In re Sami Ziad Azhari
Attorney-Respondent

Commission No. 2023PR00007

Synopsis of Hearing Board Report and Recommendation
(February 2024)

The Administrator charged Respondent in a single-count complaint with engaging in a sexual relationship with a client after the client-lawyer relationship commenced, in violation of Rule 1.8(j). Based on Respondent's admission of the alleged facts, the Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.8(j). The Hearing Board recommended that Respondent be censured for his misconduct due to his violation of the Rule, the substantial factors in mitigation, the minimal factors in aggravation, and relevant case law.

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

In the Matter of: **SAMI ZIAD AZHARI,** Attorney-Respondent, No. 6294661.	Commission No. 2023PR00007

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent in a single-count complaint with engaging in a sexual relationship with a client after the client-lawyer relationship commenced, in violation of Rule 1.8(j). The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.8(j). After considering Respondent's admission of the improper relationship, and evidence of mitigating and aggravating factors, the Hearing Board recommended that Respondent be censured for his misconduct.

INTRODUCTION

The hearing in this matter was held on August 15, 2023, at the Chicago offices of the Attorney Registration and Disciplinary Commission (ARDC) before a panel of the Hearing Board consisting of William E. Hornsby, Jr., Chair, Rachel C. Steiner, and Willard O. Williamson. Jonathan Wier represented the Administrator. Respondent was present and was represented by James A. Doppke.

PLEADINGS AND MISCONDUCT ALLEGED

The Administrator's single-count Complaint charged Respondent with violating Rule 1.8(j) of the Illinois Rules of Professional Conduct (2010) by engaging in a sexual relationship with a client after the client-attorney relationship commenced. Respondent admitted all of the factual allegations but did not admit to the misconduct charge.

EVIDENCE

The Administrator presented testimony from Respondent's former client; L.F. Administrator's Exhibit 3 was admitted into evidence. (Tr. 38). Respondent testified on his own behalf and presented the testimony of eight character witnesses.

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).

In this case, Respondent's Answer admitted all of the factual allegations of the Complaint. Therefore, we consider whether the admitted facts constitute the misconduct charged. In re Paganucci, 06 CH 48, M.R. 21727 (Sept. 18, 2007).

Respondent is charged with engaging in a sexual relationship with a client after the client-lawyer relationship commenced, in violation of Rule 1.8(j).

A. Summary

We find that the Administrator proved by clear and convincing evidence that, in 2014-2015, Respondent engaged in a sexual relationship with his client, L.F., after the client-lawyer relationship commenced. Respondent's conduct violated Rule 1.8(j).

B. Admitted Facts and Evidence Considered

L.F.'s and Respondent's testimony about the trajectory of their relationship was generally consistent. Respondent began representing L.F. in August 2014 in a telephone harassment criminal case. (Tr. 25-26, 81). Flirtations between Respondent and L.F. turned into texting of a sexual nature and then a physical sexual relationship. (Tr. 26-27, 30, 38-39, 113-19, 152-53; Adm. Ex. 3). Respondent admitted that he did not have an ongoing sexual relationship with L.F. in August 2014, when he began representing her, and that he and L.F. began a sexual relationship in October or November 2014. (Ans. at pars. 4, 5). Respondent and L.F.'s relationship ended shortly after her criminal case concluded in April 2015. (Tr. 44, 47, 154-55).

C. Analysis and Conclusions

Rule 1.8(j) provides: "A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced." Ill. R. Prof'l Cond. R. 1.8(j). Respondent admitted in his Answer and in his testimony that he began a sexual relationship with L.F. after she became his client. Based on these admissions, we find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.8(j).

EVIDENCE OFFERED IN MITIGATION AND AGGRAVATION

Aggravation

L.F. testified that she felt "used" by Respondent, hurt, embarrassed, and angry about his "abuse of power" during their relationship, which she struggled with for years before reporting him to the ARDC in 2022. (Tr. 46-47, 49, 51). She felt a power imbalance between them while her criminal case was pending because she was "in a vulnerable state" at that time and because of Respondent's role as her attorney, which could affect the case outcome. (Tr. 43).

Respondent acknowledged that a client facing criminal charges trusts her attorney and is in a vulnerable position, but L.F. did not express to Respondent that she felt there was a power imbalance or that he was taking advantage of her during his representation. (Tr. 151-52, 206). Respondent maintained that, although his judgment was compromised in that he chose to have a sexual relationship with his client, it did not affect his ability in the courtroom, and "I would handle that case exactly the same today as I did back then." (Tr. 200-06). L.F. was charged with telephone harassment for threatening and cursing at an attorney who represented her then-husband's ex-wife in post-decree litigation. (Tr. 21-22, 55-56). Although this Class A misdemeanor was punishable by up to 364 days in jail and a $2,500 fine, L.F. was sentenced to supervision due to Respondent's advocacy at her trial. (Tr. 82, 93).

Respondent testified that the theme of the defense in L.F.'s criminal case centered around her background, intent, and reason for reacting the way she did during the phone call at issue. (Tr. 83). He intended to highlight the stress of the litigation involving L.F.'s then-husband and her history as a victim of domestic violence by a previous husband. (Tr. 83-85). L.F. testified that she told Respondent sometime between August and November 2014 that she had been in an abusive relationship in the past and was suffering from bipolar disorder. (Tr. 27-29). In contrast, Respondent testified that L.F. did not share anything with him about her mental health while they

were preparing for the criminal case. (Tr. 85, 87-88, 217-18). Had she done so, Respondent would have followed his common practice of obtaining a psychological evaluation and using the results as mitigating evidence while negotiating a plea with the State. (Tr. 86). Rather, according to Respondent, he only became aware that she had previously suffered from bipolar disorder because she once mentioned in a personal conversation, not in preparation for the criminal case, that she had been involved in litigation with a former employer regarding accommodations. (Tr. 86-88, 208-09). During the time he represented L.F., he did not observe anything that indicated she was suffering from bipolar disorder, nor did she testify about that condition at her criminal trial. (Tr. 87-88, 218-19).

Respondent testified that the State never offered supervision, which would have kept L.F.'s record eligible for expungement in the future, so L.F. went to trial to have a chance at avoiding a conviction. (Tr. 90-93). The judge found her guilty and sentenced her to 18 months' supervision, which was not a conviction. (Tr. 44, 93). In hindsight, L.F. testified that this was not the outcome she expected and not a good outcome. (Tr. 44). But she also acknowledged post-trial text messages in which Respondent apologized for losing the case, she thanked him for everything he had done for her, and she agreed that she wanted him to represent her daughter in a separate matter. (Tr. 59-60; Adm. Ex. 3 at 4). Her testimony affirmed that she was not displeased about losing her case or angry with Respondent at that time. (Tr. 60). Respondent explained that "losing the case" meant "not getting a not guilty," but supervision was better than the conviction that the State had been seeking throughout his eight months on the case. (Tr. 125).

Respondent and L.F. testified about some ambiguous text messages that they exchanged during their relationship in 2014-2015, although the precise timing was unclear from the evidence. L.F. testified that she and Respondent had discussed his fear that she would inform the ARDC about their relationship, and Respondent asked her to promise not to do so. (Tr. 36-37, 39-42).

L.F. interpreted Respondent's text messages about promises (e.g., "I just don't want you to not let me represent you, or do something you promised you never would" and "You promised me no matter what you would never abandon or hurt me") to "mean[ ] that [she] was not going to report him to the ARDC." (Tr. 40-42; Adm. Ex. 3 at 5, 10).

In contrast, Respondent testified that he never made L.F. promise not to report him to the ARDC; rather, the context of the latter message was his fear that L.F., his romantic partner at that time, would "just cut ties completely with me all of a sudden." (Tr. 127-28, 165-66). Respondent's fear was exacerbated by his history of divorce and his "terrible" mental state. (Tr. 128-33). Around 2014, he was diagnosed with depression and began treatment due to symptoms of low opinion of himself, negative self-talk, loss of interest in former activities such as working out, and crying three to four times a week. (*Id*.). L.F. testified that Respondent did not share any information about his mental health with her, nor did she "ever observe anything that suggested he had mental health issues." (Tr. 43).

Mitigation

Respondent has been practicing law since 2007 and is licensed in Illinois, California, and several federal jurisdictions. (Tr. 72). For the past 10 years, he has maintained a sole practice in Chicago and Rolling Meadows, focusing on federal and state criminal defense. (Tr. 73, 80). Respondent's professional accomplishments and *pro bono* work include leadership roles in the networking organization ProVisors, the Federal Criminal Law Community, and the North Suburban Bar Association; publication in the National Association for Criminal Defense Lawyers' magazine *Champion* and in Law360; teaching mock trial courses at John Marshall and DePaul University Law Schools; teaching continuing legal education courses; and serving on the committee that drafted Illinois Supreme Court Rule 45. (Tr. 168-73).

After Respondent and L.F.'s relationship ended in April 2015, Respondent made changes in his life. In 2016, he moved downtown, started weekly to biweekly talk therapy with a psychologist, and met his current wife, who he married in 2019. (Tr. 130, 147, 149). He stopped mental health treatment prior to the pandemic in 2020 because he was no longer depressed. (Tr. 148-49). Respondent reflected, "My life has improved tremendously since then, with not only getting married, but having a baby; having a firm; kind of doing better each year." (Tr. 150). He further explained, "the biggest thing I learned from therapy is don't move the goal post. You know, I might not be at the final point that I want to be at, but anytime I'm making progress, I need to look at progress, and not look at the gap." (Tr. 150-51).

Respondent testified that, between 2015 and 2022, he "never" initiated contact with L.F., whereas she contacted him by phone call, text message, or email on at least 10 separate occasions. (Tr. 157-67). He blocked her phone numbers and email address and responded to some of the communications, for example, to refer her to other attorneys when she sought legal representation. (*Id*.). L.F. acknowledged that she reached out to Respondent several times, including calling him a vulgar name (after which Respondent asked her to stop contacting him), twice telling him that she was going to report him to the ARDC, and requesting his help with expunging her record. (Tr. 47-48, 62-66). There was no evidence that Respondent initiated contact to L.F. after their relationship ended.

After L.F. informed Respondent in 2022 that she would be contacting the ARDC (but before the ARDC charged him with a formal Complaint), he voluntarily disclosed the matter to his clients, all of his referral sources, and ProVisors and any other board that he sat on. Respondent explained that they deserved to hear about his conduct directly from him, and he respected their right to end their association with him because of it; however, none stopped working with him. (Tr. 165, 220-21). Additionally, three or four months prior to this disciplinary hearing, Respondent

disclosed the pending ARDC matter to a court in Boston, which still admitted him *pro hac vice*. (Tr. 231-32).

Respondent testified to his remorse for engaging in a sexual relationship with L.F. while she was his client. In reflecting on his conduct, he said, "It was just stupid. It was thoughtless. It was careless. It was reckless. It was insensitive." (Tr. 173-74). At that time, he did not think about how L.F. may be unhappy in the future because of their relationship, nor did he take into account his mental state, which contributed to his "horrible decision." (Tr. 174-75, 215). He knew that his behavior violated the Rules of Professional Conduct and had even discussed this with L.F. during their relationship. (Tr. 175, 205-06). He described his actions as "morally reprehensible" and stated that he would never do such a thing again. (Tr. 175).

Character Witnesses

Respondent called eight current or former members of the Illinois bench and bar as character witnesses: Sergei Kuchinski, Adam Bolotin, Wayne B. Addis, Gregory Kulis, Teresa Dickinson, Matthew Chivari, Michael Leonard, and the Honorable Michael Gerber. They knew Respondent as a law school classmate, a trusted colleague, an attorney who appeared before or in opposition to them in court, an office lessee, a prospective business partner, and a teacher. Each witness had known Respondent for at least four years, and several witnesses' professional relationships with Respondent had become friendships over time.

The character witnesses testified favorably about Respondent's reputation for truth and veracity in the legal community, describing it as "outstanding," "superb," and "excellent." (Tr. 104-05, 180, 188, 234, 248, 257). They described him as "incredibly truthful, trustworthy, honest, and a very well respected person in the legal community" and "absolutely" "an honest and forthright person." (Tr. 141, 271).

Each character witness testified that Respondent informed them about the facts of this matter after it was brought to the attention of the ARDC, but their opinion of him did not change. (Tr. 106-08, 142-43, 180-82, 188-91, 236-38, 246-50, 258-64, 271-73). All of the character witnesses spoke highly of how Respondent informed them, demonstrating his candor, accountability, genuineness, remorse, embarrassment, and even distress and devastation at the gravity of his conduct. (Tr. 106, 142-43, 180-81, 189, 193, 237, 249, 258, 261, 271-72). Mr. Addis, who had been practicing law for forty-five years, including many years as a prosecutor, found Respondent's "absolute" contrition to be remarkable. (Tr. 178, 180-81). Despite Respondent's disclosure, Mr. Leonard and Mr. Chivari are still planning to open a law firm with him. (Tr. 243, 249-50, 260-64). Several other witnesses shared that the manner of Respondent's disclosure caused them to think more highly of him. (Tr. 142-43, 181-82, 189).

Prior Discipline

Respondent, who has been licensed to practice law in Illinois since December 2007, has no prior discipline.

RECOMMENDATION

A. Summary

We recommend that Respondent be censured for his misconduct due to his violation of Rule 1.8(j), the substantial factors in mitigation, the minimal factors in aggravation, and relevant case law.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. When recommending discipline, we consider the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d

350, 360-61 (2003). We seek to recommend similar sanctions for similar types of misconduct, but we must decide each case on its own unique facts. Edmonds, 2014 IL 117696, ¶ 90.

The Administrator requested a suspension of at least 30 days due to several aggravating factors. First, the Administrator argued that L.F. was a vulnerable victim because, during the time of her sexual relationship with Respondent, her mental state was affected by a prior abusive relationship and by her active bipolar disorder. We find that this aggravation was not proved by clear and convincing evidence. Respondent admitted to knowing about L.F.'s history of abuse, which he strategically utilized as part of her criminal defense. However, the Administrator presented no evidence as to how L.F.'s history of abuse impacted her mental state during her relationship with Respondent.

As to L.F.'s bipolar disorder, she and Respondent presented conflicting testimony. L.F. said she told Respondent between August and November 2014 that she was presently suffering from bipolar disorder, whereas Respondent said he was unaware that she was affected by bipolar disorder in 2014-2015. He only knew that she had this disorder in the past because she once mentioned litigation with a former employer regarding accommodations. Had he known she was affected by bipolar disorder during their trial preparations, he would have obtained a psychological evaluation and used that evidence to seek a better offer from the State. We find Respondent's testimony as a whole to be credible. As to the conflicting evidence regarding Respondent's awareness of L.F.'s bipolar disorder, we find Respondent's testimony to be more credible than L.F.'s testimony. Respondent provided a detailed description of his typical approach to handling criminal matters in which the defendant is presently suffering from a mental illness, as well as his handling of L.F.'s case in particular, whereas L.F. briefly and vaguely testified that she told Respondent that she was suffering from bipolar disorder sometime between August and November 2014.

Second, the Administrator argued that Respondent's representation in L.F.'s criminal case was impaired by their sexual relationship, thereby negatively impacting the outcome of her case. We find that the Administrator did not prove by clear and convincing evidence that the relationship caused actual harm to L.F.'s criminal case. Although L.F. testified in hindsight that the outcome was "not good," she admitted, and her text messages with Respondent affirmed, that in 2015 she was pleased with how the trial went and even wanted Respondent to represent her daughter in another legal matter at that time. The Administrator presented no evidence to contradict Respondent's credible testimony that L.F.'s supervision sentence was a legally favorable outcome, considering the potential alternatives based on the facts of her case, and that his representation was unimpaired by their relationship. While we in no way condone Respondent's conduct, there is no evidence demonstrating that his professional judgment was compromised such that it negatively affected the outcome of L.F.'s case.

Third, the Administrator argued that Respondent's knowing and ongoing violation of Rule 1.8(j), including discussing the violation with L.F., asking L.F. to promise not to report him to the ARDC, and continuing their sexual relationship for a total of six to seven months, is an aggravating factor. We find that the Administrator proved some of these allegations by clear and convincing evidence. Respondent admitted that his conduct was not a single lapse in judgment but rather a series of voluntary acts that occurred over the course of six to seven months. Respondent also admitted that he discussed with L.F. how their sexual relationship violated the Rules of Professional Conduct, but he persisted anyway.

However, we find that the Administrator did not prove by clear and convincing evidence that Respondent asked L.F. to promise not to report him to the ARDC. L.F. and Respondent presented conflicting interpretations of their ambiguous text messages about promises. We find that Respondent's explanation that "do[ing] something you promised you never would" and

"promis[ing] me no matter what you would never abandon or hurt me" reasonably refers to his fear, as a divorcee suffering from depression, that L.F. would suddenly end their relationship. We do not find that these text messages, without additional corroboration, refer to a promise prompted by Respondent that L.F. would not report him to the ARDC.

For these reasons, we find that the only proven aggravation is Respondent's persistence in knowingly violating Rule 1.8(j) for an ongoing period of six to seven months while he remained in a sexual relationship with L.F.

Respondent, who has been licensed since 2007 and has no prior discipline, requested either no discipline or a reprimand in this matter. As mitigating evidence, he presented eight character witnesses and his own testimony, which we find to be credible. Respondent did not equivocate about his misconduct. He voluntarily disclosed the pending ARDC matter to his clients, his referral sources, and courts, accepting responsibility for the consequences of his actions, including the potential of losing clients and *pro hac vice* status. He testified to the continued support of his clients and the legal community, which the character witnesses attributed to his genuine contrition and otherwise excellent reputation as a person and as a lawyer. In particular, we find significantly mitigating Respondent's substantial amount of *pro bono* work and contributions to the legal profession, including teaching law school mock trial courses, holding leadership positions in various professional organizations, and being published in legal journals and newsletters. We believe Respondent's undisputed testimony that he has made significant changes to his life since 2015 and his sincere assurances that he will never repeat his inappropriate conduct again.

We considered the cases cited by the Administrator and Respondent to support their requested sanctions. The Administrator sought a suspension of at least 30 days based on In re Kendall, 2021PR00040, M.R. 31278 (Sept. 21, 2022) (censure for engaging in sexual relationship with client and for writing letter with false statements about his client's employment and income);

In re Sylvester, 02 CH 100, M.R. 18792 (Sept. 19, 2003) (30-day suspension, on consent, for engaging in sexual relationship with client, where there was some evidence that client was vulnerable at the time the relationship began, and where the sexual relationship delayed resolution of the case); and In re Huyett, 2013PR00123, M.R. 26681 (May 16, 2014) (60-day suspension, on consent, for engaging in sexual relationship with client and making false statements about the relationship to two judges and the ARDC, where attorney was an experienced practitioner at the time of his misconduct). See also In re Anderson, 2018PR00053, M.R. 29838 (April 19, 2019) (30-day suspension, on consent, for engaging in a sexual relationship with client and making false statements about the relationship to the Administrator). These cases involved dishonesty or other aggravating factors in addition to the improper sexual relationship. Respondent was only charged with one count of an inappropriate sexual relationship in violation of Rule 1.8(j), he has been candid and honest about his misconduct, and the Administrator did not prove the alleged aggravating factors that L.F. was a vulnerable victim or that her criminal case was negatively impacted by her sexual relationship with Respondent. Thus, Respondent's misconduct is less egregious than the misconduct in the Administrator's cited cases and does not warrant a suspension.

On the other hand, Respondent sought either no discipline or a reprimand, citing In re Howard, 96 CH 531, M.R. 15103 (Sept. 28, 1998) (no discipline for attorney who wrote other people's names on signature lines without intent to deceive) and In re Nathe, 02 CH 60, M.R. 20076 (May 20, 2005) (reprimand for attorney who had sexual relationship with shareholder of his corporate client, which tended to bring legal profession into disrepute in violation of Illinois Supreme Court Rule 770). However, Howard involved different misconduct and extenuating circumstances not present in Respondent's situation, and the sexual relationship in Nathe was with

a shareholder of a corporate client in a collection matter, rather than with an individual client who was facing criminal charges. For these reasons, we find Respondent's cited cases distinguishable.

On balance, we determine that censure is the most appropriate sanction in this matter, where the only misconduct is a violation of Rule 1.8(j) and there is minimal aggravation and significant mitigation. In light of Respondent's recognition of his wrongdoing, genuine remorse, and subsequent life changes, we find that he is unlikely to repeat his misconduct. Because we do not believe he poses a risk to the public or the profession, we determine that a censure fulfills the goals of the disciplinary process. Therefore, we recommend that Respondent, Sami Ziad Azhari, be censured for his misconduct.

Respectfully submitted,

William E. Hornsby, Jr.
Rachel C. Steiner
Willard O. Williamson

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 February 13, 2024.

/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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