In re Valarie Pope Franklin
Respondent-Appellant

Commission No. 2019PR00068

Synopsis of Review Board Report and Recommendation
(January 2022)

The Administrator brought a 13-count complaint against Respondent, charging her with dishonestly misappropriating about $122,000 of her clients' settlement funds, in violation of Illinois Rules of Professional Conduct 1.15(a) and 8.4(c) (2010). Two days before the hearing was to begin, Respondent's counsel filed an emergency motion to continue the hearing, citing newly discovered information that Respondent was suffering from mental-health issues that made her unable to participate adequately in her hearing. On the morning of the hearing, after argument on the motion, the hearing panel chair denied it, and the hearing commenced.

The Hearing Board found that the Administrator had proved all of the charged misconduct, and recommended that Respondent be disbarred. Respondent appealed, challenging the hearing panel chair's denial of her emergency motion to continue the hearing, as well as the Hearing Board's dishonesty finding, refusal to consider her mental health in mitigation, and sanction recommendation.

The Review Board found no error in the hearing panel chair's ruling denying Respondent's request to continue the hearing, nor in its misconduct findings. A majority of the review panel agreed with the Hearing Board that Respondent should be disbarred for her misconduct. A dissenting member recommended a suspension of three years and until further order.

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

In the Matter of:	
VALARIE POPE FRANKLIN,	Commission No. 2019PR00068
Respondent-Appellant,	
No. 6224951.	

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a 13-count complaint against Respondent, charging her with dishonestly misappropriating about $122,000 of her clients' settlement funds, in violation of Illinois Rules of Professional Conduct 1.15(a) and 8.4(c) (2010).[1]

Two days before the hearing was to begin, Respondent's counsel filed an emergency motion to continue the hearing, citing newly discovered information that Respondent was suffering from mental-health issues that made her unable to participate adequately in her hearing. On the morning of the hearing, after argument on the motion, the hearing panel chair denied it, and the hearing commenced.

Following the hearing, the Hearing Board found that the Administrator had proved all of the charged misconduct, and recommended that Respondent be disbarred.

Respondent appealed, challenging the hearing panel chair's denial of her emergency motion to continue the hearing, as well as the Hearing Board's finding of dishonesty, refusal to consider her mental health in mitigation, and sanction recommendation. She asks that

FILED
January 20, 2022
ARDC CLERK

this matter be dismissed or remanded, or, in the alternative, if any sanction is to be imposed, that it be a suspension stayed by probation.[2]

For the reasons that follow, we find no error in the hearing panel chair's ruling denying Respondent's request to continue the hearing, nor in its misconduct findings. A majority of the review panel agrees with the Hearing Board that Respondent should be disbarred for her misconduct. A dissenting member recommends a suspension of three years and until further order.

BACKGROUND

Respondent's Handling of Client Funds and Use of Bank Accounts

Respondent started her own solo law practice in 1993, focusing on workers' compensation, personal injury, and family law. Between 2014 and 2017, during which time the misconduct at issue in this matter took place, she was the sole signatory on business checking account 1872 ("Account 1872") at U.S. Bank, which she opened in the early 1990s to deposit client and third-party funds. She had requested a client trust account, and the printed checks identified the account as such, but the account was not an IOLTA account. Respondent also had other accounts at U.S. Bank, including a business checking account she used as the firm's operating account, a firm expense account, and personal accounts.

When Respondent received settlement funds on behalf of her clients, she deposited them into Account 1872. She knew she was required to hold client funds separate from her own property until they were disbursed, and no clients authorized her to use any portion of their settlement funds, other than fees to which she was entitled, for her own purposes.

Respondent's bank statements show that, during the time period of 2014 to 2016, Respondent frequently transferred funds from Account 1872 to her other accounts, particularly when the other accounts had low balances, and then made payments from those accounts for

personal or business purposes. She also wrote checks on Account 1872 to cover her personal expenses. On checks used to pay for letterhead, malpractice insurance, and rent, Respondent crossed out the words "Client Trust Account" on the face of the checks. She testified that she thought the money belonged to her as attorney's fees, but recognizes that her actions were wrong, as she should have transferred the funds to her business account.

In addition, bank statements show that, in 2015 and 2016, Respondent made numerous withdrawals from Account 1872 and made debit purchases from that account for personal items or services such as manicures or groceries. She testified that she was not aware that the money was coming from Account 1872 or that any of her debit cards were tied to that account. She testified that she believed Account 1872 was a legitimate IOLTA account until the ARDC began its investigation in 2016. She testified that, when she withdrew funds, she had not paid attention to the account number, or she may have picked up the wrong debit card. She denied directing U.S. Bank to link a debit card to Account 1872.

A rebuttal witness from U.S. Bank testified that an ATM card can be linked to more than one account at the request of the customer, but a primary account is always designated. She testified that a customer using an ATM could choose between accounts identified as primary or secondary, and if insufficient funds were not in the primary account, the ATM would not automatically choose a different account. She confirmed that debit cards for which Respondent's operating account was the primary account were also used to make withdrawals from Account 1872, which would have been designated as the secondary account; in those cases, the customer would have had to choose the secondary account to make withdrawals.

Respondent's actions caused the balance in Account 1872 to fall below the amount owed to her clients and at times resulted in negative balances. She acknowledged that, prior to her

disciplinary proceedings, she had never conducted a detailed review of her bank records. She acknowledged that her actions violated Rule 1.15, but she denied that she acted dishonestly or intentionally took money from clients.

Respondent's Holding of Cash in Her Office

Respondent testified that, from 2013 to 2016, she kept between $30,000 and $60,000 in her office to accommodate clients who requested cash payments. She testified that, if a client requested cash, she or her assistant would put the money in a settlement packet with a closing statement for the client's signature. She testified that, when a client requested a cash payment, she allocated cash in the office to the client and then transferred funds from Account 1872 to her personal account.

Alyce Trent, Respondent's legal assistant from 2000 to 2014, testified that Respondent kept cash in the office for clients. She testified that, prior to leaving Respondent's employ, she trained Marie Hernandez regarding client intake, communication, and filing, but that she did not train Hernandez in making deposits or withdrawals or discuss cash kept at the firm with Hernandez.

Respondent testified that Hernandez made deposits, contacted clients regarding their settlements, and inquired if they wanted cash or a check. She testified that she later learned that Hernandez stole cash intended for several clients, but she did not report Hernandez to authorities or notify the ARDC because she could not prove that Hernandez stole the cash and she felt threatened by Hernandez, who left her office in January 2016 and whose current whereabouts are unknown. Respondent informed the clients who did not receive their money about the theft and paid them from her own funds.

Respondent's Mental State

Respondent testified that her husband's sudden death in 2011 and other family losses during that time period led to her suffering from grief and depression, which affected her life in subsequent years. She testified that she did not always go into the office and was drinking to the point of blacking out, which could have caused gaps in her memory. She received a DUI in December 2015, after which she was placed on probation and ordered to go to counseling. She attributed her disconnection with the office and her failure to review bank statements to her mental-health issues.

HEARING BOARD'S RULING, FINDINGS, AND RECOMMENDATION

Ruling on Emergency Motion to Continue Hearing

On November 30, 2020, two days before the hearing, Respondent filed an emergency motion, requesting that the hearing be continued to allow Respondent to be evaluated and to seek medical treatment. In the motion and at the hearing on the motion, Respondent's counsel stated that, about 24 hours prior to filing the motion, Respondent disclosed to her counsel serious mental-health struggles, which her counsel believed rendered Respondent psychologically unfit to sit for the hearing. Respondent's counsel requested that the hearing be rescheduled to allow Respondent to obtain emergency medical treatment and an evaluation.

The Administrator objected to the motion, arguing that there was insufficient evidence in the motion to support Respondent's assertions, and noting that, even though Respondent argued that she was not psychologically fit to attend the hearing, she had continued practicing law during the pendency of this matter and at the time the motion was filed. However, he agreed to a continuance of the hearing date if Respondent agreed to go on inactive status for the

duration of her hearing, arguing that, if she was not psychologically fit to attend her hearing, then she was not psychologically fit to continue to represent clients. She declined to do so.

After the parties presented oral argument, the Chair denied Respondent's motion, stating that he was "persuaded by the Administrator's argument that [Respondent] should not be deemed incapable of participating in this hearing this morning, and then go represent clients this afternoon." (Report of Proceedings at 23.)

Misconduct Findings

Respondent acknowledged, and the Hearing Board found, that she misappropriated funds from 10 clients. That misconduct is not at issue on appeal. It further found that her misappropriation of funds was dishonest, in that she purposefully and knowingly used those funds without her clients' authority. That finding is one of the primary issues on appeal; thus, we detail the basis of the Hearing Board's dishonesty finding.

The Hearing Board found that, over the course of several years, Respondent made numerous ATM withdrawals from Account 1872, used the funds to shore up her other accounts when the balances were low, and wrote checks on Account 1872 for personal purposes. It found that "[t]he sheer number of unauthorized withdrawals and payments, coupled with the prolonged use of the account in such a manner, is persuasive evidence that Respondent's acts were intentional and dishonest." (Hearing Bd. Report at 11.) It noted that the fact that she redacted "Client Trust Account" from several checks written for personal expenses clearly indicated an attempt to conceal the inappropriate use of funds.

The Hearing Board did not accept Respondent's explanation that her acts resulted from her failure to review her bank statements or to realize a debit card was attached to Account 1872. It reasoned that her movement of funds between accounts showed that she was aware of the

balance in each account and knew when a particular account was in danger of being overdrawn. It further found that the witness from U.S. Bank effectively rebutted Respondent's claim that she could have mistakenly withdrawn funds from an ATM without designating a primary or secondary account. It also did not accept Respondent's explanation that her actions were due to sloppy recordkeeping, the chaos left by a departing employee, or her mental state, because other aspects of her practice appeared to be functioning without difficulty. It noted that she was accepting clients, filing claims on their behalf, and receiving checks from insurers that she promptly deposited into her account.

The Hearing Board also did not accept Respondent's explanation that she held large amounts of cash in her office for clients. It found "the notion that she would keep as much as $60,000 in her office" to "def[y] common sense." (Hearing Bd. Report at 12.) It further found her "narrative regarding an assistant who supposedly stole cash intended for her clients" to be "totally implausible." (*Id.*) It did not believe her testimony that she tolerated the alleged theft without reporting it to the authorities and that the assistant is now nowhere to be found. It found that her claims relating to holding cash in her office and the theft of that cash to be a "fabrication" that supported its finding of dishonesty. (*Id.*)

Having rejected Respondent's explanations for her use of her clients' funds as not credible, the Hearing Board found that she knowingly and purposefully used her clients' funds for her own personal or business purposes without authority, and thereby engaged in dishonest conduct in violation of Rule 8.4(c).

<u>Findings Regarding Mitigation and Aggravation</u>

In mitigation, the Hearing Board considered Respondent's work with her church, her cooperation in her disciplinary proceedings, her lack of prior discipline, and the testimony of

two character witnesses. It also found she acknowledged that she did not properly segregate her clients' funds and had taken ARDC courses to correct her practices.

It declined to consider her testimony about her mental health issues in mitigation. It noted that the issue first surfaced immediately prior to the hearing, the date of which had been set months earlier, and found that her testimony did not persuade it of any causal connection between her mental state and her misuse of client funds.

In aggravation, it found that Respondent harmed her clients in that she deprived them of funds they needed during a period of financial vulnerability, forcing some of them to resort to loans or family support. It noted that, while most clients ultimately received the proceeds to which they were entitled, for many, the final distribution did not come until Respondent received an inquiry from the ARDC. Some clients still had not received all of their funds by the time of hearing. It also found that Respondent engaged in a pattern of behavior, in that her misconduct was not an isolated occurrence but rather involved numerous instances of her intentional use of client funds over an extended period of time. Moreover, it found that the pattern of conduct included Respondent's practice of using the funds of one client to pay her obligation to another client, thereby continually placing additional clients in jeopardy of not receiving payment.

In further aggravation, the Hearing Board found that Respondent was not truthful in claiming that she routinely kept a large reserve of cash in her office, or in describing the disappearance of the cash from her office. It also found that she falsified documents to support he claims that she acted properly in handling her clients' matters.

Sanction Recommendation

Noting that Respondent dishonestly misappropriated over $122,000 of client funds for her own purposes, the Hearing Board recommended that she be disbarred. It found that the

mitigating factors were far outweighed by the substantial aggravating factors, and that Respondent's false testimony and effort to blame others indicated that she does not fully recognize or take responsibility for her mistakes and presents a danger to the public. It thus found that "disbarment is necessary to adequately protect the public, maintain the integrity of the legal profession and safeguard the administration of justice." (Hearing Bd. Report at 38.)

ANALYSIS

Respondent raises multiple arguments on appeal, none of which persuades us to overturn the hearing panel chair's ruling denying Respondent's motion to continue the hearing or the Hearing Board's finding of dishonesty.

1. The hearing panel chair did not abuse his discretion in denying Respondent's request to continue the hearing

Respondent first argues that her hearing should not have proceeded on its scheduled date, when she was in the throes of a severe episode of depression. She argues that, given the charges of misconduct and the fact that the Administrator was seeking disbarment, it was imperative that she be able to articulate how she handled each client's case and the circumstances surrounding the theft of the client proceeds, but that her credibility as a witness was compromised as a result of her mental state. She thus argues that the hearing panel chair erred in denying her emergency motion to continue the hearing to allow her to be evaluated and seek medical treatment.

Respondent further argues that the nature of her mental health struggles were only discovered by her attorneys the day before the hearing, and that permitting a full psychiatric evaluation would have minimally burdened the parties involved, particularly when the hearing was being conducted virtually. She notes that the hearing panel chair granted a last-minute continuance for the Administrator to conduct an evidence deposition of a rebuttal witness, which extended the proceedings by over a month.

She also contends that, even if the hearing panel chair did not have enough information at the time of the hearing on the emergency motion to determine that she was unfit to testify, he should have revisited the issue after observing her direct testimony, which was scattered and disjointed, and during which she stated that she had slept three or four hours in the previous 10 days.

Respondent must show that the hearing panel chair abused his discretion in denying her motion to continue the hearing. "The decision of whether or not to grant a continuance is entrusted to the discretion of the [hearing panel chair]." *In re Cooley*, 91 CH 426 (Review Bd., Sept. 15, 1993), at 7, *approved and confirmed*, M.R. 9484 (Jan. 25, 1994) (citing *In re Smith*, 75 Ill. 2d 134, 139 (1979)). Such discretionary decisions will not be reversed unless the hearing panel chair abused his discretion. *Id*. An abuse of discretion occurs only when no reasonable person would take the position adopted by the hearing panel chair. *In re Coyle*, 2015PR00041 (Review Bd., Feb. 16, 2017), at 7, *petition for leave to file exceptions denied*, M.R. 28670 (May 18, 2017) (citations omitted). In accordance with this standard of review, Respondent must show that no reasonable person would have taken the hearing panel chair's position and denied her last-minute request to continue her hearing. We find she has not done so.

As the party seeking a continuance, Respondent bore the burden to establish that "extraordinary circumstances" existed to continue the hearing.[3] In denying the motion to continue on the grounds that Respondent was continuing to represent clients, the hearing panel chair effectively found that she had failed to satisfy that burden. *See In re Duric*, 2015PR00052 (Review Bd., Jan. 26, 2021), at 12, *recommendation adopted*, M.R. 30734 (May 18, 2021) (in affirming Hearing Chair's denial of respondent's motion to continue on grounds of health concerns, this Board noted that, "while Respondent was seeking to continue his hearing, he continued to practice

law"); *In re Makin*, 01 CH 91 (Hearing Bd., July 25, 2002), *approved and confirmed*, M.R. 18530 (Jan. 24, 2003) (continuance denied because evidence showed the respondent had been appearing in court on other matters and because medical professional's affidavit was insufficient to support the claims of incapacity).

The hearing panel chair's rationale and ruling strike us as eminently reasonable. At the hearing on Respondent's emergency motion, Respondent's counsel stated that Respondent was experiencing a mental health crisis that rendered her unfit to testify at her hearing. (*See* Report of Proceedings at 13-17.) The Administrator's counsel informed Respondent's counsel that the Administrator would not object to the motion if Respondent agreed to go on inactive status for the duration of her hearing, but Respondent declined that offer. (Id. at 19.) Respondent's counsel responded that Respondent was having a breakdown, and that he could not get informed consent from her about whether or not she would like to give up her law license until her proceeding was over. (Id. at 22.) On appeal, Respondent's counsel points to this "Hobson's Choice" as the crux of the hearing panel chair's error in denying the motion to continue.

However, it seems obvious that, if Respondent was so mentally impaired at the time of her hearing that she could not consent to going on temporary inactive status, then she most certainly should not have been representing clients at that time. It was this manifest inconsistency that the hearing panel chair noted in finding that the Administrator's offer was a reasonable one, and that Respondent should not be deemed incapable of participating in her hearing but capable of representing clients. (*Id*. at 23.)

In addition, Respondent did not attach any medical information to her motion to substantiate her claims. For example, she did not include any information about the physician she had purportedly made arrangements to see. *See, e.g., In re Bell*, 147 Ill. 2d 15, 37 (1992)

(concluding that Hearing Board properly denied attorney's request for continuance, in part, because attorney did not provide any documentation of his dental emergency or provide Hearing Board with the name of his treating dentist so that it could verify the attorney's dental problem).

In order for this Board to overturn the hearing panel chair's ruling, Respondent needed to show that no reasonable person would have taken the same position that the hearing panel chair did. She has not done so. We cannot say that no reasonable person would have denied her request to continue her hearing, given that Respondent brought the emergency motion the day before the hearing was to commence, after the matter had been pending for over a year; that she did not submit corroborating medical information with the motion; and that she declined to stop representing clients while her mental health was evaluated. Consequently, we find no abuse of discretion in the hearing panel chair's ruling denying Respondent's motion to continue the hearing.

2, The Hearing Board's finding of dishonesty is not against the manifest weight of the evidence

Respondent argues that the Hearing Board erred in finding that she engaged in dishonest conduct. She notes that the Hearing Board's finding that she engaged in dishonesty was based on its disbelief that she kept $60,000 in cash in her office to pay client settlement distributions and that Hernandez stole money from the firm, and its conclusion that Respondent fabricated evidence that was used at hearing. She argues that evidence in the record – primarily her own testimony – supports a contrary conclusion.

In essence, Respondent asks this Board to revisit the factual findings of the Hearing Board, in that she objects to the Hearing Board's credibility determinations and other fact-finding judgments. Under our standard of review, however, the issue is not simply whether we disagree with the Hearing Board's factual conclusions or might have reached a different conclusion if we

had been the triers of fact. Rather, we defer to the factual findings of the Hearing Board, and will not disturb them unless they are against the manifest weight of the evidence.

A factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding appears unreasonable, arbitrary, or not based on the evidence. *Leonardi v. Loyola University*, 168 Ill. 2d 83, 106, 658 N.E.2d 450 (1995); *Bazydlo v. Volant*, 164 Ill. 2d 207, 215, 647 N.E.2d 273 (1995). That the opposite conclusion is reasonable is not sufficient. *In re Winthrop*, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Moreover, while this Board gives deference to all of the Hearing Board's factual findings, it does so particularly with findings on witnesses' credibility, because the Hearing Board is able to observe the testimony of witnesses – which this Board is not – and therefore is in a superior position to assess their demeanor, judge their credibility, and evaluate conflicts in their testimony. *In re Kleczek*, 05 SH 24 (Review Bd., June 1, 2007), at 8, *petitions for leave to file exceptions denied*, M.R. 21745 (Sept. 18, 2007) (citing *In re Spak*, 188 Ill. 2d 53, 66, 719 N.E.2d 747 (1999); *In re Wigoda*, 77 Ill. 2d 154, 158, 395 N.E.2d 571 (1979)).

We cannot say that the Hearing Board's finding of dishonesty is against the manifest weight of the evidence, because we believe the record contains evidence to support it. *See Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88-89 (1992) ("If the record contains evidence to support [the Hearing Board's finding], it should be affirmed"). Moreover, the existence of conflicting evidence does not alone provide a sufficient basis for overturning a factual determination. *In re Spak*, 188 Ill. 2d 53, 66 (1999).

The Hearing Board cited a plethora of evidence to support its dishonesty finding, including that "Respondent, over the course of several years, made numerous ATM withdrawals from Account 1872, used funds from the account to shore up her other accounts when balances

were low, and wrote checks on the account for personal purposes;" that she redacted the words "Client Trust Account" from several checks written for personal expenses, which "clearly indicate[d] an attempt to conceal the inappropriate use of funds;" and that "[t]he sheer number of unauthorized withdrawals and payments, coupled with the prolonged use of the account in such a manner, is persuasive evidence that Respondent's acts were intentional and dishonest." (Hearing Bd. Report at 11.) Significantly, it rejected as not credible Respondent's explanations about what happened to her clients' funds, finding those explanations to "defy common sense," to be "totally implausible," and to be a "fabrication." (*Id*. at 12.)

Where there is evidence that supports the Hearing Board's findings, it is not our place to draw our own, different conclusions. Our standard of review does not allow us to substitute our judgment for that of the Hearing Board. *In re Kleczek*, 05 SH 24 (Review Bd., June 1, 2007), at 7-8, *petitions for leave to file exceptions denied*, M.R. 21745 (Sept. 18, 2007) (citing *In re Tuchow*, 90 CH 305 (Review Bd., Oct. 12, 1994), *approved and confirmed*, M.R. 6757 (Jan. 25, 1995)). *See also In re Milks*, 99 CH 20 (Review Bd., July 2, 2003), at 3-4, *petitions for leave to file exceptions denied*, M.R. 18895 (Nov. 14, 2003) ("Although an opposite inference may be supportable from the circumstantial evidence, the Hearing Board's finding is not against the manifest weight of the evidence, and we will not substitute our judgment for that of the Hearing Board") (citing *In re Krasner*, 32 Ill. 2d 120, 204 N.E.2d 10 (1965)).

Respondent has given us no basis to overturn the Hearing Board's findings. Rather, she challenges the Hearing Board's findings that she was not truthful in her testimony. But "credibility determinations rest with the Hearing Board," *Timpone*, 208 Ill. 2d at 383, because the credibility of witnesses is "determined by those who hear and observe them." *In re Woldman*, 98 Ill. 2d 248, 254, 46 N.E.2d 35 (1983). The Hearing Board had two days to observe Respondent

and determine whether she provided credible testimony, and it specifically found that she did not. In short, the Hearing Board did not believe Respondent, and it is not this Board's place to second-guess the Hearing Board's credibility determinations.

We also cannot say that the Hearing Board erred in determining that Respondent fabricated documents. It was not arbitrary or unreasonable for the Hearing Board to determine that Respondent fabricated the documents, based on the appearance and wording of the documents, as well as Respondent's inconsistent testimony about one of the documents. As with the Hearing Board's other findings, we may not have reached the same conclusion if we had been sitting as the trier of fact, but the record contains evidence that supports the Hearing Board's finding, which is therefore not against the manifest weight of the evidence.

Accordingly, we affirm the Hearing Board's finding that Respondent's misappropriation of client funds was dishonest, and therefore that she violated Rule 8.4(c).

3. The Hearing Board did not err in declining to consider Respondent's mental health as a mitigating factor

Respondent argues that any sanction against Respondent should have been mitigated by her serious bouts of depression and alcoholism, citing *In re Driscoll*, 85 Ill. 2d 312, 315, 423 N.E.2d 873 (1981) (while evidence of alcohol abuse will not excuse misconduct, it may be considered as a mitigating factor in determining the appropriate sanction); *In re Ackerman*, 99 Ill. 2d 56, 68, 457 N.E. 409 (1983) (recognizing "value of considering alcoholism as a mitigating factor in cases where there is detailed evidence to link the attorney's drinking to his misconduct"); and *In re Breen*, 97 CH 21 (Hearing Bd., July 16, 2001), *petition for leave to file exceptions allowed*, M.R. 18100 (May 30, 2002). (considering respondent's depression as a mitigating factor, after finding that the evidence established that his misconduct was related to his depression and inability to concentrate).

Respondent argues that she was suffering from depression after losing several family members, including her husband. She was also abusing alcohol, as evidenced by the DUI she received in 2015. She states that she is now receiving treatment to overcome both ailments. She argues that the Hearing Board's sole reason for disregarding her depression was because "other aspects of her practice appeared to be functioning without difficulty" (Hearing Bd. Report at 11-12), but that the record is replete with examples of how her depression and alcohol abuse impacted her day-to-day activities. She argues that the evidence overwhelmingly demonstrated that her struggles with alcohol, anxiety, and depression impacted her ability to manage her practice during the relevant time period, and that the Hearing Board erred in failing to consider her mental health in mitigation.

Based on the record before us, we cannot say that the Hearing Board erred in declining to consider in mitigation Respondent's testimony about her struggles with alcohol, anxiety, and depression. The Hearing Board may properly reject as mitigation an attorney's emotional state, mental health, or alcohol abuse when there is no causal connection with the misconduct. *See, e.g., In re Alpert*, 09 CH 104 (Review Bd., Feb. 11, 2013), at 16, *petition for leave to file exceptions denied*, M.R. 26028 (May 22, 2013) (respondent's mental health not considered in mitigation, because he did not demonstrate a causal connection with his misconduct).

Respondent has failed to demonstrate that the Hearing Board erred in finding no causal connection between her mental state and misuse of client funds or in declining to consider her testimony of depression and anxiety in mitigation. The Hearing Board cited a substantial amount of evidence, including its own credibility determinations, in support of its finding that Respondent's misconduct stemmed from her knowing and intentional use of her clients' funds without authority, which, in turn, supports the Hearing Board's finding of no causal connection

between Respondent's mental health and her misconduct. In addition, we find that the cases relied upon by Respondent are distinguishable from this one, in that, in each of those cases, there was a finding that the respondent's alcohol abuse or mental state contributed to the misconduct. As addressed above, there is no such finding in this case.

RECOMMENDATION

The Hearing Board recommended that Respondent be disbarred for her misconduct. In making our own 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 the attorney 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 "the need to impress upon others the significant repercussions of errors such as those committed by" Respondent. *In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994) (citing *In re Imming*, 131 Ill. 2d 239, 261, 545 N.E.2d 715 (1989)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, *Timpone*, 157 Ill. 2d at 197, while also considering the unique circumstances of each case. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991).

The Illinois Supreme Court has noted that, absent mitigating circumstances, intentional conversion of a client's money constitutes "a gross violation of an attorney's oath [and] calls for disbarment." *In re Rotman*, 136 Ill. 2d 401, 423 (1990) (citing *In re Braner*, 115 Ill. 2d 384, 394 (1987)). The Court has further stated that, even with mitigating factors, "[d]isbarment is particularly warranted where the conversion and fraud involved were intentional and consisted of

a series of improper acts over an extended period of time, and where respondent manifested a pattern of behavior which clearly tends to bring the legal profession into disrepute." *In re Lewis*, 138 Ill. 2d 310, 343 (1990) (internal quotations and citations omitted).

In this case, the mitigation does not outweigh the egregiousness of Respondent's misconduct combined with the significant amount of aggravation found by the Hearing Board. We find it particularly troubling that Respondent engaged in not just one instance of dishonest conversion – which in itself would be cause for great concern – but multiple instances of conversion over a three-year period involving 10 different clients and amounting to well over $100,000.

We find this matter to be similar to cases where attorneys were disbarred for dishonest conversion of client funds. *See, e.g., In re Feldman*, 89 Ill. 2d 7, 9-10, 12-13 (1982) (respondent converted more than $29,400 in estate funds to repay the shortage in another estate from which he had converted funds, and forged his client's signature on nine checks to facilitate his misappropriation of the second estate's funds; in mitigation, he offered character evidence, had made full restitution, and had not been previously disciplined; Court found that the mitigating evidence was insufficient to overcome the weight of his misconduct, which was "intentional and consisted of a series of improper acts of an extended period of time," and disbarred him); *In re Woldman*, 98 Ill. 2d 248 (1983) (despite evidence in mitigation, attorney who converted $200,000 in settlement funds belonging to four separate clients and attempted to cover up his wrongdoing by supplying false information to the ARDC was disbarred); *In re Birt*, 2013PR00053 (Review Bd., Dec. 18, 2015), *recommendation adopted*, M.R. 27896 (May 18, 2016) (attorney dishonestly misappropriated $80,000 entrusted to him to pay an elderly woman's expenses; based on his intentionally deceitful conduct, lack of remorse, and lack of candor in his testimony, the Hearing

and Review Boards recommended, and the Court imposed, disbarment); *In re Harris,* 97 SH 88 (Review Bd., Oct. 13, 1999), *petition for leave to file exceptions allowed*, M.R. 16300 (Jan. 24, 2000) (attorney dishonestly converted around $28,000 in settlement funds in eight personal injury matters over a one-year period of time, and made a false statement to a lienholder regarding the amount of a settlement; in mitigation, he admitted much of the misconduct, had no prior discipline, and provided evidence of good character; the Court disbarred him).

Respondent's conduct is at least as egregious as that of the attorneys in the foregoing cases. Her pattern of dishonest conduct convinces us that Respondent poses a significant risk to the public and profession. Consequently, we believe that her disbarment is necessary to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. *Timpone*, 157 Ill. 2d at 197.

Accordingly, we recommend that Respondent be disbarred. We find this sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and necessary to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession.

CONCLUSION

For the foregoing reasons, we find no error in the hearing panel chair's ruling denying Respondent's request to continue the hearing, nor in the Hearing Board's findings of fact or conclusions regarding misconduct. We therefore affirm them. We recommend that, for her misconduct, Respondent be disbarred.

Respectfully submitted,

R. Michael Henderson
Bradley N. Pollock

Leslie D. Davis, dissenting:

I agree with my colleagues that, given our standard of review, we cannot find that the hearing panel chair abused his discretion in denying Respondent's request to continue her hearing. I also agree with my colleagues that the Hearing Board's findings of fact and conclusions of misconduct should be affirmed because they are supported by evidence in the record. However, given the unique circumstances of this matter, particularly Respondent's uncontroverted testimony regarding her mental illness, I believe that disbarment is too harsh of a sanction. I would recommend, instead, a suspension of three years and until further order of the Court.

Respondent's misconduct was egregious and warrants a significant sanction. My recommendation of a lengthy suspension until further order rather than disbarment is based largely on my feeling that she should have benefitted from more empathy and a greater understanding of her cultural background, which explained her delay in informing her counsel of her mental health issues. It also takes into account the substantial amount of mitigating evidence present in this matter. In short, I simply do not believe that the circumstances of this matter warrant disbarment.

I also believe a suspension of three years and until further order is amply supported by precedent. *See, e.g., In re Smith*, 2020PR00089, *petition to impose discipline on consent allowed*, M.R. 30971 (Nov. 16, 2021) (suspension of three years and until further order where attorney dishonestly converted about $31,000 in two matters; in mitigation, he was candid and expressed remorse for his conduct and made restitution of about $6,000 in one of the matters; in aggravation, he was previously suspended for similar misconduct, engaged in intentional conduct that took place over several years, and had not returned about $25,000 in the other matter); *In re Vano*, 2019PR00095, *petition to impose discipline on consent allowed*, M.R. 30438 (Sept. 21, 2020) (suspension of three years and until further order where attorney dishonestly converted more than

$111,000 from four different clients and several third-party lienholders for his own personal or business purposes; in mitigation, he made full restitution to the affected parties; in aggravation, he was previously disciplined for converting funds from his law firm, engaged in intentional conduct that took place over several years, and caused harm to his clients and the lienholders); *In re Rosen*, 2012PR00088 (Review Bd., Feb. 27, 2015), *approved and confirmed*, M.R. 27362 (Sept. 21, 2015) (suspension of three years and until further order where attorney dishonestly converted more than $85,000 from two clients, as well as made misrepresentations to a police officer and presented fabricated bank records to the Administrator in order to conceal his conduct; in mitigation, he had not been previously disciplined; in aggravation, he had not made complete restitution as of the time of his hearing); *In re Garside*, 98 CH 105 (Hearing Bd., Mar. 27, 2001), *approved and confirmed*, M.R. 17527 (June 29, 2001) (suspension of three years and until further order where attorney misappropriated $51,000 from an elderly client; in mitigation, he had not been previously suspended, made full and timely restitution, had engaged in *pro bono* work and charitable activities, and presented character witnesses; in aggravation, he misappropriated funds from a vulnerable client).

Although the amount of misappropriated funds is greater in this matter than in the foregoing cases, the foregoing cases involve greater aggravation than that involved here. For example, the attorneys in *Smith* and *Vano* were previously disciplined for similar misconduct, which is significantly aggravating. The attorney in *Rosen* not only misappropriated a significant amount of money, but engaged in additional misconduct that included lying to a police officer and to the ARDC,[4] and had repaid only a fraction of the misappropriated funds as of the time of his hearing. And the attorney in *Garside* took advantage of a vulnerable client who was elderly and infirm and had no family to supervise her affairs.

Based on the mitigation that is present in this matter, including Respondent's uncontested testimony regarding her mental health struggles during the time of her misconduct, while also considering the serious aggravating factors, I find the circumstances of this matter to be no more egregious than the foregoing cases in which the attorneys were suspended for three years and until further order. I thus believe the same sanction is warranted in this matter, and that it would be sufficient to serve the purposes of attorney discipline. Notably, it would serve the paramount purpose of protecting the public, because, as with disbarment, Respondent would have to show rehabilitation in order to be reinstated to practice.

I therefore would recommend that Respondent be suspended for three years and until further order of the Court.

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 January 20, 2022.

/s/ Michelle M. Thome

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

MAINLIB_#1461733_v1

[1] The complaint also charged her in three counts with making false statements in a disciplinary investigation, but those counts were voluntarily dismissed shortly before hearing.

[2] In her appellate briefs, Respondent argued that this matter should be dismissed because of the hearing panel chair's error in denying her request for a continuance. At oral argument, Respondent's counsel asked that the matter be remanded to the Hearing Board for a new hearing rather than dismissed. Because we affirm the Hearing Board's findings of misconduct, we do not address that discrepancy in relief sought beyond this footnote.

[3] Commission Rule 272 provides: "The Chair may continue a hearing or prehearing conference at the Chair's discretion…. No hearing shall be continued at the request of a party except under extraordinary circumstances" (emphasis added).

[4] In the present matter, the Hearing Board found, in aggravation, that Respondent falsified documents to support her claims that she acted properly in handling her clients' matters. However, the Administrator, which initially charged her with making false statements in a disciplinary investigation, voluntarily dismissed those counts of the complaint. Thus, unlike in Rosen, Respondent was not found to have violated Rules 8.1(a) or 8.4(d).

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

In the Matter of:	
VALARIE POPE FRANKLIN,	
Respondent-Appellant,	Commission No. 2019PR00068
No. 6224951.	

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Michelle M. Thome, 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 January 20, 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.

Thomas P. McGarry
Katherine G. Schnake
Counsel for Respondent-Appellant
tmcgarry@hinshawlaw.com
kschnake@hinshawlaw.com

Valarie Pope Franklin
Respondent-Appellant
Valarie Pope Franklin & Assoc.
715 Lake St., Ste. 520
Oak Park, IL 60301-1414

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/ Michelle M. Thome
By: Michelle M. Thome
Clerk

FILED

January 20, 2022

ARDC CLERK

MAINLIB_#1461733_v1