In re Robert Edward Lewin
Respondent-Appellant

Commission No. 2023PR00042

Synopsis of Review Board Report and Recommendation
(July 2024)

The Administrator brought a one-count disciplinary Complaint against Respondent, charging him with engaging in conduct that was prejudicial to the administration of justice, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010). The Complaint alleged that Respondent harassed Will County Courthouse staff by making inappropriate and offensive comments.

The Hearing Board found that Respondent committed the charged misconduct and recommended that Respondent be suspended for six months, until further order of the Court ("UFO").

Respondent appealed, challenging the Hearing Board's sanction recommendation. Respondent argued that the sanction should be a suspension of less than six months, and should not include a UFO provision.

The Review Board recommended that Respondent be suspended for two years, UFO, with the suspension stayed after six months, by an eighteen-month period of probation, with conditions. In other words, the Review Board recommended a six-month suspension, followed by eighteen months of probation, subject to conditions, and a violation of probation would result in a UFO sanction.

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

In the Matter of:

ROBERT EDWARD LEWIN,

Respondent-Appellant,

No. 1646710.

Commission No. 2023PR00042

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a one-count disciplinary Complaint against Respondent, charging him with engaging in conduct that was prejudicial to the administration of justice, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010). The Complaint alleged that Respondent harassed Will County Courthouse staff by making inappropriate and offensive comments.

Respondent, who was pro se, did not file an Answer to the Complaint, and the allegations of the Complaint were deemed admitted.

The disciplinary hearing was held on October 17, 2023, and Respondent appeared pro se. The Administrator presented one witness, and offered no exhibits. Respondent did not call any witnesses or offer any exhibits. He did give a closing argument, after being placed under oath.

The Hearing Board found that Respondent committed the charged misconduct and recommended that Respondent be suspended for six months, until further order of the Court ("UFO").

Respondent, who is now represented, filed an appeal, challenging the Hearing Board's sanction recommendation. Respondent argues that the sanction should be a suspension of less than six months, and should not include a UFO provision. The Administrator argues that the Hearing Board's recommendation is appropriate, and Respondent should be suspended for six months, UFO. The only issue on appeal is the appropriate sanction.

For the reasons that follow, we recommend that Respondent be suspended for two years, UFO, with the suspension stayed after six months, by an eighteen-month period of probation, with conditions. In other words, we recommend a six-month suspension, followed by eighteen months of probation, subject to conditions; and a violation of probation will result in the revocation of probation, and the imposition of a UFO sanction.

BACKGROUND

Respondent

Respondent was admitted to practice law in Illinois in 1974. During the relevant time period, he was a solo practitioner, with a focus on criminal defense cases. Most of his cases were in Will County. Respondent has one prior disciplinary matter from 2022, as discussed below.

Respondent's Misconduct

Between 2016 and 2023, Respondent made harassing, offensive, inappropriate, and lewd comments to Will County Courthouse staff, and in one instance, he put his hand in a female employee's hair, without her permission. The evidence at the disciplinary hearing included the allegations in the Complaint, which allegations were deemed admitted. (*See* Complaint, Common Law Record ("C.") 5-11.) The evidence also included the testimony of Thaddeus Zito ("Zito"), the Deputy Trial Court Administrator for the 12th Judicial District, who investigated Respondent's

actions. (*See* Tr. 23-47.) Additionally, the evidence included Respondent's closing argument, which he gave under oath. (*See* Tr. 54-65.)

The investigation in this case began in 2021, when a court employee on the court bailiff's staff complained about inappropriate behavior by Respondent dating back to 2016. (Complaint at ¶2, C.5-6.) According to Zito, that court employee outlined several interactions she had with Respondent that involved sexual harassment-type conduct between 2016 and 2021. (Tr. 25.) The employee's complaint also summarized similar interactions that other people had with Respondent, which included Respondent's asking court employees out on dates; offering to show them "a good time;" and telling women that they "smell really good" and "look good enough to eat." (Complaint at ¶2, C.5-6.) Zito investigated Respondent's actions, and conducted interviews with courthouse staff members. (Complaint at ¶3, C.6; Tr. 45-46.) Respondent's misconduct includes the following actions.

In March 2021, Respondent came up behind a woman, who worked at the courthouse; Respondent patted her head and placed his hand in her hair, without her consent. (Complaint at ¶5, C.6; Tr. 42, 59.) That woman worked in the law library, and Respondent sometimes discussed his personal life with her and left candy on her desk. (Complaint at ¶4, C.6.) In his response to the Complaint ("Response"), Respondent stated, "I did touch her inappropriately on the top of her head;" and "I did leave candy on her desk on a number of occasions." (Response at ¶7, C.32.)[1] A deputy sheriff, who saw Respondent touch the woman's hair, warned Respondent not to do anything like that again. (Complaint at ¶5, C.6.)

In April 2021, during a meeting with Zito and another court representative, ("the April meeting"), Respondent was asked whether he had ever said to female staff or female attorneys at the Will County Courthouse, "Nice dress, but it would look better on my floor." Respondent

replied, "I've told them they have a nice dress, but it would [be] better if it was off." (Complaint at ¶9, C.7) At the disciplinary hearing, Respondent testified, "I made the statement, boy, it sure would be nice if you took your dress off." (Tr. 60.)

During the April meeting, Respondent also admitted that he sometimes asked female opposing counsel, "Will begging or flirting be more effective?" (Complaint at ¶8, C.7) In his Response to the Complaint, Respondent stated, "I have stated to opposing counsel would begging or flirting be more effective." (Response at ¶2, C.31.) At the disciplinary hearing, Respondent testified that while he was discussing a criminal case with a prosecuting Assistant State's Attorney, he asked her, "[W]ould begging or flirting be more effective?" (Tr. 59.)

During the April meeting, Zito outlined the harassment allegations against Respondent, including all of the incidents that were described in the original complaint, and Zito offered Respondent the opportunity to rebut or clarify the allegations. (Tr. 27.) According to Zito, although Respondent "had some issues with some of the specifics," there was not "much of a dispute over the nature of the allegations at least in terms of the general description of what was going on." (Tr. 27-28.)

In May 2021, Zito sent Respondent a letter warning him not to make inappropriate comments to staff members, including inappropriate comments on women's hair, dress, or appearance; the letter also warned Respondent not to talk to staff members about his personal life, and not to ask staff members on dinner dates. (Complaint at ¶¶10-11, C.8.)

In August 2021, Respondent told a male employee in the Clerk's Office to "eat shit and die." (Complaint at ¶12, C.8.) Respondent asked the employee for assistance, and when the employee said that Respondent needed to file certain forms electronically, Respondent became agitated and told the employee to "eat shit and die." (*Id*.) In his Response to the Complaint,

Respondent denied saying that, but stated, "I have said in joking that [eat shit and die] was my favorite expression." (Response at ¶4, C.31.) Although Respondent denies that he made that statement, the allegations of the Complaint, including that allegation, were deemed admitted.

In November 2021, Respondent approached a woman, who was an employee in the Clerk's Office, and began talking to her about his personal life. During that conversation, Respondent asked the employee to have dinner with him. She declined. (Complaint at ¶13, C.8-9.) According to Zito, the clerk reported that Respondent asked her out on a romantic date and made some type of lewd comment. (Tr. 30.) At the disciplinary proceeding, Respondent admitted that he asked the clerk to go out on a date with him (Tr. 57), and testified that "she's a nice girl and I thought we would have a good time maybe." (Tr. 58.)

In June 2022, while speaking with four law students, who were judicial externs, Respondent talked about another law student, who was not there, stating, "If I were 55 years younger, I would get with her." (Complaint at ¶15, C.9.) In his Response to the Complaint, Respondent stated, "The conversation with the 4 externs took place about a week [after I talked to the law student]. I said if I were 50 years younger I would ask her out." (Response at ¶6, C. 32.) At the disciplinary hearing, Respondent testified, "I said [the law student] seemed like a nice girl to me. If I were 55 years younger, I would think about asking her out." (Tr. 57.)

In July 2022, the Chief Judge issued an order placing restrictions on Respondent's movement within the courthouse, limiting his access to most of the areas in the courthouse.

According to Zito, in June 2023, Respondent spoke to a female staff member, and commented on what a nice dress she was wearing. (Tr. 37-38.) According to Zito, a judge observed that interaction and admonished Respondent for making that statement. (*Id*.) At the disciplinary hearing, Respondent testified that in June 2023, he said to a clerk "that's a pretty dress you have

on." (Tr. 56.) That incident was not included in the Complaint, and, according to the Administrator, that evidence was offered as aggravating evidence.

At the disciplinary hearing Respondent admitted that he engaged in the conduct alleged the Complaint (except for saying, "eat shit and die"). He testified, "I did these things, okay." (Tr. 55.)

Respondent's Prior Discipline

Respondent was previously disciplined in November 2022, when he was suspended for two months for misconduct. He improperly communicated with a represented defendant in a criminal case, without the consent of the defendant's attorney, and obtained a written confession from that defendant, which he filed in court, in an effort to exculpate his own client, who was a co-defendant. He also attempted to represent the defendant who signed the confession, even though that representation would have involved a conflict of interest. *See In re Lewin*, 2021PR00074, *petition to impose discipline on consent allowed*, M.R. 031282, (Nov. 1, 2022). In that case, Respondent was disciplined for violating Rule 1.7(a) (having a conflict of interest), Rule 4.2 (improperly communicating with a represented individual), and Rule 8.4(d) (conduct that is prejudicial to the administration of justice).

Respondent's improper communication with the represented defendant took place in 2021, at the same time that he was engaging in the misconduct charged in this case. Respondent continued to engage in improper communications with courthouse employees after he was charged in the prior case in 2021, and after he was disciplined in 2022.

The Proceedings in the Instant Case

Respondent, who was acting *pro se*, failed to file an Answer to the Complaint, and he failed to file a list of potential witnesses. He also failed to appear at both pre-hearing conferences.

After Respondent failed to file his Answer, the Administrator filed a Motion for sanctions, requesting that the allegations of the Complaint be deemed admitted. (*See* Motion, C.26-35.) The Hearing Panel Chair ("Chair") issued an order directing Respondent to electronically file his Answer. The order stated that the Administrator's Motion for sanctions would be granted if Respondent did not file an Answer within two weeks. The order also set a date for a pre-hearing conference, and directed Respondent to appear. (Order, Aug. 7, 2023, C.39-40.) Respondent did not file an Answer, and did not appear at the pre-hearing conference, as ordered. The Chair granted the Administrator's Motion for sanctions, and deemed the allegations of the Complaint to be admitted. (Order, Sept. 14, 2023, C.43-44.)

Although Respondent did not file an Answer, he did prepare a Response to the Complaint, which he entitled "Answer to Complaint" and he faxed that Response to the Administrator's Counsel ("Counsel") on two occasions. In both instances, Counsel replied to Respondent by email. Counsel explained that all filings must be made through the ARDC Clerk's Office, and Counsel stated that he could not accept filings from Respondent or make filings on Respondent's behalf. Counsel also explained that Respondent's Response did not comply with the requirements of Commission Rule 233. Additionally, Counsel sent Respondent a copy of the Clerk's electronic filing manual; and suggested that the Clerk's Office might be able to assist him. Respondent then sent an email to Counsel, in which Respondent indicated that he was not able to electronically file his Answer, stating, "I can't do it." (Motion, Ex. 2, C.34.)

HEARING BOARD'S FINDINGS AND RECOMMENDATION

Misconduct Findings

Rule 8.4(d) prohibits attorneys from engaging in "conduct that is prejudicial to the administration of justice." The Hearing Board concluded that Respondent's harassment of Will

County Courthouse staff was prejudicial to the administration of justice, which constituted a violation of Rule 8.4(d). (Hearing Bd. Report at 2.)

Mitigation and Aggravation Findings

In terms of mitigation, the Hearing Board found that Respondent presented no mitigating evidence. (*Id*.)

In terms of aggravation, the Hearing Board stated:

> Respondent engaged in the current misconduct while the prior disciplinary matter was pending, during a time when he should have had a heightened awareness of his ethical obligations.
>
> In addition, Respondent was an experienced practitioner at the time of his misconduct; he engaged in a pattern of misconduct that spanned more than two years and involved multiple individuals, including a law student; and he continued to engage in his unacceptable behavior even after the Will County Circuit Court staff ordered him to stop his harassing behavior and placed restrictions on his ability to be in the courthouse. Finally, at his hearing, Respondent showed no recognition of the wrongfulness of his conduct nor any sincere remorse for it, and in fact, spent much of his testimony minimizing his conduct and rationalizing why his behavior should not have been deemed offensive. He repeatedly stated that he did not understand what was wrong with his conduct, which does not instill us with confidence that he will refrain from engaging in similar misconduct in the future.

(*Id*. at 2-3.)

Recommendation

The Hearing Board recommended that Respondent be suspended for six months, UFO. (*Id*. at 3.)

SANCTION RECOMMENDATION

The only issue on appeal is the appropriate sanction for Respondent's misconduct. Respondent challenges the Hearing Board's recommendation as being unwarranted and unduly harsh. He argues that a suspension of less than six months, without a UFO provision, is appropriate. He also argues that the Hearing Board gave too much weight to the aggravating factors, and failed to consider the mitigating evidence.

The Administrator, on the other hand, argues that a six-month suspension, UFO, is warranted given the serious nature of the misconduct and the aggravating factors.

We review the Hearing Board's sanction recommendation de novo. See In re Storment, 2018PR00032 (Review Bd., Jan. 23, 2020) at 15, petition for leave to file exceptions denied, M.R. 030336 (June 8, 2020). We consider the nature of the misconduct and aggravating and mitigating circumstances shown by the evidence, see In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (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, deter other misconduct, and protect the administration of justice from reproach. See In re Timpone, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993); In re Discipio, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994).

For the reasons set forth below, we recommend that Respondent be suspended for two years, UFO, stayed after six months, by an eighteen-month period of probation with the conditions recommended herein. We believe that the recommended sentence will protect the public, provide deterrence, and help to safeguard public confidence in the legal profession. Additionally, the conditions of probation will help to ensure that Respondent is willing and able to comply with the ethical rules.

We agree with the Hearing Board that Respondent should be suspended from the practice of law for six months. Nevertheless, we believe that a period of probation, rather than a UFO sanction, will better satisfy the disciplinary goals because it will help Respondent change his behavior, while he continues to serve the community. A violation of the probationary conditions, however, will result in a UFO sanction, which is consistent with the Hearing Board's recommendation.

The Serious Nature of the Misconduct

Respondent argues that a minimal sanction is appropriate here. We disagree given the serious nature of Respondent's misconduct and the significant aggravating factors. Respondent engaged in a pattern of inappropriate, offensive, and unethical behavior for years. His misconduct involved multiple incidents, which included the following:

- Respondent placed his hand in a woman's hair, without her consent, in front of other people.
- He told a woman that it would be nice if she took off her dress.
- He asked a clerk to go out on a romantic date, and made a lewd comment.
- He said he would like to get with a particular law student.
- He asked a prosecutor whether he should beg or flirt;
- He told women that they smelled good; they looked good enough to eat; and he would show them a good time.
- He told a male clerk to "eat shit and die."

Thus, Respondent subjected people to hurtful and demeaning behavior. His actions were so clearly offensive that he was reprimanded by a judge and a deputy sheriff on two separate occasions. Respondent's misconduct also had the ability to undermine the public's confidence in the legal profession. See Commentary to Rule 8.4, Comment 3 (stating, "[H]arassment by lawyers in the practice of law … undermines confidence in the legal profession and legal system …. [That includes] interacting with … court personnel, lawyers, and others.").

Respondent's harassment of court staff was prejudicial to the administration of justice because it interfered with the staff's work; it caused court employees to spent substantial time and resources investigating and addressing his misconduct; and it caused needless work for the Chief

Judge, who issued an order restricting Respondent's movements in the courthouse in order to protect the staff. See In re Cohn, 2018PR00109 (Review Bd., Oct. 9, 2020) at 11, petitions for leave to file exceptions allowed, M.R. 030545 (Feb. 11, 2021) ("A respondent's conduct prejudices the administration of justice if it causes judges or other attorneys to perform additional work."); In re Lane, 2019PR00074 (Review Bd., July 12, 2022) at 16, petition for leave to file exceptions denied, M.R. 031402 (Feb. 7, 2023) ("Respondent caused the judge to needlessly spend time addressing [Respondent's misconduct].").

Aggravating Factors

The aggravating factors in this case are significant and they add weight to the need for a serious sanction. Those aggravating factors include the following:

- Respondent failed to recognize the seriousness of his misconduct; he failed to express genuine regret; he failed to understand what was wrong with his behavior; and he failed to fully acknowledge that what he did was unethical and harmful, which raises serious concerns that Respondent will engage in similar misconduct in the future. *See In re Samuels*, 126 Ill. 2d 509, 531, 535 N.E.2d 808 (1989) (stating, "Respondent still believes he acted properly …, which does not inspire confidence that respondent is ready to recognize his duty as an attorney and to conform his conduct to that required by the profession."); *In re Capozzoli*, 2000PR00037 (Review Bd., Aug. 9, 2002) at 11, *petitions for leave to file exceptions allowed*, M.R. 18371 (Jan. 2, 2003) (stating, "An attorney's failure to recognize that he or she engaged in misconduct, or to show remorse … casts doubt on the attorney's understanding of his or her professional obligations and future ability to act in accordance with ethical standards.").

- Respondent continued his unethical behavior after Zito warned him that his actions were unwanted, his behavior was inappropriate, and his misconduct had to stop, and after Zito sent him a letter directing him to stop engaging in unprofessional conduct.

- He also continued to engage in misconduct after he was chastised by a deputy sheriff.

- He also continued to engage in misconduct after he was charged and sanctioned in his prior disciplinary case, which involved improper communications.

- Respondent was advised by Zito to get sexual harassment training, in order to understand what kind of conduct is inappropriate. (Tr. 29.) Respondent

disregarded that suggestion, and did not obtain any training. (Tr. 64.) Respondent stated that he does not understand what conduct is considered inappropriate today. (*Id*.)

- The record contains no evidence that Respondent has taken any substantial steps to ensure that his misconduct will not be repeated.

- At the disciplinary hearing, Respondent attempted to justify, defend, and minimize his wrongdoing. He testified that he is from a different generation; he was just joking around; he did not mean what he said; he was just being friendly; and he was being complimentary. (Tr. 57-62.) He had an excuse for everything. Based on his testimony, it appears that Respondent still believes, or at least wants to believe, that he did not do anything wrong, and he still does not understand the negative impact of his words and actions.

We strongly reject Respondent's justification and defense of his actions. Harassment is harmful and insulting, which Respondent should have known in this day and age, particularly since it was repeatedly explained to him. The fact that Respondent is from an older generation does not provide even the slightest excuse for sexually harassing women today, and Respondent should know better than to offer that as an excuse. We believe it is imperative that Respondent and other attorneys understand that sexual harassment is completely unacceptable and cannot be tolerated in the legal profession.

Mitigating Factors

Respondent argues that there are mitigating factors that should be considered in this case. We agree. The most significant mitigating factor is that Respondent has had a long and unblemished career in the law. Respondent has been a member of the bar since 1974 and he practiced law for more than forty years before he faltered and began to engage in unethical and unprofessional conduct.

Additionally, Respondent has complied with the conditions imposed by the Chief Judge of the Will County Courthouse, which restricted Respondent's movements in the courthouse. (Tr.

64.) His compliance with that order demonstrates that he has the ability (and is willing) to comply with a restrictive court order, which is a significant mitigating factor.

It is also mitigating that Respondent testified that he is willing to attend sexual harassment training; and he admitted all of the facts set forth in the Complaint, (except for telling a clerk to "eat shit and die.") It is also mitigating that his misconduct did not involve any clients or anyone who worked for him.

In terms of Respondent's failure to file an answer, Respondent argues that he did not intend to show any disrespect concerning the disciplinary proceedings. He points out that he prepared a Response to the disciplinary Complaint, which he sent to the Administrator, twice. Respondent asserts that he could not figure out how to file the Answer electronically. We have no reason to doubt Respondent's assertion that he did not know how to file his Answer electronically. However, Respondent offered no explanation as to why he did not seek help to electronically file his Answer and his list of potential witnesses, and Respondent's inability to file documents electronically raises serious concerns about his legal skills. Nevertheless, we recognize that Respondent did prepare a Response to the disciplinary Complaint, and we give that some limited weight in mitigation.

We believe that the recommended sanction properly balances the mitigating factors and the serious nature of Respondent's behavior.

Probation is Appropriate in This Case

As previously stated, we are recommending a six-month suspension, followed by eighteen months of probation, subject to conditions, with a UFO sanction that will apply if Respondent violates the probationary conditions. Probation will give Respondent a chance to reform his

behavior, with the assistance and supervision of others, and his failure to do so will result in the imposition of a UFO sanction.

It is evident from Respondent's testimony that he does not understand, or is not willing to believe, that his actions were unethical, which suggests that he is likely to repeat his misconduct in the future. We believe that the best solution is a suspension, partially stayed by probation, with conditions that require Respondent to participate in educational courses, and to work with a mentoring attorney and the ARDC's Probation Officer.

We also note that, in certain instances, Respondent's actions during the disciplinary proceedings were unprofessional. Respondent, who was *pro se*, failed to file an Answer to the disciplinary Complaint; he failed to comply with an order by the Hearing Board Chair directing him to file an Answer; he lacked the ability to make electronic filings and he failed to arrange for someone else to do so on his behalf; he failed to appear for pre-hearing conferences and failed to explain his absence; he failed to file a list of potential witnesses; and he failed to respond to the Administrator's motion for sanctions. Additionally, he failed to present any significant mitigating evidence at the disciplinary proceeding, which would have helped us assess his ability and willingness to practice law ethically. Respondent also engaged in unprofessional conduct in 2021, when he interviewed a represented defendant, for which he was disciplined in the prior case.

We believe that the recommended probationary conditions will help Respondent to change his behavior; develop an understanding of what constitutes harassment; improve his ability to act professionally; and update his skills concerning technology; and the threat of revocation will provide an incentive to practice law ethically. *See In re Smith*, 168 Ill. 2d 269, 297, 659 N.E.2d 896 (1995) (stating, "[T]he term of suspension combined with the successful completion of the strict probationary conditions will both safeguard the public and the administration of justice, as

well as give respondent the opportunity to reform and improve the case management skills necessary to continue his law practice."); *In re Jordan*, 157 Ill. 2d 266, 275, 623 N.E.2d 1372 (1993) (stating, "Both the public and the legal profession benefit from our use of probation as a form of attorney discipline …. Probation allows clients to be represented by an attorney who is still capable of practicing law, albeit under certain conditions or limitations …. The possibility that the term of suspension will be imposed, if the conditions of probation are not satisfied, also ensures the respondent's compliance with ethical rules."); *In re Gordon*, 2020PR00059 (Hearing Bd., May 26, 2021) at 10, *approved and confirmed*, M.R. 030887 (Oct. 14, 2021) (stating, "Probation can be used to address problems in an attorney's practice that can be rectified."); *In re Chiang*, 2007PR00067 (Review Bd., Jan. 30, 2009) at 15-16, *petition for leave to file exceptions denied*, M.R. 23022 (June 8, 2009) (stating, "Probation is an optional form of discipline for attorneys who have engaged in misconduct, but whose right to practice law needs to be monitored or limited …. The goal of … probation is to give the respondent an opportunity to correct the deficiencies in his or her practice, while still protecting the public.").

The recommended probationary conditions include the following: Respondent must complete the ARDC's Professionalism seminar, as well as twenty-five hours of training concerning sexual harassment, as approved by the Administrator; Respondent must meet with an ARDC Probation Officer as directed, and file quarterly reports; and Respondent's law practice must be supervised by a mentoring attorney, approved by the Administrator, with a primary focus on Respondent's communications; his professionalism; and his ability to use technology or obtain help in doing so. The recommended conditions are attached at the end of this Report and Recommendation.

In our view, this sanction will protect the public and the integrity of the profession in much the same manner as the UFO sanction recommended by the Hearing Board. During his probation, Respondent will have to establish – through his compliance with the recommended conditions – that he is fit to practice law and he has the ability to act ethically and professionally. His failure to comply with the recommended conditions will result in the revocation of probation, and the imposition of a UFO sanction.

Rule 764

Supreme Court Rule 764 provides that an attorney who is suspended for six months or more must take certain actions, including providing notice of his discipline to clients, opposing counsel, courts, and others. We believe that requiring Respondent to comply with Rule 764 is warranted to help protect Respondent's clients, opposing counsel, and the courts, as well as others, by making them aware of his misconduct and discipline.

Relevant Legal Authority

We have reviewed the cases cited by both parties, as well as cases we found through our own research. Our analysis has led us to the firm conclusion that a two-year suspension, UFO, stayed after six months by probation is the appropriate sanction, based upon precedent and given the circumstances of the instant matter.

Cases cited by the Administrator: The Administrator argues that Respondent should be suspended for six months, UFO, with no probation, as recommended by the Hearing Board. The Administrator cites two cases in which the attorneys were disbarred for misconduct that involved sexual harassment. Those cases, however, involved misconduct that was more egregious than the misconduct in this matter. Nevertheless, we agree with the Administrator that those cases provide guidance here, in that they show the need for a substantial sanction in cases involving sexual

harassment. *See In re Araujo*, 2022PR00026 (Hearing Bd., Sept. 30, 2022), *approved and confirmed*, M.R. 031492 (Jan. 17, 2023) (the attorney was disbarred for engaging in multiple instances of sexually harassing conduct while he was a judge; he attempted to kiss a female police officer, grabbed her hand, and made lewd remarks to her on two occasions; he asked a female court reporter for sex; and he made demeaning remarks about a female prosecutor; in aggravation, he abused his position as a judge; he engaged in a pattern of misconduct; he failed to cooperate in the disciplinary proceedings; and Respondent and his attorney did not appear at the hearing; in mitigation, he had no prior discipline); *In re Zurek*, 1999PR00045 (Review Bd., March 28, 2002), *petition for leave to file exceptions denied,* M.R. 18164 (Sept. 19, 2002) (the attorney was disbarred for making lewd and offensive remarks to a witness during a deposition, and for filing a motion in which he made false accusations against a judge and opposing counsel, accusing them of bribery; in aggravation, he attempted to obstruct the pre-hearing disciplinary process; and he behaved improperly at the disciplinary hearing, using offensive language, and walking out of the hearing in the middle of his testimony; and there was virtually no mitigating evidence).

The misconduct here is less serious than the misconduct in those cases, and the recommended sanction here is proportionately less serious than the sanctions (disbarment) in those two cases.

Cases cited by Respondent: Respondent argues that the sanction should be a suspension of less than six months, and should not include a UFO provision. Respondent cites three cases, *Fishman*, *Silverman*, and *Greenstein*, discussed below, which involved sexual harassment. We believe that those cases actually provide support for the recommended sanction.

In *In re Fishman*, 2001PR00109 (Review Bd., March 31, 2004), *petition for leave to file exceptions allowed and sanction increased,* M.R. 19462 (Oct. 15, 2004), the attorney was

suspended for one year for making multiple unwelcome sexual advances towards an associate at his law firm, which included non-consensual physical contact with her. In aggravation, Respondent denied the allegations of misconduct, and his misconduct contributed to the demise of his law firm. In mitigation, Fishman presented favorable character witnesses; he cooperated; he had a history of participating in charitable and community activities; he had no prior discipline; his misconduct occurred 12 years earlier; he paid a settlement of $350,000; and he was unlikely to repeat his misconduct.

In *In re Silverman*, 2004PR00120 (Review Bd., Dec. 12, 2006), *petition for leave to file exceptions denied,* M.R. 21413 (April 9, 2007), the attorney was suspended for nine months for engaging in improper non-consensual sexual conduct towards several women, and improperly communicating with a represented individual. In aggravation, Silverman abused his position; he caused emotional harm; and he engaged in a pattern of inappropriate and abusive behavior toward women. In mitigation, he cooperated; he was active in the community and the bar; he provided *pro bono* services; and he had no prior discipline.

Although *Fishman and Silverman* do not include probation, there is a serious concern in the instant matter (which is absent in those cases) that Respondent will engage in misconduct in the future, and the conditions of probation are designed to address that issue. Additionally, unlike Respondent, the attorneys in *Fishman and Silverman* had no prior discipline, and they were active in the community.[2]

Respondent also cites *In re Greenstein*, 2002PR01501, *petition to impose reciprocal discipline allowed*, M.R. 17978 (Mar. 22, 2002). In that case, the attorney was censured in Illinois, based on his sanction in California, where he was reprimanded and he was required to complete two years of probation, with conditions that included psychological treatment, community service,

and a course of study. The conditions imposed in California included the following: (1) attending the State Bar Ethics School; (2) engaging in a course of studies concerning women, and meeting with a mentor for 32 hours; (3) providing 200 hours of community service on a volunteer basis to the Center for Development of Women Entrepreneurs; (4) obtaining mental health treatment; and (5) filing quarterly reports with the Probation Unit of the disciplinary organization. Respondent successfully completed all of the conditions prior to being sanctioned in Illinois.

Greenstein was disciplined for making inappropriate and very personal comments to female employees at his law firm, and he touched an employee without her consent. In mitigation, he accepted responsibility; he expressed regret; he had no other discipline during a 30 year career; he cooperated; his home was destroyed in an earthquake and his family situation was extremely stressful; he made changes to his lifestyle; he participated in a psychotherapy program; and his doctor saw little likelihood that Greenstein would repeat his misconduct. We note that the mitigation in *Greenstein* was substantially greater than the mitigation here. Nevertheless, we believe that *Greenstein*, which involved two years of probation, supports the recommended eighteen months of probation in this case.

Finally, Respondent cites *In re Orner*, 1994PR00533, *petition for discipline on consent allowed*, M.R. 10435 (Sept. 23, 1994), which we believe is inapplicable. In that case, the attorney was censured for making sexually explicit comments to two legal secretaries, who worked at Orner's law firm. Unlike Respondent, however, Orner accepted responsibility, and he agreed to proceed based on a consent petition. Orner and his law firm also entered into an agreement with the Equal Employment Opportunity Commission that established methods to eliminate unlawful employment practices. Additionally, Orner had no prior discipline, whereas, in this case Respondent was previously disciplined. We note that Respondent's prior two-month suspension

was not enough to deter him from continuing to engage in unethical conduct, and we find that a minimal sanction, as suggested by Respondent, is not appropriate.

Additional cases: The additional cases discussed below, *Cohn*, *Gordon*, *Sides*, and *Lane*, also provide guidance here. In *Cohn*, Respondent made abusive statements, and was suspended for six months. In *Gordon*, *Sides*, and *Lane*, the attorneys made false statements – rather than harassing statements – that resulted in suspensions, stayed in part by probation.

In *In re Cohn*, 2018PR00109 (Review Bd., Oct. 9, 2020), *petitions for leave to file exceptions allowed and sanction increased*, M.R. 030545 (Feb. 11, 2021), the attorney was suspended for six months for using abusive and vulgar language against opposing counsel and making false statements concerning a judge's integrity. At the disciplinary hearing, Cohn stated that his abusive language was not a big deal, which showed that he did not fully understand the impact of his misconduct. In mitigation, Cohn had practiced law for 37 years without any prior discipline, and he served as a Zoning Commissioner in his suburb. The Review Board concluded that Cohn would benefit from a review of his professional responsibilities, and the Supreme Court ordered Cohn to complete the ARDC Professionalism seminar.

In *In re Gordon*, 2020PR00059 (Hearing Bd., May 26, 2021), *approved and confirmed*, M.R. 030887 (Oct. 14, 2021), the attorney was suspended for one year, UFO, with the suspension stayed after six months, by six months of probation, with conditions. In other words, Gordon was suspended for six months, followed by six months of probation. The UFO provision would apply only if Gordon violated the conditions of probation. Gordon was disciplined because he made false statements and created a false document; he failed to file an appellate brief in a criminal case; he failed to refund fees; and the pleadings that he filed reflected an extreme lack of professionalism. The probationary conditions included that Gordon's law practice be supervised by another

attorney; that Gordon complete the ARDC Professionalism Seminar; that he meet with the ARDC's Probation Officer; and that he file quarterly reports. If Gordon complied with the conditions, then probation would terminate without further order of the Court. If he violated the conditions, then probation would be revoked and he would be suspended, UFO.

In *In re Sides*, 2011PR00144 (Review Bd., March 31, 2014), *petitions for leave to file exceptions allowed and sanction modified*, M.R. 26732 (Dec. 4, 2014), the attorney was suspended for five months, with the suspension stayed after sixty days, by two years of probation, subject to conditions. In other words, Sides was suspended for two months, followed by two years of probation. Sides was disciplined for making false statements about the integrity of judges in his judicial circuit and about another attorney. Unlike Respondent, Sides acknowledged wrongdoing, expressed remorse, and had no prior discipline; Sides also presented significant mitigating evidence, including that he volunteered with the Red Cross and other organizations; he was active in his church; he provided *pro bono* services; and there was little risk that he would repeat his misconduct. The probationary conditions required that Sides' law practice be supervised by another attorney; that Sides submit quarterly reports to the ARDC; and that Sides attended meetings with an ARDC Probation Officer.

In *In re Lane,* 2019PR00074 (Hearing Bd., Nov. 4, 2021), *sanction recommendation adopted*, (Review Bd., July 12, 2022), *petition for leave to file exceptions denied*, M.R. 031402 (Feb. 7, 2023), the attorney was suspended for nine months, with the suspension stayed after six months, by a six-month period of probation with conditions. In other words, Lane was suspended for six months, followed by six months of probation. Lane was disciplined for making false statements, accusing a judge of protecting and assisting criminal conduct; entering a fraudulent order; and participating in improper *ex parte* communications. The conditions of probation

included supervision of Lane's law practice by another attorney, and attending meetings with an ARDC Probation Officer. The Hearing Board stated, "[W]e believe [Lane] would benefit from a period of probation focused on her professionalism and communications with others. We also note that … her representation of herself in this proceeding was disorganized and often not on point. These issues support our recommendation that [Lane] would benefit from a period of probation that includes working with a mentor." (*Lane* Hearing Bd. Report at 15.)

The misconduct in *Cohn*, *Gordon*, *Sides, and Lane* – as in this case – involved unprofessional, inappropriate, and offensive comments, which had the ability to undermine the integrity of the legal profession, damage the reputation of the legal profession, and negatively impact the individuals who were subjected to those comments. The recommended sanction in this case falls within the range of sanctions imposed in those cases, and the recommended conditions of probation are similar to conditions imposed in those cases.

CONCLUSION

In sum, we believe that the recommended sanction will help to ensure that Respondent does not engage in misconduct in the future. We also believe that it properly balances the serious nature of Respondent's actions, with the mitigating evidence, including that Respondent practiced law for more than forty years without any blemishes to his record.

The recommended sanction provides that Respondent will be prohibited from practicing law for six months; he will be given an opportunity to reform his conduct while on probation for eighteen months; and if he violates the terms of probation, the UFO sanction will go into effect. We believe that this sanction serves the goals of attorney discipline by protecting the public, maintaining the integrity of the profession, acting as a deterrent to Respondent and other attorneys, and helping to preserve public confidence in the legal profession.

Therefore, we recommend that Respondent be suspended for two years, UFO, stayed after six months by an eighteen-month period of probation, subject to the conditions recommended below:

a. Respondent shall attend and successfully complete the ARDC Professionalism Seminar, before the end of the first six months of his probation. Respondent shall provide proof of his attendance to the Administrator.

b. Respondent shall attend and successfully complete twenty-five hours of training concerning the issue of sexual harassment, to be determined in consultation with the Administrator, and subject to the approval of the Administrator, before the end of the first six months of his probation. Respondent shall provide proof of his attendance to the Administrator.

c. During his probation, Respondent's practice of law shall be supervised by a licensed attorney, with a primary focus on Respondent's communications; his professionalism; and his ability to use technology or obtain help in doing so. Respondent shall arrange a relationship with a supervising attorney, approved by the Administrator, to act as a mentor throughout the period of probation. Respondent shall meet with the supervising attorney within the first thirty days of probation, and at least once a month thereafter. Respondent shall authorize, direct, and arrange for the supervising attorney to provide a report in writing to the Administrator, no less than once every quarter, regarding respondent's cooperation with the supervising attorney, and the supervising attorney's general appraisal of respondent's communications, professionalism, and ability to use technology or obtain help in doing so. Respondent shall notify the Administrator of the name and address of the supervising attorney. Respondent shall provide notice to the Administrator of any change in supervising attorneys within fourteen days of the change.

d. During his probation, Respondent shall attend meetings with the ARDC's Probation Officer, as scheduled by the Probation Officer, and Respondent shall submit quarterly written reports to the Probation Officer concerning Respondent's cooperation with the supervising attorney, and the nature and extent of Respondent's compliance with the conditions of probation.

e. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct, specifically including, but not limited to, Rule 764, and Rule 8.4(d), and Respondent shall refrain from any sexual harassment and any other harassing behavior that is in violation of Rule 8.4(d).

f. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773, and shall reimburse the Commission, at least

thirty days prior to the termination of probation, for any further costs incurred during the period of probation.

g. Probation shall be revoked if Respondent is found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated, and the suspension shall continue until further order of the Court (UFO).

h. Probation shall terminate without further order of the Court provided that Respondent complies with the above conditions.

Respectfully submitted,

Bradley N. Pollock
Scott J. Szala
Pamela E. Hill Veal

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 July 24, 2024.

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

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[1] Although Respondent did not file an Answer electronically with the ARDC Clerk's Office as required, he prepared a Response that was entitled "Answer to Complaint," which he sent to the Administrator's counsel, and it is part of the record, as discussed below. (See Response, C.31-32.)

[2] We note that Fishman and Silverman were decided more than seventeen years ago. In our view, it is likely that cases involving similar misconduct today would result in much more serious sanctions than the sanctions imposed at that time. There is now a greater awareness of the significant harm caused by sexual harassment and non-consensual sexual conduct, and the strong need to prevent that type of behavior.

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

In the Matter of: **ROBERT EDWARD LEWIN,** Respondent-Appellant, No. 1646710.	Commission No. 2023PR00042

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

I, Andrea L. Watson, 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 email 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 July 24, 2024, 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.

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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/ Andrea L. Watson
By: Andrea L. Watson
Deputy Clerk

FILED

July 24, 2024

ARDC CLERK