

BEFORE THE HEARING BOARD
OF THE
ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

HEATHER LYNN BIAGI,

Attorney-Respondent,

No. 6316215.

Commission No. 2021PR00101

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission (“ARDC”), by his attorney, Tammy L. Evans, pursuant to Supreme Court Rules 753(b) and 761(c), complains of Respondent, Heather Lynn Biagi, who was licensed to practice law in Illinois on August 4, 2014, and alleges that Respondent has engaged in the following conduct, which subjects her to discipline pursuant to Supreme Court Rule 770:

COUNT I
(Criminal conduct)

1. At all times related to this complaint, Respondent and Jason VanSchoyck (“VanSchoyck”) were the owners of Pro Excavating & Grading, LLC (“Pro Ex”). Respondent is the manager of Pro Ex and represents the company and its employees in legal matters as needed.

2. On or before August 2014, Respondent and VanSchoyck planned to develop property that they owned on Schwartz Street in Edwardsville. Prior to commencing the development of the property, Respondent and VanSchoyck were required to submit a site development plan (“plan”) that contained a drawing that illustrated the proposed development of the property to the Madison County Planning and Development Department. A plan must be completed by an Illinois licensed professional engineer.

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ARDC Clerk

3. On or before August 8, 2014, Respondent contacted Kenneth Richard Jones (“Jones”), a licensed professional engineer with Sherrill Associates, Inc. (“Sherrill Associates”), to complete a plan for the property.

4. Pursuant to Illinois Administrative Code Title 68, § 1380.295, every licensed professional engineer shall have a reproducible seal or facsimile, which must contain the name, license number of the professional engineer, and the words “Licensed Professional Engineer of Illinois.” The professional engineer is required to seal all documents prepared by or under the direct supervision and control of the professional engineer, and the licensee’s written signature and date of signing, along with the date of the license expiration, must be placed adjacent to the seal.

5. On August 8, 2014, Jones completed a plan for the property. Jones signed and affixed his seal to the plan, and wrote “8/8/14 exp. 11/30/15” under the seal, which represented the date he signed the plan and the date of his license expiration.

6. At all times related to this complaint, the engineering profession was regulated by the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation (“IDFPR”). Professional engineers must renew their licenses every two years. Jones was required to renew his professional engineering license with the IDFPR on November 30 of each odd numbered year.

7. On or before August 20, 2018, Respondent altered the plan that Jones had completed on August 8, 2014, by making revisions to the original drawings, removing the dates that Jones had written under his seal on the original plan, and affixing a purported signature date of August 20, 2018 and a purported license expiration date of November 30, 2018 under Jones’ seal.

8. On or before September 14, 2018, Respondent submitted the altered plan to Andrea Yancey (“Yancey”), Planning Coordinator for the Madison County Planning and Development Department.

9. At the time Respondent tendered the altered plan to Yancey, Respondent knew that the altered plan falsely represented that Jones had made revisions to the original plan, and that he had signed, sealed, and affixed the date of signing and his license expiration date to the revised plan.

10. On September 25, 2018, the Madison County State’s Attorney filed a criminal complaint against Respondent. The State’s Attorney charged Respondent with Forgery, a Class 3 Felony, that she, with the intent to defraud, knowingly delivered an altered site development plan to the Madison County Planning and Development Department that contained alterations that were purportedly made and approved by the registered professional engineer at Sherrill Associates. The matter was docketed as *The People of the State of Illinois v. Heather L. Biagi*, case number 2018-CF-2860.

11. On August 23, 2021, Respondent pled guilty to the amended charge of theft in case number 2018-CF-2860, that she knowingly obtained by deception, a site development plan with alterations that were not approved by the registered professional engineer, Sherrill Associates, without paying for said alterations with the intent to deprive the owner permanently of the value of the alterations, in violation of 720 ILCS 5/16(a)(2). In exchange for her guilty plea, the court sentenced Respondent to 18 months of probation and ordered her to pay \$539 for court costs.

12. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. engaging in a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer by conduct including having committed a criminal act of theft, that she knowingly obtained by deception, a site development plan with alterations that were not approved by the registered professional engineer, Sherrill Associates, without paying for said alterations with the intent to deprive the owner permanently of the value of the alterations, in violation of 720 ILCS 5/16(a)(2), and in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010); and
- b. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including, altering the original site development plan that Jones completed on August 8, 2014, by making alterations to the original drawings, removing the dates that Jones had written under his seal on the original plan, and affixing a purported signature date and a purported date of license expiration under Jones' licensed professional engineer seal, and then knowingly delivering the altered site development plan to the Madison County Planning and Development Department, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Criminal conduct – driving under the influence of alcohol and damage to government supported property)

13. On March 17, 2018, Respondent met some friends in St. Louis, Missouri where they rode around the city on a bar cycle. After consuming alcoholic beverages, Respondent got into her 2016 GMC Yukon Denali ("Yukon") and drove eastbound on Interstate 70.

14. On March 17, 2018, at approximately 9:30 p.m., the Illinois State Police Emergency Radio Network ("ISPERN") broadcast advised that a white sport utility vehicle ("SUV") was traveling eastbound on Interstate 70 at mile post 21 and was possibly being driven by a driver under the influence. The ISPERN broadcast also advised that the SUV was observed leaving the roadway, traveling into the ditch and then back onto the interstate.

15. After hearing the ISPERN broadcast, a Bond County Sheriff's deputy positioned his patrol vehicle eastbound on Interstate 70 at Exit 36. At approximately 9:38 p.m., the deputy observed Respondent's Yukon pass his location and he accelerated to 120 mph in an attempt to catch up to Respondent. The deputy observed Respondent's Yukon speeding and swerving from lane to lane on Interstate 70. The deputy activated his patrol vehicle emergency lights and emergency siren behind Respondent's Yukon, but Respondent did not stop.

16. Respondent exited Interstate 70 at Exit 41 and continued driving northbound on Millersburg Road. When Respondent stopped at the T-intersection of Millersburg Road and Illinois Route 40, the deputy positioned his patrol vehicle to block Respondent's access to Illinois Route 40 westbound. Respondent struck the front passenger-side fender and wheel of the deputy's patrol vehicle with her Yukon, causing the deputy's patrol vehicle to slide sideways approximately two feet until both vehicles came to rest in the middle of the intersection. The deputy exited his patrol vehicle with his weapon drawn and ordered Respondent to exit her Yukon, but she remained in the driver's seat. The deputy then removed Respondent from her Yukon, placed her in handcuffs and conducted a search of her person. The deputy contacted the Illinois State Police to conduct the investigation.

17. At approximately 10:54 p.m., an Illinois State Police trooper arrived on the scene to conduct an investigation. The trooper made contact with Respondent and observed that her eyes were glassy and her speech was slurred. When the trooper asked Respondent to exit the patrol vehicle, he detected a strong odor of alcohol and observed Respondent swaying back and forth while standing. He then asked Respondent to consent to field sobriety tests and she did. During the field sobriety tests, Respondent showed numerous indicators of impairment. The trooper asked

Respondent to consent to a portable breath test and Respondent provided a breath sample of .134. The trooper placed Respondent under arrest for driving under the influence.

18. On March 19, 2018, the Illinois State Police charged Respondent with driving under the influence of alcohol, in violation of 625 ILCS 5/11-501(a)(2); failure to yield to emergency vehicles, in violation of 625 ILCS 5/11-907(a)(1); and operating an uninsured motor vehicle, in violation of 625 ILCS 5/3-707. The matters were docketed as *People v. Heather L. Biagi*, case number 2018-DT-000002-D-001 in Bond County Circuit Court.

19. On March 19, 2018, the Bond County State's Attorney filed a two-count criminal complaint against Respondent. In Count I, the State's Attorney charged Respondent with knowingly damaging property of the Bond County Sheriff's Department (damage to government supported property), in violation of 720 ILCS 5/21-1.01(a)(1), a Class 4 Felony. In Count II, the State's Attorney charged Respondent with knowingly, and without justification, operating a motor vehicle in a manner which placed a Bond County Sheriff's deputy in reasonable apprehension of being struck by the moving motor vehicle (aggravated assault), in violation of 720 ILCS 5/12-2(c)(7), a Class 4 Felony.

20. On September 25, 2019, Respondent pled guilty to driving under the influence of alcohol, failure to yield to emergency vehicles, and operating an uninsured motor vehicle. In exchange for her guilty plea, the court sentenced Respondent to probation for a period of 24 months, and ordered her to pay a total fine and costs in the amount of \$2,500, and serve 100 hours of community service.

21. On September 25, 2019, Respondent pled guilty to criminal damage to government supported property, that she knowingly damaged property of the Bond County Sheriff's Department when she struck the front passenger-side of a Bond County squad car with her Yukon.

In exchange for her guilty plea, the court sentenced Respondent to second chance felony probation for a period of 24 months, pursuant to 730 ILCS 5/5-6-3.4, with no judgment of conviction being entered, and dismissed the felony charge of aggravated assault. The court ordered Respondent to pay restitution in the amount of \$1,559.03, and pay a total fine and costs in the amount of \$1,000.

22. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. engaging in criminal acts that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer by conduct including having committed the criminal acts of driving under the influence of alcohol, in violation of 625 ILCS 5/11-501(a)(2); failure to yield to emergency vehicles, in violation of 625 ILCS 5/11-907(a)(1); operating an uninsured motor vehicle, in violation of 625 ILCS 5/3-707; and damage to government supported property, in violation of 720 ILCS 5/21-1.01(a)(1); in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010).

COUNT III
(Unauthorized practice of law)

23. Pursuant to Illinois Supreme Court Rule 756, an attorney admitted to practice law in Illinois must register and pay the annual registration fee to the ARDC on or before the first day of January.

24. Respondent did not register or pay her annual registration fee to the ARDC on or before January 1, 2018.

25. On or about March 9, 2018, Respondent was removed from the roll of attorneys authorized to practice law in Illinois for failure to register and pay the annual registration fee to the ARDC for 2018. On or about March 10, 2018, the ARDC sent Respondent a letter to her registered business address, which was her home address located at 1027 Franklin Avenue in

Edwardsville, Illinois, informing her that her name was removed from the roll of attorneys and that she was not authorized to practice law in Illinois.

26. On or about March 12, 2018, Respondent received the letter from the ARDC that informed her that her name had been removed from the roll of attorneys and that she was no longer authorized to practice law in Illinois.

27. Between March 9, 2018 and September 12, 2018, Respondent practiced law after being removed from the roll of attorneys. Her conduct included filing entries of appearance on behalf of two defendants, both employees of Pro-Ex, in St. Clair County Circuit Court. On April 18, 2018, Respondent filed an entry of appearance on behalf of Kyle P. Klostermann (“Klostermann”) in case numbers 2018-TR-5471 (commercial truck display name violation), 2018-TR-5472 (unlicensed driver), and 2018-TR-5473 (operating a vehicle without a safety certificate). While she did not appear at a hearing for the matters that was scheduled on July 24, 2018, she signed an order on September 12, 2018, as the attorney for Klostermann, resetting the matters to November 7, 2018. On June 13, 2018, Respondent filed an entry of appearance on behalf of Marvin O. Bazzell in case numbers 2018-TR-12116 (operating an uninsured motor vehicle) and 2018-TR-12117 (driving 15-20 mph over the speed limit). Respondent filed her entries of appearance in the above matters despite being removed from the roll of attorneys.

28. On October 10, 2018, Respondent registered and paid the annual registration fee for 2018.

29. On October 10, 2018, Respondent was reinstated to the roll of attorneys.

30. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, by conduct including the filing of entries of appearance on behalf of Kyle P. Klostermann and Marvin O. Bazzell, both employees of Pro-Ex, in the St. Clair County Circuit Court matters described in paragraph 27, above; signing a court order as Klostermann's attorney and resetting his matters for hearing; and holding herself out as an attorney after her name was removed from the roll of attorneys authorized to practice law in Illinois, in violation of Rule 5.5(a) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be referred to a panel of the Hearing Board of the Commission, that a hearing be held, and that the Hearing Panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

/s/ Tammy L. Evans
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