In re Philip Edwin Koenig
Respondent-Appellant

Commission No. 2020PR00076

Synopsis of Review Board Report and Recommendation
(March 2022)

The Administrator brought a one-count complaint against Respondent, charging him with failing to safeguard client funds and engaging in dishonest conduct in violation of Rules 1.15(a) and 8.4(c) of the Illinois Rules of Professional Conduct (2010). The complaint alleged that Respondent knowingly and without authorization used $70,076.80 in settlement funds, which belonged to a client, for Respondent's personal and business benefit. The Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be suspended for 18 months.

Respondent appealed, challenging only the Hearing Board's sanction recommendation and asking this Board to recommend a censure or a six-month suspension followed by a period of probation.

A majority of the review panel recommended that Respondent be suspended from the practice of law for one year. One panel member concurred in part and dissented in part, agreeing that Respondent should be suspended for one year, but recommending that his suspension come with conditions addressing his mental and physical health issues.

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

In the Matter of:

PHILIP EDWIN KOENIG,

Respondent-Appellant,

No. 1498606.

Commission No. 2020PR0076

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a one-count complaint against Respondent, charging him with failing to safeguard client funds and engaging in dishonest conduct in violation of Rules 1.15(a) and 8.4(c) of the Illinois Rules of Professional Conduct (2010). The complaint alleged that Respondent knowingly and without authorization used $70,076.80 in settlement funds, which belonged to a client, for Respondent's personal and business benefit. Following a hearing at which Respondent was represented by counsel, the Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be suspended for 18 months.

Respondent appealed, challenging the Hearing Board's sanction recommendation, and asking this Board to recommend a censure or a six-month suspension followed by a period of probation.

For the reasons that follow, a majority of the review panel recommends that Respondent be suspended from the practice of law for one year. One panel member concurs in part and dissents in part, agreeing that Respondent should be suspended for one year, but

recommending that his suspension come with conditions addressing his mental and physical health issues.

BACKGROUND

The facts as found by the Hearing Board are fully set out in the Hearing Board's report. Because the only issue on appeal is the appropriate sanction for Respondent's misconduct, the facts are summarized briefly here.

Respondent was licensed in 1975 and has been a sole practitioner since 1998. His practice primarily involves estate planning and administration, probate litigation, real estate, bankruptcy, tax, and commercial litigation. He was 72 years old at the time of his hearing. He has no prior discipline.

Respondent represented a client in a will-construction lawsuit that settled in 2018. As part of the settlement, Respondent received $187,500 on his client's behalf, and deposited those funds into his client trust account. After Respondent deducted his legal fees and costs, the balance of the funds, totaling $91,673, belonged to his client. In early January 2019, Respondent sent his client a check drawn on Respondent's client trust account in the amount of $91,673.

The client did not attempt to negotiate that check until December 2019. When the client tried to negotiate the check, it was returned because of insufficient funds in Respondent's client trust account. Respondent knew that his client had not negotiated the check prior to December 2019. Thus, Respondent should have been holding $91,673 in his trust account on behalf of his client. Respondent testified that he anticipated that his client would not negotiate the check because the client had been unhappy with the settlement of the case.

In the meantime, between July and November 2019, Respondent used $70,076.30 from his client trust account for his own business and personal purposes, which included paying debts and making deposits into a retirement or investment account. As a result, the balance in

Respondent's client trust account fell below the amount that he should have been holding for his client. Respondent knew he was not entitled to use those funds.

Approximately one month after Respondent's check bounced, Respondent provided a certified check to his client for the full amount due, $91,673.80.

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

The Hearing Board found that Respondent failed to safeguard his client's funds by withdrawing $70,076.30 from his client trust account, causing the balance in that account to fall below the amount he should have been holding for his client. It further found that he knew that the money belonged to his client and that he did not have the authority to use those funds for himself. It thus found that Respondent dishonestly misappropriated his client's funds, in violation of Rules 1.15(a) and 8.4(c). Those misconduct findings are not at issue on appeal.

In mitigation, the Hearing Board found that Respondent acknowledged his wrongdoing, accepted responsibility and was genuinely remorseful for his misconduct, promptly made full restitution, cooperated in his disciplinary proceedings, volunteered in his community, provided *pro bono* legal services over the past forty years, was active in bar association work, participated in continuing legal education, was involved in legislative advocacy, and had a long legal career with no prior discipline. The Hearing Board also noted that Respondent presented favorable character testimony from two individuals. Based on their testimony, the Hearing Board found that "Respondent is very honest, ethical and a good lawyer, who enjoys a good reputation." (Hearing Bd. Report at 6.)

In addition, the Hearing Board noted that Respondent was diagnosed with stage 4 prostate cancer shortly before the misconduct at issue in this matter occurred. His diagnosis caused him significant anxiety, and exacerbated depression and anxiety that he had experienced for years. However, as the Hearing Board further noted, Respondent did not attribute his conduct to his

depression; he testified that he knew his conduct was wrong, but his "good judgment slipped away." (Hearing Bd. Report at 5.) The psychiatrist who examined Respondent at the behest of the Administrator diagnosed him with persistent depressive disorder with anxious distress and intermittent major depressive episodes, but he also saw no causal relationship between Respondent's mental condition and his misconduct. Moreover, he saw no reason why Respondent could not continue to practice. Thus, while the Hearing Board did not give significant mitigating weight to Respondent's health problems, it found that "Respondent's overall mental state contributed to a situation in which Respondent behaved differently from the way he normally behaved," and that "Respondent's health problems were an additional factor contributing to our conclusion that his misconduct was an aberration." (Hearing Bd. Report at 9.)

In aggravation, the Hearing Board found that Respondent's misconduct involved a series of acts over time.

In reaching its sanction recommendation, the Hearing Board rejected both the Administrator's request for a three-year suspension and Respondent's request for censure and recommended that Respondent be suspended for 18 months.

SANCTION RECOMMENDATION

The only issue on appeal is the appropriate sanction for Respondent's misconduct. Respondent argues that an 18-month suspension is excessive and unduly punitive in light of the extensive mitigation in this case and, in particular, the Hearing Board's finding that Respondent's misconduct was an aberration. Respondent asks us to recommend, instead, a censure or a six-month suspension followed by probation. The Administrator, in turn, contends that the Hearing Board appropriately considered the nature of Respondent's misconduct and all of the aggravating and mitigating factors in making its sanction recommendation, and that this Board should make the same 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). We also consider the deterrent value of attorney discipline and whether the sanction will help preserve public confidence in the legal profession. *Gorecki*, 208 Ill. 2d at 361 (citing *In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994)). 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).

We agree with the Hearing Board that Respondent's misconduct is serious and is aggravated by the fact that it involved multiple acts over several months. We also agree with the Hearing Board that this matter presents significant mitigating factors, all of which support the conclusion that Respondent's misconduct was an aberration. In particular, we note the Hearing Board's finding that Respondent was genuinely remorseful for his actions and considered his misconduct to be "serious and very shameful." (Hearing Bd. Report at 6.) The Hearing Board also found, based on the testimony of character witnesses, that Respondent was ordinarily an honest and ethical attorney. In addition, Respondent, who was 72 years old at the time of hearing, practiced law for 46 years without any disciplinary problems. He acted quickly to repay the money he had taken and made full restitution to his client long before these disciplinary proceedings were brought. Finally, while Respondent's mental-health issues did not cause his misconduct, his "overall mental state contributed to a situation in which Respondent behaved differently from the

way he normally behaved. Therefore, Respondent's health problems were an additional factor contributing to [the] conclusion that his misconduct was an aberration." (Hearing Bd. Report at 8.)

In light of the extensive and compelling mitigation in this matter, we believe that an 18-month suspension is longer than necessary to serve the purposes of the disciplinary system. While every disciplinary case is unique, we find that this matter is most similar to the following dishonest-conversion cases, in which the attorneys were suspended for one year.

In *In re Miller*, 2014PR00134 (Review Bd., Jan. 27, 2017), *petition for leave to file exceptions denied*, M.R. 28618 (May 18, 2017), the Court imposed a one-year suspension on an attorney who dishonestly converted $85,000 in three separate client matters, at a time when he was experiencing financial difficulties. None of his clients were harmed; none of his clients complained; and all of his clients received their money without delay before disciplinary proceedings were brought. Mitigation was significant, similar to this matter, including that the attorney had practiced for 50 years without discipline.

In *In re Saciuk*, 2014PR00075 (Review Bd., Jan. 20, 2016), *petitions for leave to file exceptions denied and recommendation adopted*, M.R. 27979 (May 18, 2016), the Court imposed a one-year suspension on an attorney who dishonestly converted approximately $23,000 of client and third-party funds in two matters. The attorney used the misappropriated funds for frivolous and extravagant personal expenses, including expensive meals at restaurants, trips to casinos, purchases of alcohol, and home furnishings. Moreover, he did so at a time when he was in poor financial condition, which, according to the Review Board, made his decisions to take client funds to maintain his extravagant lifestyle even more troubling. He made restitution only after the ARDC commenced its investigation.

In *In re Gunzburg*, 09 CH 57 (Review Bd., Feb. 27, 2013), *petition for leave to file exceptions denied*, M.R. 26039 (May 22, 2013), the Court imposed a one-year suspension on an

attorney who, over an 18-month period, dishonestly converted $67,000 from funds that he was holding for clients in three personal injury matters and used them for personal expenses – some of them extravagant. In addition, he engaged in the unauthorized practice of law for failing to timely register. In aggravation, the Review Board found that substantial sums were converted to meet the attorney's personal expenses; that the conversion was not the result of an isolated or momentary lapse of judgment; and that two of the instances involved dishonesty. In mitigation, the Review Board noted that the attorney had practiced for 30 years with no prior discipline and had expressed remorse for and acknowledged his misconduct. It also noted that character witnesses testified to his good reputation, no clients complained, and all clients and lienholders had been paid, and all of the clients except one were paid before the ARDC got involved with the case.

In *In re Belgrad*, 97 CH 79 (Review Bd., Aug. 13, 1999), *approved and confirmed*, M.R. 16180 (Nov. 22, 1999), the Court imposed a one-year suspension on an attorney who dishonestly converted about $7,000 in connection with a personal injury matter where the attorney's client was a disabled young adult. The attorney settled his client's case, deposited the funds in his client trust account, and used them for his own purposes. The client's mother tried for two years to recover the funds and have the attorney pay her son's medical providers, but he ignored her requests. It was not until the Administrator filed charges against the attorney that he made restitution to the client. The attorney also failed to acknowledge his wrongdoing, express contrition for it, or cooperate with the disciplinary process.

In *In re Cleveland*, 85 Ill. 2d 520, 426 N.E.2d 842 (1981), the Court imposed a one-year suspension on an attorney who converted escrow funds of approximately $36,000, which he used to satisfy tax obligations and to purchase commodities. He did not pay restitution until a complaint was filed with the ARDC. In mitigation, he had not been previously disciplined during his 28 years of practice.

While some of the above-cited cases involve a lesser amount of converted funds, those cases have greater aggravation and/or less mitigation than the present matter. In *Saciuk* and *Gunzburg*, for example, the attorneys used the converted funds for extravagant personal expenses; and the attorney in *Saciuk* did not make restitution until charges were brought against him. In *Belgrad*, the attorney converted funds from a vulnerable client, and for two years, ignored the client's mother's requests to return the funds. Moreover, he did not make restitution until the Administrator filed charges against him, and he did not acknowledge or express remorse for his conduct or cooperate with the disciplinary proceedings. The attorney in *Cleveland* also did not make restitution until a complaint was filed against him. On balance, we find this matter to be most comparable to *Miller*, in terms of the nature of the misconduct as well as the aggravating and mitigating factors.

We therefore recommend that Respondent be suspended for one year. We find this recommended sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and sufficient to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession. Given Respondent's long career with no prior discipline, his acceptance of responsibility and deep remorse for his actions, the lack of monetary harm to his clients, the Hearing Board's conclusion that his misconduct was an aberration, and the unique circumstances regarding his physical and mental health, we believe that "any further period of suspension ... would impermissibly serve merely to punish [Respondent], and it would benefit neither the public nor the legal profession." *In re Odom*, 01 CH 69 (Review Bd., Sept. 10, 2004) at 17, *petition for leave to file exceptions denied*, M.R. 19772 (May 19, 2005) (*citing In re Leonard*, 64 111. 2d 398, 356N.E.2d 62 (1976)).

Notwithstanding our sympathy for Respondent's health struggles, we decline to recommend that any portion of his suspension be stayed by probation. We also disagree with our

colleague that conditions addressing Respondent's mental and physical health are warranted and appropriate, and therefore decline to recommend that any conditions be imposed during or after the recommended one-year suspension.[1]

Significantly, there is no support in the record that Respondent's medical issues may become further aggravated during the suspension period and thereafter. The Administrator's psychiatric expert, Dr. Finkenbine, was not asked that question and he did not indicate that Respondent was likely to decline in the future, although he did testify that in his opinion Respondent is fit to practice law. Moreover, the record does not support imposing any conditions concerning Respondent's cancer, including updates on his personal medical status, since there was no suggestion by Dr. Finkenbine, or by any evidence in the record, that Respondent cannot practice law because he has cancer, or that having cancer is likely to cause Respondent to engage in misconduct in the future.

We also disagree that, during oral argument, Respondent's counsel opened the door to the imposition of conditions during and after a one-year suspension, as recommended by our colleague. Rather, Respondent's counsel argued that the appropriate sanction would be a censure, or up to a six-month suspension and probation with conditions, so that Respondent could continue practicing law without any interruption, or with a minimal interruption, and counsel identified probationary conditions that might be appropriate in connection with a very short period of suspension. Respondent's counsel did not have the opportunity to address the sanction being recommended by our colleague because that type of sanction was not suggested by the Administrator, the Hearing Board, precedential cases, or Respondent's counsel.

After hearing and observing the testimony of both Respondent and the Administrator's psychiatric expert who examined him, the Hearing Board found that Respondent's mental-health issues were not causally related to his intentional misconduct. Notably, the Hearing

Board did not include probation, or any conditions during suspension, as part of its recommendation. *Cf. In re Ladewig*, 00 CH 33 (Review Bd., Apr. 30, 2004), *petition for leave to file exceptions denied*, M.R. 19512 (Sept. 24, 2004) (agreeing with Hearing Board's recommendation of probation). Thus, while we have taken Respondent's mental state into account as a mitigating factor, we do not believe that probation or conditions during suspension are warranted under the circumstances of this matter, where the Hearing Board found that Respondent's misconduct involved intentional acts that were not the result of or causally related to his mental-health issues.

CONCLUSION

For the foregoing reasons, we recommend that Respondent be suspended from the practice of law for one year.

Respectfully submitted,

R. Michael Henderson
J. Timothy Eaton

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[1] The dissent purports to be a concurring opinion in part, but we disagree. The majority of the panel does not attach any conditions to its recommendation of a one-year suspension because they are not warranted by the record before us. We also disagree with the dissent's unprecedented recommendation of a combination of a suspension and then probation with conditions attached to both time periods.

Scott J. Szala, concurring in part and dissenting in part:

I concur in the recommendation set forth in the majority's opinion, and for the reasons stated therein, that Respondent should be suspended from the practice of law for one year. However, I respectfully dissent and write separately to address certain mental and physical conditions, which, in my view, are necessary for Respondent to resume and continue practicing law again. In the latter regard, I believe that conditions designed to address Respondent's mental and physical health are warranted and appropriate. Accordingly, I recommend that the conditions set forth below be imposed during Respondent's suspension period and during a one-year period of probation thereafter.

First, as the starting point for my opinion, and reviewing the "unique" circumstances of this matter, Illinois case law consistently states that the purpose of attorney discipline 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."[2] *In re Edmonds,* 2014 IL 117696, ¶ 90 (citations omitted).

Second, while the Hearing Board's Report references that the ARDC-appointed psychiatrist Ryan Finkenbine, M.D., examined Respondent and diagnosed Respondent as having "persistent depressive order with anxious distress and intermittent depressive episodes" (Hearing Bd. Report at 5; Report of Proceedings at 46-49),[3] it does not specifically address Dr. Finkenbine's medical report, which was admitted into evidence as Administrator's Exhibit 12. (Because of privacy considerations, all details of the report and testimony (*see* Report of Proceedings at 41-66) will not be discussed here, but they are also important to my opinion.) In general, the medical report discusses Respondent's struggle with mental-health issues for decades and his treatments and medications received during this time. (Adm. Ex. 12 at 2; Report of Proceedings at 48-49.)

These issues have worsened during the past decade. (*Id.*) In addition, in the spring of 2019, Respondent was diagnosed with Stage 4 prostate cancer,[4] which was "significant and severe" and caused his depression to worsen and his anxiety to increase. (Report of Proceedings at 55-57.)

Although Dr. Finkenbine concluded that Respondent's mental condition did not cause his misconduct (Hearing Bd. Report at 8; Report of Proceedings at 50-52), and that his condition did not appear to "significantly impact" and should not be a "major factor" in his then-current ability to practice law (Adm. Ex. 12 at 4; Report of Proceedings at 53), the psychiatrist was not questioned at the hearing about Respondent's ability to practice law after a suspension of any length. Significantly, and not addressed by the Hearing Board or the majority opinion, Dr. Finkenbine made a general recommendation that Respondent "would benefit from continued treatment for depression" and should continue his use of medications and therapies (including one therapy apparently not used previously) so that his mental condition would not significantly impact his future ability to practice as an attorney. (Adm. Ex. 12 at 4.)

Dr. Finkenbine's written report and oral testimony provide, in great part, the basis for my recommendation that conditions designed to address Respondent's mental and physical health should be required before Respondent resumes practicing law and for one year thereafter. To Respondent's credit, the record suggests that he has often (but not always) effectively dealt with his challenging medical and physical issues (*e.g.*, generally running a successful solo law practice).[5] If the majority's recommendation for a one-year suspension (or any time period) is adopted, the key issue then becomes the state of Respondent's mental and physical health from the effective date of Respondent's suspension until his reinstatement and for some period of time thereafter. The medical issues discussed in Dr. Finkenbine's report and testimony may continue or even worsen during the suspension period and thereafter. Accordingly, in my view, by requiring medical testing, evaluations, and reports for the next two years, the dictates of *Edmonds* and similar

cases to protect the public, maintain the integrity of the profession, and protect the administration of justice can best be obtained.

Third, during the oral argument before the Review Board and in response to questioning by its panel members, Respondent's counsel (with his client present) volunteered that Respondent would accept certain conditions, including probation, as part of a sanction recommendation, including medical conditions (mental and physical), and for up to three years. (1/14/22 Review Bd. argument.) Respondent's current legal position becomes clear upon reviewing the Hearing Board's comment that "Respondent requested lenity but did not propose a specific sanction" (Hearing Bd. Report at 7), as well as Dr. Finkenbine's report and testimony. Given the medical issues here, I reject the Administrator's argument that this issue is waived or that probation cannot be imposed for intentional misconduct. (Adm. Br. at 13; *see* "Fourth" point, *infra.*) Plainly, Respondent's current position opens the door to the imposition of medical conditions, testing, evaluations, and reporting. If a suspension is imposed, then to ensure that Respondent is mentally and physically able to resume practicing law successfully after the suspension, he should, as recommended by Dr. Finkenbine, continue to receive medications and therapies designed for his mental condition. Further, as Respondent, through his counsel, agreed at the Review Board argument, the medical evaluations should include updates on Respondent's cancer status.

Fourth, though the Administrator argues that probation is not warranted because Respondent's conduct was intentional and his mental condition did not cause his misconduct, (Adm. Br. at 13-19), the case of *In re Laz,* 05 CH 114 (Review Bd., May 9, 2008), *petition for leave to file exceptions denied,* M.R. 22484 (September 19, 2008), is precedent to the contrary. In *Laz,* the Illinois Supreme Court adopted the recommendation of the Review Board that Laz be placed on a two-year suspension, stayed by probation in the second year, contingent on the

condition that Laz receive successful medical treatment from a psychiatrist. In reaching its recommendation, the *Laz* Review Board rejected the Administrator's argument that intentional misconduct is not subject to probation. *Id.* at 6-9. In doing so, it quoted *In re Jordan,* 157 Ill. 2d 266 (1993), wherein the Court stated:

> Our ultimate objective in attorney discipline is not to be harsh or to punish the respondent, but to impose a sanction that is uniquely tailored to the precise facts of each particular case. To this end we must retain a degree of flexibility in disciplining unprofessional conduct, so that we are guided by the spirit of the rules, not merely by a strict or technical interpretation of terminology.

Laz, 05 CH 114 (Review Bd.), at 7, quoting *Jordan,* 157 Ill. 2d at 274 (internal citations omitted).

In *Jordan*, the Court, through its inherent powers and to safeguard the public and protect the integrity of the bar, ordered a three-year suspension of the respondent, stayed by probation for the three years, despite respondent's intentional misconduct (forged document and misrepresentations to the ARDC) and no showing of a disability. 157 Ill. 2d at 269-278. Although the Administrator now attempts to distinguish *Jordan* by arguing the "unique circumstances" of that case (Adm. Br. at 18), he does not dispute the Court's aforesaid statement and that probation for intentional misconduct without a disability was permitted.

The *Laz* Review Board also rejected the Administrator's argument that probation could not be imposed since no causal connection existed between the respondent's mental condition and the specific misconduct, citing cases where the mental condition contributed to the misconduct and probation was given. *Laz,* 05 CH 114 (Review Bd.), at 8. This significant factor also exists here. Specifically, the Hearing Board concluded that "Respondent's overall mental state [affected by the cancer diagnosis] contributed to a situation in which Respondent behaved differently than he normally behaved." (Hearing Bd. Report at 9.)

While *Laz* provides case law support here, the facts favoring Respondent and a flexible sanction recommendation are much stronger. Unlike Laz, Respondent here did not deceive multiple clients, make misrepresentations to a court, forge documents, or fail to express remorse, and he was not charged, much less convicted, of any crime (especially felonies). *See Laz,* 05 CH 114 (Review Bd.), at 3-6, 10. Furthermore, unlike Laz, Respondent will be required to receive medical attention (mental and physical) for both years, not just the one year after the suspension ends, better preparing him to resume practicing law after his suspension.

In summary, because of Respondent's current and future medical conditions (mental and physical), his age, a review of his entire legal career, case law, representations by Respondent's counsel, and a sincere hope for Respondent's successful return to the practice of law (as a solo practitioner, with a firm, or engaged in other legal pursuits), I recommend the one-year suspension, with accompanying two years of monitored mental and physical testing, treatments, evaluations, and reporting, with these probationary conditions for the second year meeting the *In re Jordan* teaching of a "flexible" and "unique" sanction recommendation.

As outlined below, since Respondent will be on probation for the second year, if Respondent fails to comply with the medical conditions imposed during the one-year period after the suspension ends, the Administrator could file a petition with the Court seeking to reinstate the suspension and until Respondent complies with the medical conditions. (Given Respondent's counsel's representations on behalf of his client accepting the imposition of medical conditions, and Respondent's substantial remorse, this possibility seems unlikely.) Although a similar sanction recommendation could be reached by a *Laz* two-year suspension, with a stay after one year and conditional probation for the second year (including successful medical treatment), such recommendation would be greater than the 18-month suspension sought by the Administrator on appeal (adopting the Hearing Board's sanction recommendation), the one-year suspension

recommendation of my colleagues and myself, and the significantly less injurious conduct to the public and the bar in the instant matter than the aforesaid egregious facts in *Laz*.

Therefore, in light of Respondent's current mental and physical health, but the uncertainty of his medical future, together with his acceptance (through counsel) of imposing medical conditions, Respondent should be required to participate in mental and physical health testing, evaluations, and treatments by licensed medical doctors during the one-year period of his suspension and for the one-year probationary period thereafter, with these doctors providing reports to the Administrator at least three times during each of these years. The medical conditions imposed during and after the suspension should help to ensure Respondent's successful return to the law practice (or other legal pursuits) and to protect the public and the bar; and the two-year period of conditions is less than the three years that Respondent's counsel agreed would be acceptable to his client.

Accordingly, because of the aforesaid unique circumstances, I recommend that Respondent be suspended for one year and with the following conditions for two years, commencing on the date of the suspension:

a. During the two-year period, Respondent shall be treated and participate in mental and physical health testing, evaluations, and treatments with licensed medical doctors acceptable to the Administrator (potentially Respondent's current medical doctors), including: (1) a licensed psychiatrist ("psychiatrist"); and (2) a licensed medical physician specializing in cancer treatment ("cancer specialist");

b. Respondent shall report to his psychiatrist and cancer specialist on a regular basis, the frequency of which is to be determined by these doctors, with the Administrator advised of any change in attendance deemed warranted by his psychiatrist and cancer specialist;

c. Respondent shall comply with all treatment and continuing care recommendations of his psychiatrist and cancer specialist,

including the taking of doctor-prescribed medications and by participating in mental therapies as prescribed;

d. Respondent shall provide his psychiatrist and cancer specialist with an appropriate release (1) authorizing the psychiatrist to disclose information to the Administrator as to whether Respondent has attended therapy sessions on a regular basis, as determined by his psychiatrist; (2) authorizing the psychiatrist to report promptly to the Administrator the failure of Respondent to comply with any part of the established treatment plan; (3) authorizing the cancer specialist to disclose to the Administrator the progress of Respondent's cancer treatment; and (4) authorizing the psychiatrist and cancer specialist to respond promptly to any inquiries by the Administrator regarding Respondent's treatment and compliance with any established treatment plan;

e. Respondent shall submit reports to the ARDC probation office from both the psychiatrist and cancer specialist on the first day of the month at three months, seven months, and eleven months after the suspension begins, and similarly during the one-year probationary period after the suspension has ended;

f. Provided that Respondent complies with the above conditions during his period of suspension, his suspension shall terminate without further order of the Court;

g. If Respondent does not comply with all of the above conditions during his period of suspension, his suspension shall continue until his psychiatrist and cancer specialist each submit an appropriate evaluation and report attesting that Respondent is fit to practice law and that his mental and physical health issues are not likely to affect his practice of law;

h. Provided that Respondent complies with the above conditions during the one-year probationary period following his suspension, these conditions shall terminate without further order of the Court;

i. If Respondent does not comply with the above conditions during the one-year probationary period after the suspension has ended, the Administrator may petition the Court to reinstate Respondent's suspension until his psychiatrist and cancer specialist each submit an appropriate evaluation and report attesting that Respondent is fit to practice law and that his mental and physical health issues are not likely to affect his practice of law;

j. By requiring a psychiatrist to perform testing, evaluations, prescribing medicines, and reporting as set forth above, Respondent is not precluded from also obtaining help from other licensed medical professionals, including, but not limited to, psychologists, clinical therapists, or other qualified mental health professionals;

k. If Respondent does not comply with all of the above conditions, Respondent shall reimburse the Administrator for any costs, as defined by Supreme Court Rule 773, resulting from his non-compliance, to be paid 30 days before the termination of his suspension, and thereafter, 30 days before the end of his one-year probation after his suspension;

l. Respondent shall notify the Administrator within 14 days of any change of address; and

m. Respondent shall provide the Administrator with contact information for his psychiatrist and cancer specialist; and the Administrator will provide to each of them, copies of the Hearing Board's Report and Recommendation, the Review Board's Report and Recommendation, and the Illinois Supreme Court's order imposing discipline in this matter.

In conclusion, for the reasons stated above, I respectfully concur in part, and dissent in part, from the majority's opinion.

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 March 28, 2022.

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

[2] After characterizing Respondent's misconduct as an "aberration" and balancing the seriousness of his actions, the Hearing Board recommended an 18-month suspension. (Hearing Bd. Report at

8-9.) The Review Board's majority opinion discusses the reasons why a one-year suspension is appropriate (*see supra* at 4-9), and I agree with this recommendation, given the extensive mitigation in this case, including Respondent's lengthy and generally distinguished legal career, substantial *pro bono* work, community service, service as a former ARDC inquiry panel member in the early 1990s, lack of prior discipline, and cooperation with the ARDC. (R. 80-82, 111, 122.) While the Hearing Board's recommendation is reasonable, I conclude that, under the totality of the circumstances, including the *Miller* decision discussed by the majority (*see supra* at 6), and the additional factors discussed herein, a one-year suspension with two years of conditions (effective from the date of the suspension), is the more appropriate sanction recommendation. The second year of conditions is the one-year period of probation. (*See* "Third" and "Fourth" points, discussed *infra.*)

[3] In April 2021, Dr. Finkenbine examined Respondent once and for approximately two hours. (R. 45.) In evaluating Respondent as a non-treating psychiatrist, Dr. Finkenbine cautioned Respondent that he "would not provide [him with] any specific treatment nor make more than general recommendations to manage any mental health problems." (Adm. Ex. 12 at 1.) Moreover, Dr. Finkenbine did not have a professional opinion on whether Respondent was likely to engage in the misconduct at issue here again. (R. 65.) When this Report and Recommendation is issued, it will be almost one year since Dr. Finkenbine's examination.

[4] At oral argument before the Review Board, Respondent's counsel (with his client present) stated his belief that Respondent's cancer was being treated and controlled. (1/14/22 Review Bd. argument.)

[5] Respondent consistently disclaimed that his depression significantly affected his ability to practice law. (Adm. Ex. 12 at 4.) Respondent testified that he taught his children that they must learn to "play hurt" and deal with frequent "stressors" of life, implying that he did so as well. (R. 78.) While the sports analogy, life-experience advice, and parent-children teaching moments may be understandable and, at times, laudable in those settings, in my opinion, for a person to have the privilege of being an attorney and to protect the public, Illinois case law demands more, including required monitored medical evaluations and reports of Respondent for the next two years.

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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 March 28, 2022, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

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Respondent-Appellant
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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

FILED

March 28, 2022

ARDC CLERK