In re David C. Thollander
Attorney-Respondent

Commission No. 2021PR00070

Synopsis of Hearing Board Report and Recommendation
(September 2022)

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The Hearing Board found that the Administrator proved that Respondent engaged in conduct prejudicial to the administration of justice, in violation of Rule 8.4(d), by continuing to insist on making a record after the judge had ruled on his objection, which ultimately delayed the trial's conclusion. It found that the Administrator failed to prove the remaining charges and recommended that they be dismissed. The Hearing Board recommended that Respondent be reprimanded for his misconduct.

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

In the Matter of:

DAVID C. THOLLANDER,

Attorney-Respondent,

No. 6202012.

Commission No. 2021PR00070

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Based upon Respondent's conduct during a 2018 trial in the Circuit Court of Cook County, the Administrator charged Respondent with engaging in conduct intended to disrupt a tribunal; using means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person; committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer; and engaging in conduct that is prejudicial to the administration of justice. The Hearing Board found that the Administrator proved that Respondent's conduct prejudiced the administration of justice, and, for that misconduct, rcommended that Respondent be reprimanded. It found that the Administrator failed to prove the remaining charges and recommended that they be dismissed.

INTRODUCTION

The hearing in this matter was held remotely by videoconference, as agreed by all parties, on March 28 and April 20, 2022, before a panel of the Hearing Board consisting of Jose A. Lopez, Chair, William J. Fenili, and Julie McCormack. Melissa A. Smart represented the Administrator. Respondent was present and was represented by Thomas P. McGarry and Shelley M. Bethune.

PLEADINGS AND MISCONDUCT ALLEGED

On August 30, 2021, the Administrator filed a one-count Complaint against Respondent arising out of Respondent's conduct during a bench trial before a Cook County Circuit Court judge. The Complaint charged Respondent with engaging in conduct intended to disrupt a tribunal; using means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a person; committing a criminal act that reflects adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer; and engaging in conduct prejudicial to the administration of justice, in violation of Illinois Rules of Professional Conduct 3.5(d), 4.4(a), 8.4(b), and 8.4(d), respectively. Respondent filed an Answer on October 12, 2021, in which he admitted some factual allegations and denied others, and denied all charges of misconduct.

EVIDENCE

The Administrator called two witnesses: Cook County Circuit Court Judge Anna Demacopoulos and Respondent, as an adverse witness. Administrator's Exhibits 1 through 12 and 14 through 16 were admitted into evidence.

Respondent testified on his own behalf and called Kevin Besetzny as a fact witness as well as three character witnesses. Respondent's Exhibits 1 through 10 were admitted into evidence.

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).

Respondent Is Charged With Engaging In Conduct Intended To Disrupt A Tribunal; Using Means In Representing A Client That Have No Substantial Purpose Other Than To Embarrass, Delay, Or Burden A Person; Committing A Criminal Act That Reflects Adversely On Respondent's Honesty, Trustworthiness, Or Fitness As A Lawyer; And Engaging In Conduct Prejudicial To The Administration Of Justice.

A. Summary

Respondent engaged in conduct prejudicial to the administration of justice, in violation of Rule 8.4(d), by continuing to insist on making a record after the judge had ruled on his objection, which led to the court prematurely ending the trial by several hours and ultimately delayed the trial's conclusion. The Administrator did not prove the remaining charges.

B. Admitted Facts and Evidence Considered

Respondent was licensed to practice law in Illinois in 1989. In addition, he was admitted to practice in Michigan in 1998.

In August 2014, Respondent filed an age discrimination lawsuit in the Chancery Division of the Circuit Court of Cook County on behalf of his client, Albert Campasano. The action, which arose out of Campasano's attempt to purchase property, eventually was assigned to Judge Anna Demacopoulos, who held a bench trial in the matter from May 21 through May 25, 2018. (Ans. at pars. 1-3.)

On the third day of the trial, May 23, Repondent objected to a question that his opposing counsel, Kevin Besetzny, asked a witness. After the judge denied Respondent's objection, the following exchange occurred between Respondent and Judge Demacopoulos:

COURT: All right. I'm going to allow the testimony. Go ahead, Mr. Koster.

MR. THOLLANDER: (Inaudible)

COURT: I'm sorry? Say it a little louder, Mr. Thollander.

MR. THOLLANDER: Oh, gadzooks.

COURT: We're going to take a five-minute recess.

(Ans. at par. 4; Adm. Ex. 7 at 56; Resp. Ex. 1 at 398.)

Judge Demacopoulos took a short recess. When the proceedings resumed, the following exchange occurred:

COURT: Mr. Koster, you're still under oath. You may ask another question.

MR. THOLLANDER: Your Honor, if I can make a record?

COURT: No.

MR. THOLLANDER: I can't talk?

COURT: Mr. Thollander, I'm warning you at this time. Please have a seat. Mr. Thollander, please have a seat.

MR. THOLLANDER: I want to make a record.

COURT: Have a seat.

MR. THOLLANDER: I still want to make a record.

COURT: Have a seat.

MR. THOLLANDER: I'm sitting down.

COURT: Thank you.

MR. THOLLANDER: I want to make a record.

COURT: Mr. Besetzny, please. You may ask another question.

MR. THOLLANDER: Your Honor, I'm objecting to the Court. I want to make a record as to the issue of the offer. Mr. Campasano's complaint sought among other things enjoining the sale and having the property sold to him, and the discussions and offer around the sale all pertained to settlement or partial settlement of this case.

COURT: Ask another question, Mr. Besetzny. Mr. Thollander, if you make one more comment under your breath --

MR. THOLLANDER: I said gadzooks.

> COURT: Mr. Thollander, if you make one more comment that's offensive to this Court, I will hold you in contempt of court.
>
> MR. THOLLANDER: Gadzooks is offensive to the Court?
>
> COURT: You are now in contempt of court. I'm fining you $1,000. Ask another question, Mr. Besetzny.
>
> MR. THOLLANDER: May I ask the Court --
>
> COURT: You are now [at] $2,000. Ask another question, Mr. Besetzny.

(Ans. at par. 5; Adm. Ex. 7 at 56-58; Resp. Ex. 1 at 398-400.)

A few minutes later, during the Respondent's cross examination of the same witness, the following exchange occurred between Judge Demacopoulos and Respondent:

> COURT: Mr. Thollander, clearly the witness is confused as I am to your question. You're asking a question that's confusing. You may clarify. What tab are you looking at?
>
> MR. THOLLANDER: I am looking at the tab that counsel has indicated --
>
> COURT: What tab?
>
> MR. THOLLANDER: 25.
>
> COURT: Mr. Thollander, you are now at $3,000. I will not tolerate your conduct any longer. We are terminating for the day.

(Ans. at par. 6; Adm. Ex. 7 at 74-75; Resp. Ex. 1 at 416-17.)

After this exchange, the matter was continued to the next day, May 24. When the trial resumed, Judge Demacopolous advised Respondent that the contempt order stood, but that the $3,000 sanction was vacated and a full sanction hearing would occur at the conclusion of the trial. Based on what had transpired the previous day, Judge Demacopolous asked Respondent to keep his voice down when addressing witnesses, refer to exhibits by their number, not use a hostile tone when questioning witnesses, and allow the Court to hear objections and arguments then rule on objections without interrupting the judge during her ruling. (Ans. at par. 7; Adm. Ex. 8 at 6-7; Resp. Ex. 1 at 435-36.)

After the trial concluded, Judge Demacopolous allowed Respondent to make a statement in allocution. The judge took the matter of the sanction for the contempt finding under advisement and continued the matter to August 28, 2018. (Ans. at par. 8; Adm. Ex. 8 at 69-76; Resp. Ex. 1 at 498-505.)

In a written opinion and order issued on August 28, 2018, the judge held Respondent in direct criminal contempt of court, finding that he "[r]efused to comply with Court orders; [c]ontinually muttered under his breath throughout the trial; interrupted the Court [by] yelling, 'Gadzooks!' after the Court ruled; and [b]ehaved in other rude, hostile, and unbecoming manners to the Court." (Adm. Ex. 10 at 1-2.) The judge further found that Respondent's behavior "impeded and interrupted [the] Court's proceedings, lessened the dignity of the Court, and tended to bring the administration of justice into disrepute." The judge ruled that Respondent was in direct criminal contempt of court by willful and contemptuous conduct, and fined him $1,000. (Id. at 2.)

Respondent appealed from the contempt judgment against him. On December 19, 2019, the Illinois Appellate Court issued an opinion affirming the contempt judgment. (Adm. Ex. 14.) Respondent filed a petition with the Illinois Supreme Court seeking leave to appeal from the appellate court's decision. (Adm. Ex. 15.) On March 25, 2020, the Illinois Supreme Court denied Respondent's petition. (Adm. Ex. 16.)

Testimony of Judge Demacopolous

At Respondent's hearing, Judge Demacopolous testified that, at the time Respondent was challenging her ruling overruling his objection, he was "getting extremely aggressive, standing, pacing, and yelling." (Tr. 124.) She testified that he was "shuffling or throwing papers on his desk." (Tr. 129.) When asked to clarify what she meant by throwing papers, she testified that he was "taking papers off his desk, and throwing them up in the air, or … shoving them across the table with his client right next to him." (Tr. 136.) She testified that he was "visibly upset" at her

ruling, and, while he was walking away with his back toward her, he said something inaudible under his breath. (Tr. 129.) She asked him to say it louder, and he responded, "Oh, gadzooks." (Id.) She testified that she then took a five-minute recess to defuse the situation and give Respondent an opportunity to calm down, think about his actions, and refocus back on the merits of the case. (Tr. 130.)

After the recess, Respondent continued to state that he wanted to make a record about his objection. Judge Demacopolous testified that Respondent continued to pace back and forth, refused to sit after she told him to take a seat, and spoke in a loud tone of voice. (Tr. 131-32.) After the judge instructed Respondent's opposing counsel, Kevin Besetzny, to ask another question, Respondent was "loud, saying things under his breath; getting aggressive in the courtroom; and making comments under his breath." (Tr. 135.)

Judge Demacopolous testified that, while she did not know what "gadzooks" meant, she considered it offensive, and believed it was "a comment or critique or an attempt to in some way undermine the Court's ruling." (Tr. 137-38.) She took it as if Respondent "was trying to disrupt the administration of justice," because she was trying to get to the merits of the case and have Mr. Besetzny ask another question, and Respondent continued to interrupt and challenge her ruling. (Tr. 138.) She acknowledged, however, that Respondent made "a very legitimate objection;" she just did not like that he kept asking to make a record about it over and over again. (Tr. 225.)

With respect to what occurred right before she ended the trial for the day, Judge Demacopolous testified that Respondent was questioning a witness and was getting frustrated with the answers he was getting. (Tr. 141.) She testified that both she and the witness were confused by Respondent's question about a particular exhibit, so she asked him to rephrase the question and asked him what exhibit he was looking at, and he "screamed" the number 25. (Tr. 141-43.) She

then ended the proceedings for the day, held him in contempt for a third time, and told him that she would order him to be taken into custody if he did not have $3,000 in the courtroom the next morning. (Tr. 143-44.)

Judge Demacopolous testified that Respondent's conduct on May 23 affected the proceedings in that it was disruptive and delayed the conclusion of the trial. (Tr. 145-46.)

Testimony of Respondent

Respondent testified that, when he asked if "gadzooks" was offensive to the Court, it was not a snide, demeaning, or flippant comment; he asked because he was "baffled." (Tr. 282.) He testified that he said "gadzooks" out of frustration, did not believe the word was offensive, and did not mean to offend the Court. (Tr. 517.)

He testified that he did not shout, yell, or scream "gadzooks" or "25," and that he did not throw papers. (Tr. 282, 530-32.) He testified that he said "gadzooks" under his breath. (Tr. 537.) He denied pacing or refusing to sit; denied he took papers off his desk and threw them in the air or shoved them across the table; denied he muttered or made inaudible statements; and denied that he screamed the number "25." (Tr. 598-99.) He testified that, to the extent he raised his voice during the trial, it was so that his client, who was 83 at the time of trial and was very hard of hearing, could hear him; and that, earlier in the trial, Judge Demacopolous had directed him to keep his voice up. (Tr. 339, 465-66.)

Respondent testified that, at the time Judge Demacopolous told him to have a seat, he was at his table, standing up but not walking around or pacing. Respondent testified that, after the judge told him to take a seat, he continued to ask to make a record because he needed to make a record to preserve the issue for his client. He testified: "I wanted the record to be clear that the Court was not allowing me to -- to raise concern as to the Court's ruling. I was baffled that she wouldn't let me make a record as to what was transpiring." (Tr. 299.) He further testified that he sat down

after the first or second time she asked him, and was already sitting when she repeated her request several more times. (Tr. 321-23.)

With respect to the allegation that he yelled "25," Respondent testified that the exchange at issue occurred during his cross-examination of the opposing party. Respondent was cross-examining the witness regarding an exhibit that he had testified about on direct examination, but the exhibit that was identified during direct examination did not contain the information that the witness testified about, which created confusion during Respondent's cross-examination. The witness's counsel, Mr. Besetzny, interjected during Respondent's questioning and identified the exhibit as 25. Judge Demacopolous then asked which tab, and Respondent said "25." (Tr. 328-31.) Respondent testified that he did not scream or yell when he said "25." (Tr. 335.)

Testimony of Kevin Besetzny

Kevin Besetzny testified that, when Respondent said "gadzooks" for the first time, Respondent was walking back to his table from where he was questioning the witness, and "mumbled very, very lowly under his breath that word, gadzooks." (Tr. 557.) Mr. Besetzny's impression as to why Respondent said "gadzooks" was that "it was simply a slight sign of exasperation" on Respondent's part. He testified that a lot had happened in a very short period of time since the lunch recess ended and it was a moment of frustration. (Tr. 558-59.)

Mr. Besetzny testified that he had no recollection of respondent yelling "gadzooks" at any point during the trial, and that "the first time that it was said was a very very quiet softly spoken word." (Tr. 559.) He further testified that he had no recollection of Respondent screaming "25;" shouting, yelling, screaming, or throwing papers at any point during the four-day trial; loudly arguing with or yelling at Judge Demacopolous during the trial; refusing to comply with court orders during the trial; muttering under his breath during the trial, other than the first time he said

"gadzooks;" interjecting during the court's rulings in an inappropriate or unprofessional way; or behaving in a hostile manner. (Tr. 561-62.)

In response to questions from the hearing panel chair, Mr. Besetzny testified that Respondent did not scream "gadzooks" or "25," and that "[t]here was nothing [he] would characterize as anyone screaming" or yelling during the trial. Mr. Besestzny testified that he believed that Mr. Campasano was hard of hearing, based upon his own interactions with Mr. Campasano while taking his deposition as well as at the time of trial. He testified that, when Judge Demacopolous ended the proceedings for the day on May 23, it was in the afternoon, likely after 3 p.m. and probably closer to 3:30. (Tr. 593-94.)

With respect to Respondent's actions following Judge Demacopolous' overruling of his objection, Mr. Besetzny testified: "Certainly, Mr. Thollander was trying to make a record. I -- I don't know that I would say he was interrupting the Court, but he was definitely trying to make a record. This was a particularly stressful few moments." He further testified: "Mr. Thollander was, as -- as many lawyers do during the course of the trial was -- was trying to make a record where he felt it was necessary and proper." (Tr. 585-86.) Mr. Besetzny testified that "any time there's objections and attempts are made to make a record, one could argue that there was a delay, but I did not think that there was any substantial delay or any attempt to delay things on Mr. Thollander's part." (Tr. 592.)

C. Analysis and Conclusions

The charging paragraph of the Complaint, which essentially mirrors Judge Demacopoulos' order holding Respondent in contempt, alleges that Respondent "mutter[ed] under his breath, … shout[ed] at, loudly argue[d] with, yell[ed at,] and interrupt[ed] Judge Demacopoulos and behav[ed] in other rude, hostile and unbecoming manners to the Court," in violation of Rules 3.5(d), 4.4(a), and 8.4(d), and, because of this conduct, was held in criminal contempt of court, in

violation of Rule 8.4(b). (Compl. ¶17.) As discussed below, we find that the Administrator proved that Respondent violated Rule 8.4(d) but failed to prove that he violated Rules 3.5(d), 4.4(a), or 8.4(b).

Nothing in our findings should be construed as a comment on the findings of criminal contempt made by the trial judge and affirmed on appeal. The legal standards used to impose contempt are significantly different from the standards used to make findings of a violation of the disciplinary rules. The contempt findings were made during a multi-day trial. We are examining a snapshot of the events that occurred during that trial. Our findings are based solely on the application of the proven facts regarding those events to the specific disciplinary rules violations charged by the Administrator.

Rule 3.5(d)

A lawyer shall not engage in conduct intended to disrupt a tribunal. Ill. R. Prof'l Conduct 3.5(d) (2010). We find that the Administrator did not meet his burden of proof on the charge that Respondent violated Rule 3.5(d).

In reaching our finding of no misconduct, we have considered all of the evidence presented to us, determined the credibility of witnesses, and attempted to resolve conflicting testimony. Based upon our analysis, we find insufficient evidence to support the allegation that Respondent engaged in conduct that was intended to disrupt the proceedings in Judge Demacopolous' courtroom.

We have considered Judge Demacopolous' testimony about Respondent's behavior in her courtroom, as well as Respondent's testimony, which conflicts with Judge Demacopolous' description of his conduct. We might have found it difficult to resolve the conflicting testimony between two individuals who have diametrically opposed views of what occurred over the course of the four-day trial, were it not for the testimony of Mr. Besetzny, who was present in the

courtroom at all times and directly witnessed the interactions between Respondent and Judge Demacopolous. Mr. Besetzny testified credibly that he had no recollection of Respondent engaging in the conduct that forms the basis of the Rule 3.5(d) charge. We give a great deal of weight to Mr. Besetzny's testimony, as he was a neutral observer of the exchanges between Respondent and Judge Demacopolous.

Accordingly, based on the evidence presented, including Mr. Besetzny's testimony and the trial transcript, we find insufficient evidence to find a violation of Rule 3.5(d).

This leaves us with Respondent's continued insistence on making a record, even after Judge Demacopolous overruled his objection, and even after she took a brief recess. While we do not condone Respondent's refusal to abide by her ruling, we are persuaded by the testimony of Respondent as well as Mr. Besetzny that Respondent did not intend to disrupt the proceedings. As Mr. Besetzny observed, Respondent "was trying to make a record where he felt it was necessary and proper," and was not attempting to delay the proceedings. (Tr. 586, 592.)

We find that, in continuing to insist on making a record, Respondent was focused solely on protecting his client's rights and preserving the record for a possible appeal. This is not to say that he was a model of civility or that he could not have handled the situation better than he did. His actions did, in fact, disrupt the proceedings, but based on the evidence, that was not his intent. It is to say, however, that the Administrtor did not meet his burden of showing that Respondent engaged in conduct intended to disrupt a tribunal. Cf. In re Cohn, 2018PR00109, M.R. 30545 (Jan. 21, 2021) (Hearing Bd. at 6) (attorney's derogatory and insulting comments to opposing counsel had no legitimate purpose but rather were made for the purpose of disrupting a deposition, and therefore violated Rule 3.5(d)).

Accordingly, we find that the Administrator did not prove by clear and convincing evidence that Respondent violated Rule 3.5(d).

Rule 4.4(a)

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person. Ill. R. Prof'l Conduct R. 4.4(a) (2010). For the same reasons that we found that the Administrator failed to prove a violation of Rule 3.5(d), we also find that he failed to prove a violation of Rule 4.4(a).

While we do not condone Respondent's refusal to accept Judge Demacopolous' ruling and abide by her instructions to move on from his objection, we find that the evidence does not support the charge that his actions had no substantial purpose other than to embarrass, delay, or burden a third person. Rather, the evidence clearly establishes that Respondent's primary purpose in continuing to object to Judge Demacopolous' ruling and insisting on making a record, notwithstanding the judge's repeated admonitions, was to advocate for his client and protect his client from what he believed to be an incorrect evidentiary ruling. See In re Murphy, 2012PR00146 Nov. 30, 2105) (Hearing Bd.) (finding no violation of Rule 4.4(a) where Respondent's purpose in making certain statements and filing certain pleadings was to protect her own financial position and obtain fees she believed had been awarded to her).

Accordingly, we find that the Administrator did not prove by clear and convincing evidence that Respondent violated Rule 4.4(a).

Rule 8.4(b)

It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. Ill. R. Prof'l Conduct 8.4(b). Comment 2 to Rule 8.4 notes that "a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses

involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category."

Respondent was held in direct criminal contempt of court based upon his interactions with Judge Demacopolous described above. Again, we do not condone behavior that could be construed as disrespectful to a judge, but we cannot say that Respondent's actions reflect adversely on his honesty, trustworthiness, or fitness as a lawyer, nor do they fall into any of the categories set forth in Comment 2. While, as discussed below, we find that Respondent's conduct prejudiced the admnistration of justice by causing a delay in the trial, this impact on judicial proceedings does not constitute "serious interference with the administration of justice."

Moreover, the Administrator presented no precedent that would support a finding that Respondent's conduct rose to the level of conduct that has been found to violate Rule 8.4(b). To the contrary, the cases cited by the Administrator in support of the charge that Respondent violated Rule 8.4(b) are factually distinguishable from this one, in that they clearly involve fitness to practice or dishonesty – conduct that is expressly encompassed by Rule 8.4(b). See In re Thomas, 2017PR00035, M.R. 30052 (Nov. 19, 2019) (attorney held in criminal contempt for appearing in court while intoxicated; he also was convicted of aggravated DUI); In re Moore, 99 CH 36, M.R. 17486 (May 25, 2001) (attorney who had multiple DUI convictions was held in criminal contempt for appearing in court while intoxicated and for being unfit to proceed with a plea); In re Freund, 2013PR00097, M.R. 27515 (Sept. 21, 2015) (in dissolution proceeding, attorney was held in indirect criminal contempt for assisting client in removing property from the marital residence in violation of court orders). Respondent's conduct, in contrast, involved neither dishonesty nor substance-abuse or mental-health issues that would call into question his fitness as a lawyer.

Consequently, based on the text of Rule 8.4(b), the commentary to that rule, and the absence of precedent that would compel us to hold differently, we find that Respondent's conduct did not violate Rule 8.4(b).

Rule 8.4(d)

It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Ill. R. Prof. Cond. 8.4(d). In order to establish a violation of Rule 8.4(d), the Administrator must prove that the attorney's conduct caused actual prejudice to the administration of justice. Prejudice to the administration of justice has been found when an attorney's offensive remarks led to unnecessary court time, lawyer time, litigant expense, and animosity between counsel. See In re Cwik, 89 CH 690 (Review Bd. at 10) (Reprimand, Mar. 9, 1993). We find that the Administrator proved that Respondent's conduct before Judge Demacopolous prejudiced the administration of justice.

In a case that is analogous to the present matter, an attorney was held in direct criminal contempt after intentionally and repeatedly defying a judge's evidentiary ruling. In re Ginzkey, 2010PR00006 (Oct. 7, 2010) (Hearing Bd.). In the written order setting forth his adjudication of contempt against the attorney, the judge stated that the attorney's conduct "impeded and interrupted the proceedings, lessened the dignity of the court, and tended to bring the administration of justice into disrepute." Id. at 2. Based on this conduct, the Adminisrator charged the attorney with engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the 1990 Illinois Rules of Professional Conduct. The Administrator recommended that the attorney be reprimanded for his actions; the Hearing Board agreed and issued a reprimand of the attorney.

As in the Ginzkey matter, Respondent's initial refusal to accept the Court's evidentiary ruling caused the Court to expend time urging him to move on, precipitated a five-minute recess,

and ultimately created a tense situation that culminated in the Court ending the proceedings early on May 23, which caused a delay in the trial. We therefore find that Respondent's actions predjudiced the administration of justice, in violation of Rule 8.4(d).

EVIDENCE IN AGGRAVATION AND MITIGATION

Mitigation

Respondent presented testimony from three character witnesses, as follows:

Bonnie M. Wheaton is a DuPage County Circuit Court judge in the Chancery Division. She has been a judge for 34 years, and was the presiding judge of the Chancery Division for 20 years, from 2000 to 2020. Judge Wheaton testified that she knows Respondent from his numerous appearances before her over the past 20 years. Asked to describe his demeanor when he appears before her, Judge Wheaton testified that Respondent has always been prepared, polite, and respectful. She testified that, in a few of the cases that Respondent had in front of her, he represented difficult clients, and he did a good job managing the clients and doing the best he could in difficult situations. (Tr. 410-12.)

David Ricordati testified he has known Respondent for between 35 and 40 years, and Respondent is one of Mr. Ricordati's best friends. They also work together professionally, in that Mr. Ricordati, who is a real estate agent, gives Respondent two or three or four referrals a year for real estate closings. He also has referred a few litigation matters to Respondent. Mr. Ricordati testified that he has never had a complaint about Respondent from the people he has referred. He also testified about his close personal relationship with Respondent and Respondent's positive personal attributes. He testified that he has read the complaint against Respondent, and that the allegations against Respondent are not consistent with the man he has known for 35 years. (Tr. 420-28.)

Bradley Birge is a Chicago attorney who has been practicing since 1987, concentrating in commercial litigation. He met Respondent in April 2011, when he was investigating a fraudulent transaction on behalf of a client and learned that Respondent had a similar issue with one of his clients. Mr. Birge testified at length about the extensive help that Respondent provided to him, with no compensation, throughout the litigation, which spanned almost 10 years. He testified that he trusts Respondent's judgment and integrity, and believes he is honest, trustworthy, and intelligent. Mr. Birge testified that he was familiar with the allegations of the complaint against Respondent, and that he still believes Respondent is an excellent lawyer and a benefit to the Illinois Bar. Mr. Birge testified that Respondent has an excellent reputation in the legal community. (Tr. 481-501.)

Aggravation

The Administrator contends that Respondent has neither expressed remorse for his conduct nor acknowledged that he engaged in wrongful conduct.

Prior Discipline

Respondent has no prior discipline.

RECOMMENDATION

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, 2014IL117696, ¶ 90. In arriving at our recommendation, we consider these purposes as well as the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1184 (2003). We seek to recommend similar sanctions for similar types of misconduct, but must decide each case on its own unique facts. Edmonds, 2014IL117696, ¶ 90.

By no means do we excuse Respondent's misconduct, but neither do we find it particularly serious, given that it occurred on one afternoon of a four-day trial, caused no harm to the parties, and caused only a short delay in the proceedings. We also find that Respondent's misconduct is mitigated by the facts that he fully cooperated in his disciplinary proceeding, has an unblemished record in 33 years of practice, and presented impressive character testimony.

The Administrator asks this panel to find, in aggravation, that Respondent has not expressed remorse for his conduct before Judge Demacopolous or even acknowledged that he engaged in wrongful conduct. It is true that, during his hearing, Respondent testified about his view of the events that unfolded in Judge Demacopolous' courtroom, disputed Judge Demacopolous' characterization of the events, and denied that his actions constituted misconduct. However, a respondent is entitled to defend himself, and the fact that he does so is not aggravating and does not mean he lacks remorse. In re Grosky, 96 CH 624, M.R. 15043 (Sept. 28, 1998) (Review Bd. at 9-10); In re Carey and Danis, 99 SH 67 and 99 SH 68, M.R. 18575 (May 22, 2003) (Review Bd. at 16-17). These principles hold particularly true where, as here, we agree with Respondent that the evidence does not support all of the charges of misconduct. Consequently, we decline to find, in aggravation, that Respondent lacked remorse or failed to acknowledge that he engaged in misconduct.

The Administrator requested that Respondent be reprimanded for his conduct. Based upon the nature of Respondent's misconduct, and taking into account the mitigating factors, we agree that a reprimand is an appropriate disposition in this matter. See, e.g., In re Ginzkey, 2010PR00006, (reprimand of attorney who engaged in conduct prejudicial to the administration of justice by repeatedly defying judge's evidentiary ruling); In re Harrison, 06 CH 36, M.R. 22839 (March 16, 2009) (censure of attorney who made statements that he knew were false or with

reckless disregard as to their truth or falsity concerning the integrity of a judge and a prosecutor and engaged in conduct that was prejudicial to the administration of justice). We find that Respondent's misconduct is on par with that of the attorney in Ginzkey, and is less egregious than the misconduct at issue in Harrison.

Accordingly, we recommend that Respondent, David C. Thollander, be reprimanded.

Respectfully submitted,

Jose A. Lopez, Jr.
William J. Fenili
Julie McCormack

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 September 8, 2022.

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

In the Matter of:

DAVID C. THOLLANDER,

Attorney-Respondent,

No. 6202012.

Commission No. 2021PR00070

PROPOSED REPRIMAND

To: David C. Thollander

You are being reprimanded by the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission as follows:

1. As detailed in the Hearing Board Report and Recommendation, during a 2018 trial in the Circuit Court of Cook County before Judge Anna Demacopoulos, you engaged in conduct that prejudiced the administration of justice.

2. Your conduct violated Rule 8.4(d) of the 2010 Illinois Rules of Professional Conduct.

3. You have not been previously disciplined; you did not engage in any dishonest conduct; and you fully cooperated in these proceedings. Based on the favorable character testimony you presented, we believe your conduct during the 2018 trial is not consistent with your usual manner of practicing law and that you will not repeat your mistakes.

4. Your conduct, however, was improper and cannot be condoned. The Hearing Board has authority, pursuant to Supreme Court Rule 753(c) and Commission Rule 282 to administer a reprimand to an attorney in lieu of recommending disciplinary action by the Court, and the Hearing Board has determined such action is appropriate in this case.

5. Therefore, you are hereby reprimanded and admonished not to repeat or engage in conduct similar to the misconduct outlined in the Report and Recommendation.

6. You are further advised that, while this reprimand is not formally presented to the Supreme Court, it is not to be taken lightly. This reprimand is a matter of public record and is on file with the Attorney Registration and Disciplinary Commission. It may be admitted into evidence in any future disciplinary proceedings against you.

Respectfully submitted,

Jose A. Lopez, Jr.
William J. Fenili
Julie McCormack

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