In re Scott Ian Jacobson
Attorney-Respondent

Commission No. 2022PR00038

Synopsis of Hearing Board Report and Recommendation
(October 2023)

The Administrator charged Respondent in a two-count Complaint with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by making false statements about his trial experience in a judicial application and an interview with the McHenry County State's Attorney's office. The Hearing Panel found that the Administrator proved the charges of misconduct by clear and convincing evidence. After considering the nature of the misconduct and weighing the factors in mitigation and aggravation, the Hearing Panel recommended that Respondent be suspended for one year.

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

FILED
October 24, 2023
ARDC CLERK

In the Matter of:

SCOTT IAN JACOBSON,

Attorney-Respondent,

No. 6301751.

Commission No. 2022PR00038

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Hearing Panel found that Respondent made false statements about his trial experience in a judicial application and an interview with the McHenry County State's Attorney's office. By doing so, he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Based on the nature of the misconduct, Respondent's lack of candor in his testimony, and his failure to take responsibility for the misconduct, the Hearing Panel recommended that he be suspended for one year.

INTRODUCTION

The hearing in this matter was held by video conference on March 22 and 23, 2023, before a Panel of the Hearing Board consisting of Stephen S. Mitchell, Chair, Michael V. Casey, and Charles A. Hempfling. Jonathan M. Wier represented the Administrator. Respondent was present and was represented by James A. Doppke.

PLEADINGS AND ALLEGED MISCONDUCT

In a two-count Complaint, the Administrator alleged that Respondent knowingly made false statements in applying for a judgeship and interviewing for a first chair felony prosecutor

position. The Administrator charged Respondent with engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010). In his Answer, Respondent admitted the statement in his judicial application was incorrect, neither admitted nor denied making the statements attributed to him in his interview, and denied the charges of misconduct.

EVIDENCE

The Administrator presented testimony from Respondent as an adverse witness, Daniel Wilbrandt, Randi Freese, Rita Gara, Michael Combs, and Patrick Kenneally. The Administrator's Exhibits 2-6, 8-10, and 14 were admitted. Respondent testified on his own behalf and presented character testimony from the Honorable Susan Hutchinson and Jeffrey Kaplan. The Respondent's Exhibits 1-3 were admitted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

Background

In 2008 and 2009, while in law school, Respondent worked as a law clerk in the Cook County State's Attorney's office. He first worked in the appeals division. After obtaining a temporary law license under Supreme Court Rule 711, he worked in the criminal division for about

one year. (Tr. 27-9, 268-69, 275). Respondent applied for an assistant Cook County State's Attorney position but was not hired. (Tr. 30).

From 2010 to 2015, Respondent was employed by the State's Attorney Appellate Prosecutor's office. (Tr. 30). His work for the Appellate Prosecutor involved handling appeals and sometimes advising assistant State's Attorneys on certain issues. (Tr. 296-97). During that employment, he did not try any cases. (Tr. 42, 367-68).

In 2015, Respondent was hired as a law clerk by Justice Susan Hutchinson of the Second District Appellate Court. He was employed in that capacity until July 2018, when he joined the civil division of the McHenry County State's Attorney's office. (Tr. 34, 37).

I. In Count I, Respondent is charged with making false statements in an application for judgeship, in violation of Rule 8.4(c).

A. Summary

Respondent engaged in dishonest conduct by falsely representing in a judicial application that he acted as trial counsel for a particular case when he knew he had not done so.

B. Admitted Facts and Evidence Considered

On December 9, 2016, Respondent signed an Application for Appointment to Office of Associate Judge for the Twenty-Second Judicial Circuit. He submitted the application and was interviewed. The application asked him to list the last two jury cases he tried to verdict within the previous five years. One of the cases Respondent listed was People v. Castillo, 10-CF-2035, in Winnebago County. Respondent certified that all of the statements he made in the application were true, complete, correct, and made in good faith. (Adm. Ex. 14).

Respondent admits he was not a trial attorney for People v. Castillo and did not answer that question correctly. (Ans. at par. 6; Tr. 350). In his Answer, Respondent stated he worked on People v. Castillo in an advisory capacity during his employment with the Appellate Prosecutor.

He testified that he listed the case in the application because he provided advice before the trial. (Tr. 80, 354). He further testified that he told the circuit court judges who interviewed him that he listed the case to demonstrate the type of work he had done. (Tr. 354). Respondent does not believe the circuit court judges were misled, because he included the case in good faith as relevant trial experience and "everyone there accepted that." (Tr. 379).

C. Analysis and Conclusions

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) (2010). Dishonesty includes any conduct, statement, or omission that is calculated to deceive, including the suppression of truth and the suggestion of what is false. In re Gerard, 132 Ill, 2d 508, 528, 548 N.E.2d 1051 (1989). The evidence must establish purposeful conduct or reckless indifference to the truth, rather than a mistake. In re Gauza, 08 CH 98, M.R. 26225 (Nov. 20, 2013) (Hearing Bd. at 42).

There is no question that Respondent's representation that he tried the People v. Castillo case was false. Respondent acknowledges he did not try the case and admits he certified as true all of the statements contained in the application. He denies acting with deceptive intent, however, because he listed the case only as a representative example of the type of work he did, and the interviewing judges knew he did not try the case. We reject Respondent's explanations. Respondent made no effort within the application to qualify or explain his limited involvement. Even if we did accept as true Respondent's testimony that he explained his role during his interview, it would not excuse making a knowing misrepresentation in the application and certifying it as true. Consequently, we find that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c).

II. In Count II, Respondent is charged with engaging in dishonest conduct in violation of Rule 8.4(c) by making false statements about his trial experience during a job interview.

A. Summary

The Administrator proved by clear and convincing evidence that Respondent violated Rule 8.4(c) by making false representations about his trial experience during an interview for a position with the McHenry County State's Attorney's office and in subsequent conversations.

B. Admitted Facts and Evidence Considered

After being hired in 2018 as an assistant McHenry County State's Attorney, Respondent primarily worked in the civil division and on appeals but also assisted with some criminal matters. In 2019, he applied for a first chair position in a felony courtroom. (Tr. 38). McHenry County State's Attorney Patrick Kenneally described the first chair position as one of the most important in the office because that attorney is responsible for the most serious criminal cases. The first chair attorney takes the lead in the courtroom and oversees the second chair attorney. (Tr. 196, 226). Trial experience was a particularly important qualification for the position, in addition to experience handling court calls and dealing with victims. (Tr. 94, 127, 160-61, 226-27, 230-31).

Respondent's interview for the first chair position took place on April 23, 2019. (Tr. 42). Respondent testified he was experiencing difficulties in his personal life at that time and was consuming "a lot" of alcohol. According to Respondent, he kept vodka in a water bottle in his backpack and drank it at the office. (Tr. 319-20). He testified he was also taking five prescription medications. (Tr. 318-19, 321). Respondent stated he was not himself during this time period and does not recall things he said or events he attended. (Tr. 319).

In a letter to the Administrator during the investigation of this matter, Respondent stated he consumed two alcoholic beverages and an Ambien the night before the interview. (Tr. 321). He omitted from the letter other substances he was routinely taking because "he was not in a place

to admit these things at that time." (Tr. 322). When questioned by the Administrator about whether he drank alcohol or took any medication the day of the interview, Respondent testified he could not recall. (Tr. 46, 321). When Respondent's counsel asked if he took Ambien in combination with alcohol on or before the day of the interview, Respondent answered, "Both, I'm sure." (Tr. 318). Despite his inability to remember what medications he took the morning of the interview, he testified he is sure that he was impaired when he entered the interview even though he does not specifically recall feeling that way. (Tr. 320, 323).

During the morning of April 23, 2019, Respondent and assistant State's Attorney Daniel Wilbrandt attended a mock trial workshop at a high school. (Tr. 45). Wilbrandt was in close proximity to Respondent during the workshop and saw no indication that he was under the influence of alcohol or medication. (Tr. 97-98).

Later that day, Respondent's interview took place in the law library of the McHenry County State's Attorney's office, with a panel of attorneys including State's Attorney Kenneally and senior assistant State's Attorneys Wilbrandt, Randi Freese, Rita Gara, and Michael Combs. The interviewing attorneys did not observe Respondent to be under the influence of alcohol or medication during the interview or at any other time while in the office. (Tr. 130-31, 140, 145, 165, 199, 230).

Before the interview began, the interview panel noted that they did not have Respondent's resumé. Respondent believes he submitted it to Kenneally's assistant, Carolyn, prior to his interview. (Tr. 40). Carolyn was not in the office at the time of the interview, so Respondent was asked to retrieve a copy of his resumé from his computer. Freese and Gara testified that Respondent left the room and, when he returned, said he was not able to find his resumé. (Tr. 131,

164-65). Respondent does not remember the interview panel asking for a copy of his resumé or asking him to retrieve it. (Tr. 49-50).

According to the interviewing attorneys, Respondent stated he tried cases before juries while he worked for the Appellate Prosecutor. (Tr. 104, 133, 168-69, 219, 231). Kenneally recalled Respondent stating he tried a dozen or more cases. (Tr. 231). Respondent provided specifics, including that he was a trial lawyer for a DUI case in Kendall County, People v. Vasquez, which involved five fatalities. (Tr. 105, 133-34, 170, 199-201, 233). He also stated he was specially assigned to a Champaign County State's Attorney drug unit as a prosecutor. (Tr. 133, 200, 231). He further stated he tried cases with attorney Chuck Colburn of the Appellate Prosecutor's Office (Tr. 107, 135, 201, 232) and termination of parental rights cases in Winnebago County with attorney Pam Wells. (Tr. 136, 171, 201, 232-33).

Respondent does not remember making any of the foregoing statements and does not believe he would have said them. (Tr. 388). He acknowledged that, if he did make those statements, they would not have been true. (Tr. 52-61, 326-30). Respondent testified that he consulted with prosecutors in the Champaign County State's Attorney's office about a suppression issue but was never specially assigned to work for that office. (Tr. 53-57). Regarding People v. Vasquez, Respondent testified he handled the direct appeal of that case but not the trial. (Tr. 301). He does not believe he said he tried cases with Chuck Colburn. He believes he would have said that he knew Colburn or had spoken to him about cases. (Tr. 57). With respect to his work with Pam Wells, Respondent believes he would have said that he worked with her on a number of cases but does not remember what he actually said. (Tr. 60). He denied stating that he tried cases with her. (Tr. 383).

The interviewing attorneys further testified that Respondent stated he tried felony narcotics cases as a first chair attorney for the Cook County State's Attorney's office. (Tr. 102, 104, 133, 139-40, 167, 200, 231). Freese recalled Respondent stating he was an assistant Cook County State's Attorney (Tr. 133). Gara testified her specific recollection was that Respondent indicated he was in a first chair position at the Cook County State's Attorney's office and that he tried cases. (Tr. 190). Kenneally testified Respondent gave the impression he was in charge of a courtroom that handled felony drug cases. (Tr. 231).

Respondent testified that as a law clerk for the Cook County State's Attorney he was assigned to two courtrooms in the criminal division, where he shadowed the assistant State's Attorneys assigned to those courtrooms. (Tr. 272). One of the courtrooms was a violent crimes court call and one was "strictly a felony narcotics courtroom." (Tr. 274-75). Respondent's responsibilities included organizing the file folders for each day's cases and handling pretrial hearings under the supervision of an assistant State's Attorney. (Tr. 277-79). He assisted with research and writing for issues that arose, and sometimes would handle a suppression hearing by himself, with supervision. He examined "basic foundational witnesses" in some trials. (Tr. 281-83).

Respondent further testified that he tried twelve to fifteen cases in Cook County. (Tr. 52). He does not believe he said he was assigned as a first chair attorney in narcotics court, but "probably said I first chaired several drug cases when I was at 26th Street, because I did." (Tr. 384). He denied conducting a full trial by himself without supervision. (Tr. 283). In the resumé Respondent submitted when he first applied to the McHenry County State's Attorney's office in 2018, he described his position and experience with the Cook County State's Attorney's Office as follows:

Law Clerk, Criminal Appeals & Felony Trial Divisions (May 2008-May 2010)

- Prosecuted criminal cases in the Circuit Court of Cook County and in Illinois' reviewing courts.

(Tr. 309-310; Resp. Ex. 3).

After the interview ended and Respondent left the room, the interviewing attorneys discussed their suspicions that Respondent had lied about his trial experience, especially his statement that he prosecuted felony cases as a first chair attorney in Cook County. (Tr. 109, 172, 235-36). Based on their knowledge of the amount of time and experience needed to become a first chair attorney in a Cook County felony courtroom, they did not believe it would have been possible for Respondent to have gained that position while he was in law school or immediately after graduating from law school. (Tr. 102, 167-68, 200, 234).

Combs volunteered to verify Respondent's statements because he knew Chuck Colburn and Pam Wells. (Tr. 172). Combs made inquiries with the Appellate Prosecutor and learned that Respondent was not assigned as a special prosecutor in Champaign County and never handled any jury trials for the Appellate Prosecutor. Combs spoke with Chuck Colburn, who did not know who Respondent was. (Tr. 203-205). Combs further learned that Respondent did not try any termination of parental rights cases in Winnebago County and was not trial counsel on the People v. Vasquez case. (Tr. 204). Combs prepared a memo summarizing his investigation. (Adm. Ex. 2).

Respondent believes Combs wrote down what he thought he heard Respondent say, "and that became the narrative of it." (Tr. 51).

On Friday, May 3, 2019, Respondent met with Kenneally and Gara. (Tr. 62). Respondent testified he does not remember the purpose of the meeting, but is sure they discussed his interview. (Tr. 62). Kenneally and Gara testified they went through Respondent's statements with him and explained how they verified that the statements were not true. They sought an explanation from

Respondent but did not receive one. (Tr. 238). They asked Respondent for specific information, such as trial dates and the names of his purported trial partners, but Respondent was unable to provide that information. (Tr. 177; Adm. Ex. 8). Instead of explaining why he made the statements, Respondent appeared confused and did not give direct answers to questions. (Tr. 238). Gara testified she had "never seen somebody so determined to be evasive." (Tr. 175). After Kenneally and Gara advised Respondent, they would have to reconsider his employment if he did not come clean, Respondent admitted to embellishing some of his work history. (Tr. 176; Adm. Ex. 8). Kenneally suggested that Respondent think about what he said over the weekend and return on Monday to discuss it further. Kenneally wanted to give Respondent a chance to rectify his mistakes and move forward. (Tr. 240).

On adverse examination, Respondent recalled saying "generally" that he embellished certain aspects of his experience but does not remember when he said that. (Tr. 63). On direct examination, Respondent testified he did not recall ever using the word "embellish" with any of the interviewing attorneys, including Kenneally and Gara. (Tr. 346). He felt he provided information in response to Kenneally's and Gara's questions and testified he gave them names of his trial partners in Cook County. (Tr. 334-35). He does not recall how the meeting ended. (Tr. 337).

Respondent met with Kenneally and Gara again on Monday, May 6, 2019. (Tr. 64). In that meeting, Kenneally told Respondent he would have to agree to certain conditions to maintain his employment. (Tr. 242-43). Respondent signed a performance improvement plan that altered his job responsibilities by assigning him to a misdemeanor traffic call, significantly reduced his salary, and imposed several conditions. (Tr. 179-80; Adm. Ex. 9). The conditions included "[c]omplete honesty with supervisors, co-workers, and anyone else you may deal with in your

official capacity as an assistant state's attorney" and apologizing to the attorneys who were present for the interview. (Adm. Ex. 9). Kenneally included the condition requiring complete honesty because "we had concerns that he had not been completely truthful with people." (Tr. 244).

Respondent testified he was placed on the plan largely because of his interview but also "to try to move me into the Criminal Division, as well." (Tr. 65). He felt he was being asked to apologize for statements he was not sure he made and was not sure what the objective was for requiring him to apologize. (Tr. 340).

Respondent met with the interviewing attorneys and apologized for anyone having felt misled. (Tr. 390). When asked whether he feels he misled the attorneys, he stated, "I must have" and then said he was not sure how to answer that question. (Tr. 391).

The interviewing attorneys testified that the apology conversations did not alleviate their concerns. Wilbrandt testified that Respondent said he "messed up" or "got carried away." Wilbrandt took those comments to mean that Respondent fabricated his experience, but Respondent did not directly admit that he lied. (Tr. 112, 114, 121). Respondent recalled Wilbrandt asking how many trials he had done in Cook County, and Respondent answered twelve to fifteen. (Tr. 343). Combs testified that Respondent apologized and said he got carried away but also repeated his assertion that he tried cases for the Cook County State's Attorney's office. Respondent claimed he was "drummed out" of that office for political reasons. (Tr. 209). Respondent denied making that statement. (Tr. 342). Respondent generally recalls apologizing to Combs and Wilbrandt for statements he made during the interview. He does not remember saying he got carried away, but that sounds like what he would have said. (Tr. 71).

When Respondent met with Freese, she repeatedly asked him to admit that he had not worked as an assistant State's Attorney in Cook County and had not tried twenty jury trials there

as a first chair attorney. Freese testified that Respondent continued to assert that he was a first chair attorney in Cook County. (Tr. 139-40). According to Freese, when she asked Respondent questions, he would go off on a tangent or would not answer. (Tr. 145). According to Respondent, when he tried to answer Freese's questions, she recharacterized anything he said. (Tr. 73). Freese felt Respondent was lying to her and told him to leave her office. (Tr. 139).

Gara was present for part of Respondent's conversation with Freese. When Gara entered Freese's office, Freese stated that Respondent was continuing to say he was an assistant State's Attorney in Cook County. He later admitted he was an intern. (Tr. 183-84). Gara asked Respondent how many felony trials he had done in Cook County as an intern, and Respondent said around twenty. Gara asked if he was supervised for these trials, and Respondent said sometimes he tried cases without supervision. Gara found this even more ludicrous than what Respondent said during his interview because Respondent would have had very little experience and the ethical rules require supervision of law students. (Tr. 184-85).

On or around May 9, 2019, Respondent raised for the first time with Kenneally that he had consumed alcohol and prescription medication the night before his interview. Kenneally's sense was that Respondent said this because he knew his apologies had not gone well and it was going to be difficult for him to keep his job. (Tr. 247). After Combs and Freese expressed that Respondent's apologies were not satisfactory, Kenneally terminated Respondent's employment. (Tr. 248, 254). Kenneally made the decision to do so because of Respondent's "lack of a full mea culpa" and because he continued to "minimize, obfuscate, or not entirely tell the truth" when making his apologies. (Tr. 245).

Combs, Gara, Freese, and Wilbrandt each sent a letter to the ARDC reporting that Respondent fabricated details of his employment history and trial experience. (Adm. Exs. 4-6).

C. Analysis and Conclusions

The Administrator alleges that Respondent knowingly made multiple false statements about his trial experience during his interview and in subsequent conversations. In determining whether conduct involves dishonesty, fraud, deceit or misrepresentation, we consider the totality of the facts and circumstances. In re Isaacson, 2011PR00062, M.R. 25805 (March 15, 2013) (Hearing Bd. at 21). The Court has noted that "motive and intent are rarely proved by direct evidence, but rather must be inferred from conduct and the surrounding circumstances." In re Edmonds, 2014 IL 117696, ¶ 54.

We begin by addressing whether Respondent made the statements at issue. We find the Administrator proved by clear and convincing evidence that he did. Our findings are based primarily on our assessments of the witnesses' credibility. Because we have the opportunity to observe the witnesses, assess their demeanor, and judge their testimony in light of the overall circumstances shown by the evidence, it is our responsibility to determine their credibility and resolve conflicting testimony. In re Stark, 2013PR00027, M.R. 27037 (Jan. 16, 2015) (Hearing Bd. at 21).

We found attorneys Wilbrandt, Freese, Gara, Combs, and Kenneally to be credible witnesses. They had clear recollections of the interview and subsequent events. Their testimony as to Respondent's representations about his trial experience was detailed and consistent. We find it highly improbable that all five attorneys misheard, misunderstood, or mischaracterized what Respondent said. We disagree with Respondent's assertion that inconsistencies in their testimony call into question the reliability of their recollections. While there were slight discrepancies on inconsequential details, such as where someone sat during the interview, there were no significant inconsistencies surrounding what they heard Respondent say. We also reject Respondent's attempt to discredit Combs' testimony and find Combs was a credible witness.

The interviewing attorneys' testimony regarding Respondent's statements is corroborated by the events following the interview. Those events included Combs' investigation; the meetings between Keneally, Gara, and Respondent and the content of those meetings; the decision to place Respondent on a performance plan requiring him to apologize to and honestly communicate with his colleagues; and Keneally's decision to terminate Respondent's employment when he failed to comply with that condition. Common sense and experience lead us to conclude that these events would not have occurred unless Kenneally and the members of the interview panel were certain about what they heard Respondent say. For these reasons, we find credible the interviewing attorneys' testimony, individually and collectively, with respect to the statements Respondent made during his interview and in follow-up conversations.

We found Respondent, on the other hand, neither credible nor candid. His memory of the events in question was selective, he was evasive in his responses, and he gave testimony that was contradictory, false and misleading. For example, he acknowledges having said, in the days following his interview, that he embellished his work history. Yet, he also suggests that the attorneys' recollections of his statements were the result of a false or incorrect narrative that Combs created, and the other four attorneys adopted. We cannot logically reconcile Respondent's contradictory testimony and find it indicative of an attempt to avoid the consequences of his misrepresentations. In addition, we found Respondent's testimony about his purported impaired condition on the day of his interview to be less than candid. Respondent's testimony shifted throughout the hearing, from stating he could not remember whether he consumed alcohol and prescription medication that day to stating he was sure he was impaired at the time of his interview. We find Respondent raised the possibility of impairment in an effort to bolster his purported inability to remember what he said during his interview, but his testimony was so vague and self-

serving that it had the opposite effect of damaging Respondent's credibility. Due to Respondent's disingenuous demeanor and our assessment that he was unable or unwilling to answer questions in a straightforward manner, we found Respondent's testimony lacking in credibility and candor.

Accordingly, based on the credible testimony of attorneys Kenneally, Wilbrandt, Freese, Gara, and Combs, we find the Administrator proved by clear and convincing evidence that Respondent falsely stated he tried cases while he worked for the Appellate Prosecutor and, when pressed for specifics, misrepresented that he was specially assigned to the Champaign County State's Attorney's office to prosecute drug cases, tried cases with attorneys Chuck Colburn and Pam Wells, and acted as trial counsel for the People v. Vasquez case.

We further find that Respondent falsely stated he tried felony cases as a first chair attorney for the Cook County State's Attorney. The Administrator alleges in the Complaint that Respondent falsely stated during his conversation with Freese and Gara on May 8, 2019, that he worked as an assistant State's Attorney in Cook County and, after admitting he actually was an intern, said he tried around twenty jury trials in that capacity. Respondent attempts to distinguish between having represented that he was hired as a Cook County assistant State's Attorney and appointed to a first chair position, which he denies having said, and having stated that he "first chaired several drug cases in Cook County," which he testified was true. Even if we accept Respondent's distinction, we do not find credible his assertion that he "first chaired several drug cases" while he was practicing under a Supreme Court Rule 711 temporary law license.

Supreme Court Rule 711 allows a law student or law school graduate who is not yet licensed to perform certain legal services under the supervision of an active member of the bar, upon meeting certain requirements. During the relevant time period, Supreme Court Rule 711(c)(2)(ii) provided:

> In criminal cases, in which the penalty may be imprisonment, in proceedings challenging sentences of imprisonment, and in civil or criminal contempt proceedings, the student or graduate may participate in pretrial, trial, and post-trial proceedings as an assistant of the supervising member of the bar, who shall be present and responsible for the conduct of the proceedings.

Ill. S. Ct. R. 711(c)(2)(ii) (2006). Respondent's testimony that he "first chaired" drug cases in Cook County connotes that he acted as the lead attorney and had primary responsibility for trying those cases. He was not permitted, however, to exercise that level of responsibility for felony matters while operating under a 711 temporary law license. There is no reason to believe Respondent meant that he acted as a first chair attorney for misdemeanor matters. He testified that the Cook County courtroom to which he was assigned was "strictly a felony narcotics courtroom." We do not find it plausible that a law student or new graduate would be given "first chair" responsibility for felony matters in Cook County, as that would not only defy common sense and experience but would have violated Supreme Court Rule 711(c)(2)(ii). Accordingly, we find that Respondent falsely represented to Freese and Gara that he acted as a first chair attorney for felony drug cases in Cook County and gave false testimony in this matter repeating that assertion.

We find Respondent made the false statements at issue knowingly, with the intent to mislead the interview panel. Our finding of dishonest intent is based on Respondent's subsequent acknowledgement that he embellished and "got carried away," as well as circumstantial evidence indicating that his statements were not an innocent mistake or misunderstanding. That evidence includes Respondent's false statement in his judicial application, which demonstrates a pattern of misrepresenting his experience; his failure to produce his resumé when asked to do so; his experience and knowledge that the statements he made could not have been true; and his unconvincing and unsubstantiated attempts to explain his behavior by suggesting he was impaired.

For all of the foregoing reasons, the evidence clearly and convincingly established that Respondent intentionally misrepresented his trial experience in an effort to convince the interview

panel that he was qualified for the first chair position. By doing so, he engaged in dishonest conduct in violation of Rule 8.4(c).

EVIDENCE IN MITIGATION AND AGGRAVATION

Mitigation

Respondent has served on the Board of the McHenry County Bar Association and has been involved with the Appellate Lawyers Association and the Illinois State Bar Association. (Tr. 356). Between 2015 and 2020, he was involved with the Chicago Angels charitable organization, which helps foster families. (Tr. 357).

Respondent's infant son died in May 2020, and his relationship with his wife subsequently deteriorated. They are currently going through a divorce. Respondent still supports and has parenting time with his stepdaughter. (Tr. 362).

Respondent testified that, after losing his job, he entered a detoxification program, went to counseling, and attended Alcoholics Anonymous and Narcotics Anonymous meetings. He stated he had a relapse in August 2022 but has been sober since that time. (Tr. 359-60).

Respondent values his law license, and it is important for him to maintain his employment. (Tr. 362-63). He feels terrible about the interview incident and having to account for things he does not remember because he was under the influence. (Tr. 384-85).

Character Testimony

The Hon. Susan Hutchinson, Justice of the Illinois Appellate Court, Second District, testified that Respondent was one of her law clerks from December 2015 through July 2018, and again from July 2019 through the present. (Tr. 393-95). In her opinion, Respondent is a very good attorney. (Tr. 399). Justice Hutchinson does not have much knowledge of Respondent's reputation for honesty and truthfulness in the legal community, but she has not heard anything

negative about him. (Tr. 401-402). She is not aware of any occasion when Respondent has been dishonest with her. (Tr. 404). It would concern her if Respondent made a false statement in a judicial application, but the allegations in this matter have not affected her feelings about him as an employee. (Tr. 407).

Justice Hutchinson testified about two incidents when Respondent took items from her office to his home. On one occasion, when she could not locate the office postal meter, she asked Respondent about it, and he said he did not know where it was. Later that day, Respondent said he found the postal meter in his garage, and he brought it back to the office. According to Respondent, he asked Justice Hutchinson if he could take the postal meter home. She did not recall him asking but does not doubt that he did. (Tr. 401). Respondent also took a ladder from the office. Justice Hutchinson remembers him asking to borrow it, and he brought it back when she asked where it was. (Tr. 410). Justice Hutchinson further testified there have been times when Respondent did not come into the office for two or three days and did not communicate with the office because he had a migraine. (Tr. 413).

Jeffrey Kaplan, the Clerk of the Second District Appellate Court, is a friend of Respondent's and has known him since the early 2010s. Kaplan is an inactive member of the Michigan Bar and is not licensed in Illinois. He has never known Respondent to lie. He and Respondent have had general discussions about the allegations in this matter, in which Respondent admitted to a misunderstanding as to the judicial application and a lack of memory about the interview. In Kaplan's view, Respondent had a sterling reputation in the court community until this proceeding. (Tr. 416-26).

Aggravation

Respondent testified that "if anybody feels misled, I absolutely want to apologize, and correct the record on it." (Tr. 385). However, he feels the people to whom to had to apologize had already decided he lied, and Respondent does not know that he did. (Tr. 386).

Prior Discipline

Respondent has no prior discipline.

RECOMMENDATION

A. Summary

Based on Respondent's pattern of dishonesty, failure to take responsibility for his conduct, and lack of candor in his testimony, we recommend that he be suspended for one year.

B. Analysis

In determining our sanction recommendation, 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 bear in mind that the purpose of 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. We seek consistency in recommending similar sanctions for similar misconduct, but must base our recommendation on each case's unique circumstances. In re Edmonds, 2014 IL 117696, ¶ 90.

The proven misconduct is serious because of its dishonest nature. Honesty is an important element of good moral character and general fitness to practice law. In re Polito, 132 Ill. 2d 294, 303, 547 N.E.2d 465 (1989). As an experienced attorney and an assistant State's Attorney at the time of the interview in question, Respondent should have been well aware of his obligation to conduct himself with honesty. Instead, he disregarded that obligation in an effort to advance his

career. It is troubling that he did so when seeking positions for which public trust and confidence are especially important.

We consider in mitigation that Respondent has no prior discipline and cooperated in this proceeding. We accept the testimony of Respondent's character witnesses that they consider Respondent to be honest. That said, Justice Hutchinson's testimony about Respondent taking office property to his home on two occasions and keeping it there until she asked about it raises questions in our minds about his trustworthiness.

We do not consider as mitigation Respondent's claimed alcohol and/or prescription medication use or abuse. There is no evidence before us from a health care provider substantiating Respondent's testimony regarding his dependence at the time of the interview or any subsequent treatment efforts. While we in no way diminish the seriousness of such issues, the evidence is insufficient for us to find that Respondent's misconduct or memory lapses were causally connected to alcohol and prescription drug consumption.

In aggravation, we consider that Respondent engaged in a pattern of misrepresenting his trial experience. He did not express sincere contrition for his dishonesty. He expressed remorse "if anyone felt misled," but not for the fact that he misled the interview panel. He also sought to blame others, including attorneys Combs and Freese, for mischaracterizing his statements rather than owning up to his fabrications. Respondent's lack of candor in his testimony is another significant factor in aggravation. See Gorecki, 208 Ill. 2d 350; In re Vavrik, 117 Ill. 2d 408, 415, 512 N.E.2d 1226 (1987). We conclude that Respondent did not testify truthfully when he repeated his assertions that he was a first chair attorney in felony matters while practicing under a Supreme Court Rule 711 temporary law license, stated he was sure that he was impaired at the time of his

interview, and stated that part of the reason he was placed on a performance improvement plan was to move him into the criminal division.

The Administrator asks us to recommend a one-year suspension, citing In re Posterli, 89 CH 0520, M.R. 7407 (May 24, 1991) (six-month suspension for falsifying resumes on at least two occasions); In re Bourgeois, 01 CH 97, M.R. 19087 (Jan. 20, 2004) (two-month suspension for answering questions falsely in an application for an associate judge position) and In re Novick, 2012PR00176, M.R. 27367 (Sept. 21, 2015) (sixty-day suspension for providing false information in an employment application and asking his father to provide a letter that falsely stated the attorney's employment and salary history).

Respondent contends that, if misconduct is found, a reprimand or censure would be an appropriate recommendation. He relies on In re Fumagalli, 2010PR00018, M.R. 24052 (Sept. 22, 2010) (censure for twice acting as a witness to the execution of documents that were signed outside the attorney's presence); In re Meyer, 06 SH 0008, M.R. 21134 (Nov. 17, 2006) (censure for placing a false date on two deeds and engaging in a conflict of interest by representing persons in an estate matter involving the deeds); and In re Barton, 2015PR00074, M.R. 02878 (Sept. 22, 2017) (censure for attorney signing, and having his secretary sign, a client's will and trust as witnesses without having witnessed their signing; notarizing a client's deed and trust without having witnessed their signing; and failing to reasonably consult with a client about his ability to understand his estate plan).

We do not find the misconduct in Fumagalli, Meyer, and Barton to be as egregious as Respondent's pattern of making dishonest statements. Moreover, the attorneys in those cases admitted to and accepted responsibility for their ethical lapses and engaged in misconduct not to benefit themselves but because they misguidedly believed they were helping their clients.

Respondent, on the other hand, acted in his own self-interest and has not taken responsibility for his dishonesty. Therefore, we find Respondent's cases inapposite and decline to rely on them.

Of the Administrator's cited cases, we find Posterli most similar due to Posterli's pattern of fabricating his qualifications for legal positions. Posterli created a resume with a false law school grade point average, class rank, and honors and awards, which was distributed to multiple potential employers. He obtained a job at a law firm after submitting the false resume. He later created another falsified resume with the initial fabrications as well as false statements about his work history. Unlike Respondent, the Hearing Board found Posterli was contrite, remorseful and unlikely to repeat his misconduct. Posterli, 89 CH 0520 (Review Bd. at 3). Posterli was suspended for six months.

Our research revealed the following additional cases that we find comparable to this matter. In In re Haasis, 2017PR00049, M.R. 029011 (Nov. 20, 2017), the attorney submitted employment applications and resumés to the Illinois Department of Transportation (IDOT) containing false representations about her work history, including statements that she practiced law for several years before she was actually licensed. She was hired by IDOT and then terminated after her false statements came to light. Haasis admitted her misconduct and expressed remorse. She was suspended for six months.

In In re Maciasz, 06 CH 80, M.R. 23960 (Sept. 22, 2010), the attorney was suspended for one year for being dishonest with his employers. Maciasz, who was also an accountant, operated a "moonlighting" business providing accounting and some legal services, unbeknownst to two law firms that employed him. When Maciasz moved to a new firm, he was required to fill out a form identifying all of his clients and anyone for whom he obtained information that was subject to duties of loyalty and confidentiality. He did not disclose any information related to his

moonlighting practice. He was also required to provide tax returns, but intentionally omitted the portions of his returns that showed his moonlighting income. Maciasz was found to have engaged in dishonest conduct and breached his fiduciary duty to his employers.* In recommending a one-year suspension, the Review Board was particularly troubled that Maciasz was not remorseful, altered his tax returns, and certified to his employer that his representations were accurate when he knew they were not. Maciasz, 06 CH 80, M.R. 23960. Here, Respondent similarly certified as true a statement he knew to be false and did not display genuine remorse. For these reasons, we find the circumstances of this case more comparable to Maciasz than Haasis and Posterli.

Based on Respondent's pattern of fabricating his work history, some of which he repeated in his testimony here, we conclude that the recommended sanction must be sufficient to impress upon Respondent the importance of complying with ethical rules and must protect the integrity of the profession. We determine that a one-year suspension will fulfill these purposes and is within the range of sanctions imposed in comparable cases. Accordingly, we recommend that Respondent, Scott Ian Jacobson, be suspended for one year.

Respectfully submitted,

Stephen S. Mitchell
Michael V. Casey
Charles A. Hempfling

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 October 24, 2023.

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

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[*] Pursuant to In re Karavidas, 2013 IL 115767, common law charges such as breach of fiduciary duty are no longer permissible in disciplinary proceedings. Charges of misconduct must be tethered to a particular disciplinary rule.