite an obvious conflict of interest. He also failed to consult with his clients the servers about the most basic objectives of the representation, i.e. how to resolve the charges against them. Respondent did not inform these clients about the status of their matters or give them any more than a preliminary and rudimentary outline of their matters. This deprived them of any meaningful ability to make informed decisions about the representation.

The Administrator suggested that Respondent should be suspended for six to nine months. However, that suggestion was based on all the misconduct charged, some of which was not proven. Compare e.g. In re Montalvo, 98 SH 11, M.R. 16865 (Sept. 22, 2000) (six-month suspension; misconduct included dishonesty). Also, this case does not involve the same type of significant aggravating factors present in cases such as Daley 98 SH 2 (Review Bd. at 17) (nine-month suspension; prior discipline).

Significant mitigating factors are present here. Respondent presented favorable character testimony, which we credited. He has no prior discipline. See In re Meyer, 08 CH 14, M.R. 24889 (Nov. 22, 2011). Respondent has been involved in significant charitable work and volunteer

activities. See In re Fleming, 2011PR00017, M.R. 26460 (Jan. 17, 2014). Respondent did not act out of any evil or self-serving motive, but rather in a manner that he thought, at the time, was expedient. See In re Barton, 2015PR00074, M.R. 28798 (Sept. 22, 2017).

Some aggravating factors are present. Respondent's misconduct harmed his clients by depriving the servers of their right to decide how their cases should be resolved. See generally In re Rossiello, 03 CH 33 (Review Bd. at 11). Respondent also caused his clients harm due to the servers' legitimate concerns about having a record of these violations. Respondent should have recognized that, given their youth and inexperience with legal matters, the servers needed greater care from him. See generally In re Crane, 96 Ill. 2d 40, 58, 449 N.E.2d 94 (1983). In addition, Respondent still appears not to understand the conflict of interest inherent in his representation of both the restaurant and the servers. An attorney's failure to recognize the wrongfulness of his or her conduct raises concern about the attorney's ability to conform to ethical norms in the future. In re Spak, 2017PR00061, M.R. 29935 (Sept. 16, 2019). This factor also supports our decision to recommend that Respondent be required to successfully complete the ARDC Professionalism Seminar, as a way to aid Respondent in better understanding his ethical obligations.

Short suspensions have been imposed on other attorneys who represented clients despite an obvious conflict of interest, (e.g. In re Hildebrand, 00 SH 74, M.R. 18802 (Sept. 19, 2003) (ten-month suspension, stayed after four months by probation)), or failed to keep clients properly informed and sought to resolve a case without the client's clear consent. E.g. In re Rossiello, 03 CH 33, M.R. 21894 (Jan. 23, 2008) (four-month suspension); cf. In re Wildermuth, 2012PR00175, M.R. 28062 (Jan. 13, 2017) (ninety-day suspension). These cases all present distinguishing characteristics, but provide guidance as to the range of discipline appropriate for misconduct like that in which Respondent engaged.

For these reasons, we recommend that Respondent, Paul Anthony Tanzillo, be suspended for four months and required to successfully complete the ARDC's Professionalism Seminar within one year of the date the final order of discipline is entered.

Respectfully submitted,

William E. Hornsby, Jr.
Laura K. McNally
Jim Hofner

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 Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on December 16, 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] Citations to Ans. are to Respondent's Amended Answer.

[2] This report uses the servers' first names only, consistent with the Chair's ruling redacting their last names from the record. (Tr. 11-13).

[3] The charges in Count I relate to Respondent's dealings with all four servers. Only three testified. While ordinarily the failure of an allegedly aggrieved client to testify leaves a significant evidentiary gap, (see e.g. In re Moran, 2014PR00023, M.R. 27812 (Mar. 22, 2016)), that is not the case here, as the admitted facts and Respondent's testimony establish the charges in Count I as to all four servers.