In re Scott Ian Jacobson
Respondent-Appellant

Commission No. 2022PR00038

Synopsis of Review Board Report and Recommendation
(May 2024)

The Administrator brought a two-count complaint against Respondent, charging him with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010). The complaint alleged that Respondent knowingly made false statements in a judicial application, and during a job interview with the McHenry County State's Attorney's Office.

The Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be suspended for one year.

Respondent appealed, challenging the Hearing Board's sanction recommendation, and asking the Review Board to recommend that Respondent be reprimanded, censured, or suspended for less than six months. The Administrator asked the Review Board to adopt the Hearing Board's recommendation.

The Review Board agreed with the Hearing Board's sanction recommendation, and therefore recommended that Respondent be suspended for one year.

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

In the Matter of:

SCOTT IAN JACOBSON,

Respondent-Appellant,

No. 6301751.

Commission No. 2022PR00038

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a two-count complaint against Respondent, Scott Ian Jacobson, charging him with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010). The complaint alleged that Respondent knowingly made false statements in a judicial application, and during a job interview with the McHenry County State's Attorney's Office ("McHenry Office").

Following a hearing that was held on March 22 and March 23, 2023, the Hearing Board found that Respondent committed the charged misconduct and recommended that Respondent be suspended for one year. Respondent was represented at the hearing. The Administrator presented testimony from five attorneys, who participated in Respondent's job interview with the McHenry Office, and the Administrator called Respondent as an adverse witness. The Administrator offered nine exhibits that were admitted. Respondent testified on his own behalf and presented two character witnesses. He offered three exhibits that were admitted. (Hearing Bd. Report at 1-2.)

Respondent appealed, challenging the Hearing Board's sanction recommendation, and asking this Board to recommend that Respondent be reprimanded, censured, or suspended for less than six months. The Administrator asks this Board to adopt the Hearing Board's recommended sanction of a one-year suspension.

For the reasons that follow, we agree with the Hearing Board's sanction recommendation and, therefore, recommend that Respondent be suspended for one year.

FACTS

Respondent

Respondent was admitted to practice law in Illinois in 2010. While he was in law school, Respondent worked for two years as an intern and law clerk at the Cook County State's Attorney's Office ("Cook County"), in the Appeals Division and the Criminal Division. While there, he obtained his temporary law license under Supreme Court Rule 711 license, which allowed him to participate in trials, as long as he was supervised by a licensed attorney. (Tr. 28-30; Rule 711.)

After Respondent graduated from law school, he worked at the office of the Illinois State's Attorneys Appellate Prosecutor ("Appellate Prosecutor's Office") in Elgin, Illinois, for five years, from 2010 to 2015, where he primarily handled appeals. After that, he worked as a law clerk for Justice Susan Hutchinson of the Illinois Appellate Court, Second District, for three years. In 2018, he began working at the McHenry Office, as an Assistant State's Attorney ("ASA") in the Civil Division, where he primarily concentrated on appellate work. He was fired in May 2019, based on the misconduct charged here. Justice Hutchinson re-hired Respondent in 2019, and he was her senior law clerk at the time of the disciplinary proceeding. Respondent has no prior discipline.

Respondent's Misconduct

Overview: As charged in Count I of the disciplinary complaint, in 2016, Respondent applied for the position of Associate Judge, and he intentionally made a false statement about his trial experience on the judicial application. He was asked to list two jury cases that he had tried. One of the cases he listed was *People v. Castillo*. In fact, Respondent had not tried that case. (Tr. 81.)

As charged in Count II of the disciplinary complaint, in 2019, Respondent applied for a position with the McHenry Office to be the first chair trial attorney, prosecuting criminal cases, in a felony courtroom. He intentionally made false statements about his trial experience during an interview for the position, and in several subsequent conversations. He falsely represented that he had tried numerous cases before juries, including narcotics cases, and a DUI case involving five deaths. None of that was true. (Tr. 33, 54-62, 284.)

***The judicial application*:** In 2016, Respondent applied to be appointed as an Associate Judge in Illinois. Respondent, however, did not get the position.

The judicial application asked for information concerning jury trial experience, stating in question 4(A), "List the last two jury cases tried to verdict, during the past five years." One of the cases that Respondent listed was *People v. Castillo*, in Winnebago County. (*See* Adm. Ex. 14.) He certified that all of his statements were true. (*Id*.; Tr. 82.) However, Respondent did not try the *Castillo* case, and he did not appear in front of the jury in that case. (Tr. 81, 350-51, 379.)

***The April 2019 interview*:** In 2019, Respondent applied for a position with the McHenry Office to be the first chair trial attorney in a felony courtroom, handling criminal cases. Respondent had been working for the McHenry Office as an ASA in the Civil Division since July

2018. Because Respondent made numerous false statements during the interview, he did not get the job, and he was fired from his position as an ASA at the McHenry Office. (Tr. 246.)

On April 23, 2019, five attorneys from the McHenry Office interviewed Respondent for the first chair trial attorney position. The interviewing attorneys included: Patrick Kenneally, who was the McHenry County State's Attorney; Rita Gara, who was the First Assistant State's Attorney; Randi Freese, who was a Chief of the Criminal Division; Daniel Wilbrandt, who was also a Chief of the Criminal Division; and Michael Combs, who was in Special Prosecutions.

Those five attorneys testified at the disciplinary hearing. Collectively, they testified that Respondent stated he had extensive trial experience, which included the following:

- Respondent stated that he had tried numerous cases before juries while he was working for the Appellate Prosecutor's Office between 2010 and 2015. (*See e.g.*, Tr. 104-05, 134, 168-70, 220, 232.) According to Patrick Kenneally, Respondent stated he had tried a dozen or more cases while working for the Appellate Prosecutor's Office. (Tr. 232.)
- Respondent stated that he was a trial lawyer in *People v. Vasquez*, which was a DUI case that involved five deaths. (*See e.g.*, Tr. 105-06, 134-35, 170-71, 202-04, 234.)
- Respondent stated that he was assigned as a special prosecutor for the drug unit in the Champaign County State's Attorney's Office. (*See e.g.*, Tr. 134, 200-01, 232.)
- Respondent stated that he had tried cases with an attorney, Chuck Colburn, who worked for the Appellate Prosecutor's Office. (*See e.g.*, Tr. 107-08, 136, 202, 233.)
- Respondent stated that he had tried two cases in Winnebago County with an attorney, Pam Wells, concerning the termination of parental rights. (*See e.g.*, Tr. 137, 202-03, 233-34.)
- Respondent stated that he had tried felony narcotics cases as a first chair attorney for the Cook County State's Attorney's Office. (*See e.g.*, Tr. 103-05, 134-36, 140-41, 168, 184-85, 191, 200-01, 232, 235.)

One of the interviewing attorneys, Michael Combs, investigated those statements, and determined that none of those statements were true. Combs learned that Respondent had never handled any jury trials for the Appellate Prosecutor's Office; Respondent was not trial counsel on the *Vasquez* case; he was not assigned as a special prosecutor in the drug unit in Champaign

County; he did not try cases with Chuck Colburn; Respondent did not try cases with Pam Wells; and he did not try felony narcotics cases as a first chair attorney in Cook County. (Tr. 204-06.) Respondent also failed to produce his resume during the interview (Tr. 101-02, 113, 165-66), which would have made it clear that he had very limited trial experience. (*See* Resp. Ex. 3.)

Michael Combs prepared a memorandum in which he identified the statements that Respondent made during the interview, and summarized the investigation relating to those statements. (Tr. 207; Adm. Ex. 2.) In the memo, Combs stated, "I asked [Respondent] for specificity about his trial work and took notes. I then conducted a follow-up investigation and discovered that … the information provided by Mr. Jacobsen was false." (Adm. Ex. 2, at p.1.)

At the disciplinary hearing, Respondent admitted that he did not have extensive trial experience. He testified to the following: He did not try any cases while he worked at the Appellate Prosecutor's Office. (Tr. 33, 54.) He did not try the *Vasquez* case which was a DUI case involving five deaths. (Tr. 60.) He was not assigned as a special prosecutor for the drug unit in Champaign County. (Tr. 55-58.) He did not try any cases with Chuck Colburn. (Tr. 59.) He never tried a case with Pam Wells. (Tr. 61-62.) He was never a first chair attorney in a felony courtroom in Cook County (Tr. 62), and he never conducted a full bench or jury trial by himself with no supervision while he was an intern in Cook County. (Tr. 284.) Respondent testified, "I would not have been a first chair of anything in the Cook County State's Attorney's Office at that time, because I was not sworn in as an ASA, and was not … a first chair in a felony courtroom." (Tr. 62.)

Conversations after the April 2019 interview: Shortly after the interview, Respondent had several conversations with the interviewing attorneys.

On May 3, 2019, Respondent met with Patrick Kenneally and Rita Gara. They confronted him with the statements that they believed to be untrue, and sought to get an explanation from him. (Tr. 175, 239.) In response, Respondent was very evasive and they were unable to get a straight answer from him. (Tr. 175-76.) However, Gara testified that "at some point towards the end, he finally admitted to embellishing some of his work history. That was the word he used, and then he apologized." (Tr. 177.) In a memo summarizing the meeting, Gara stated, "He finally admitted that he 'embellished' … and apologized." (Adm. Ex. 8.) At the end of the May 3rd meeting, Kenneally suggested that Respondent think about things over the weekend. According to Kenneally, he wanted to give Respondent a chance to come clean. (Tr. 241.) Respondent testified that during the May 3rd meeting, Kenneally and Gara challenged some of the statements he made during the interview, and that he generally remembered saying that he had embellished certain aspects of his experience. (Tr. 64.)

On May 6, 2019, Kenneally and Gara met with Respondent again. Respondent signed a performance improvement plan that altered his job responsibilities, lowered his salary, reduced the level and type of work he was doing, and imposed a group of conditions, including a condition that required complete honesty. (Tr. 180-81, 245; Adm. Ex. 9.)

On May 6, 2019, Respondent also met with Michael Combs. According to Combs, Respondent said, he wanted to apologize for the interview, and that he got carried away. (Tr. 210; Adm. Ex. 3.) Respondent testified that he generally recalls apologizing to Combs. (Tr. 71.)

Around the beginning of May, Respondent also met with Daniel Wilbrandt. According to Wilbrandt, during that meeting, Respondent said "something like, I messed up, or got carried away; or something along those lines." (Tr. 113.) Respondent testified that he met with Wilbrandt and apologized for his conduct in the interview. (Tr. 71.)

On May 8, 2019, Respondent met with Randi Freese, one of the interviewing attorneys. Gara eventually joined them. According to Freese, Respondent continued to stand by the things he had said during the interview, including that he had been an ASA in Cook County and had tried twenty jury trials in a felony courtroom as a first chair trial attorney. (Tr. 139-41.) According to Freese, she repeatedly told Respondent to stop lying to her. (Tr. 142.) In a letter to the ARDC, Freese stated, "Mr. Jacobson initially told me he was an Assistant State's Attorney in Cook County for 3 months but later in the conversation admitted that was not true." (Adm. Ex. 5.)

According to Gara, on May 8th, she saw Respondent in Freese's office, and she heard raised voices, so she went into Freese's office and joined the meeting. (Tr. 184.) Gara testified, that when she walked in, Freese was upset, and Freese said, in front of Respondent, "'You know, he's still lying …. [He's] still saying that he worked as an assistant state's attorney [for Cook County].'" (Tr. 184-85.) According to Gara, at some point during the conversation, Respondent admitted that he had not worked as an ASA for Cook County, he had just been an intern (Tr. 185); nevertheless, Respondent continued to assert that he had been the first chair attorney in felony trials, and sometimes he did those trials without supervision. (Tr. 185.) According to Gara, that was "ludicrous" because Respondent was inexperienced and there were rules that required the supervision of law students. (Tr. 185-86.)

On May 9, 2019, Respondent went to Kenneally's office and offered to resign. (Tr. 248.) According to Kenneally, he was still hoping to salvage Respondent's employment and keep him as a member of the office, so Kenneally did not accept Respondent's resignation. (Tr. 248-50.) During that meeting, for the first time, Respondent said that he had consumed alcohol and prescription medicine the night before the interview, and he did not really remember what happened during the interview. (Tr. 248-50, 254.)

Later that day, Kenneally learned that Respondent had continued to make false statements and minimize his actions during his interview with Randi Freese, which led to Respondent's termination on May 9, 2019. (Tr. 246, 255.)

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

The Hearing Board found that Respondent violated Rule 8.4(c), which prohibits attorneys from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation." The Hearing Board concluded that he knowingly made a false statement about his trial experience on his judicial application in 2016, in violation of Rule 8.4(c), as charged in Count I. (Hearing Bd. Report at 3-4.) The Hearing Board also found that Respondent made false statements about his trial experience during the April 2019 interview and in subsequent conversations, in violation of Rule 8.4(c), as charged in Count II. (Hearing Bd. Report at 5, 13-17.)

Findings Regarding Mitigation and Aggravation

The Hearing Board found that there was substantial mitigation. (Hearing Bd. Report at 17-18.) Respondent was engaged in charitable work and was active in bar associations. He was involved with the Chicago Angels for five years, which is a charitable organization that helps foster families. He also served on the Board of the McHenry County Bar Association, and he was involved with the Appellate Lawyers Association and the Illinois State Bar Association. Respondent cooperated in the disciplinary proceedings; he has no prior discipline; and two character witnesses, Justice Hutchinson and Jeffrey Kaplan, the Clerk of the Second District Appellate Court, testified on his behalf.

Respondent testified that, after losing his job in 2019, he entered a detoxification program; he went to counseling and therapy; he attended Alcoholics Anonymous and Narcotics

Anonymous meetings; and, following a relapse in August 2022, he had been sober for eight months at the time of the disciplinary hearing. (Tr. 360-61.) Respondent also testified he has custody of his stepdaughter, and he values his law license. (Tr. 362-63.) He further testified that his infant son died in May 2020; Respondent's relationship with his wife deteriorated; and they were in the process of getting divorced. (Tr. 318, 360, 362-63.)

In aggravation, the Hearing Board found that Respondent did not accept responsibility or express sincere remorse; he sought to blame others for mischaracterizing his statements rather than owning up to his fabrications; he engaged in a pattern of misrepresenting his trial experience; he was seeking positions of trust; he disregarded his obligation to be honest in his position as an ASA; and he provided false and misleading testimony. (Hearing Bd. Report at 19-22.)

Recommendation

The Hearing Board recommended that Respondent be suspended for one year. (*Id*. at 23.)

SANCTION RECOMMENDATION

Respondent challenges the Hearing Board's recommendation and asks this Board to recommend a reprimand, a censure, or a suspension of less than six months. The Administrator responds that a one-year suspension is warranted, as recommended by the Hearing Board.

We review the Hearing Board's sanction recommendation based on a *de novo* standard. *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). In making our recommendation, we consider the nature of the proved misconduct, and any 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 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 Discipio*, 163 I11. 2d 515, 528, 645 N.E.2d 906 (1994).

We defer to the Hearing Board's findings concerning witnesses' credibility because the Hearing Board is able to observe the witnesses, assess their demeanor and credibility, and resolve conflicting testimony. *See In re Timpone*, 157 Ill. 2d 178, 196, 623 N.E.2d 300 (1993). We also give weight to the Hearing Board's sanction recommendation because the disciplinary system relies on the Hearing Board to make rational, well-reasoned recommendations concerning discipline, consistent with precedent. *See In re Towles*, 1997PR00090 (Review Bd., Aug. 19, 1999) at 13, *petition to file exceptions denied,* M.R. 16173 (Nov. 22, 1999).

We find that a one-year suspension is the appropriate sanction in this case. The Hearing Board provided a thorough, thoughtful, and sound analysis of the facts and the law, and we agree with the Hearing Board's conclusion that a one-year suspension is needed in this case to satisfy the disciplinary goals, and, above all, to deter Respondent and protect the public.

Respondent's Misconduct was Serious

Respondent argues that a one-year suspension is unduly harsh and the Hearing Board misjudged the aggravating and mitigating factors in this matter. We disagree. We believe that the recommended sanction properly balances the serious nature of Respondent's actions with the mitigating factors in this case and is not unduly harsh.

Respondent's dishonest conduct was very serious. He attempted to advance his career by making a false representation on his judicial application for the position of Associate Judge in 2016, and by making false statements during his interview for the position of first chair

trial attorney in 2019. In both instances, he engaged in dishonesty while applying for a significant and influential position that required the highest degree of honesty and integrity. As the Hearing Board stated, "It is troubling that he [made false statements] when seeking positions for which public trust and confidence are especially important." (Hearing Bd. Report at 20.)

Patrick Kenneally, who was the State's Attorney, described the first chair trial attorney position as being one of the most important positions in the McHenry Office. (Tr. 228.) Kenneally pointed out that the position involved prosecuting serious crimes that had serious effects on individuals, families, and communities. (Tr. 228.) According to Kenneally, he was looking for an experienced attorney, who had years of trial experience, as well as experience handling court calls and dealing with victims. (Tr. 227-28.) Respondent made false representations in order to make it appear that he had those qualifications. In fact, he was primarily an appellate attorney, and he did not have the extensive trial experience needed to deal with criminal cases, court calls, and victims.

During the interview, Respondent falsely represented that he had tried dozens of cases. He also falsely represented that he had prosecuted significant cases, including narcotics cases, termination of parental rights cases, and a DUI case that involved five deaths. He fabricated his work history because he wanted to be the first chair attorney, even though he was not qualified.

Rita Gara testified that when the interview was over, there was a "horrible suspicion that he was lying." (Tr. 173.) Gara said that it was "shocking" for an ASA to lie. (*Id*.) She also said that it was "a heavy thing" for an ASA "to lie about work experience … to get a job that [he was] not qualified for." (*Id*.)

During the two weeks following the interview, Respondent also made false statements to the interviewing attorneys in his meetings with them. Although he was given the

opportunity to retract his false statements and clear the air, he refused to do so. Instead, he repeated his false statements. Randi Freese testified, "I couldn't even get him to admit that he had not worked in Cook County … as an ASA, rather than an intern; and I also couldn't get him to admit that he hadn't tried 20 jury trials in a felony courtroom as a first chair attorney." (Tr. 140.) Rita Gara testified, "I have never seen somebody so determined to be evasive." (Tr. 176.)

We note that the April job interview was conducted by attorneys who were Respondent's colleagues. They worked in the McHenry Office where Respondent worked, and they knew him. (Tr. 324-25, 329-30.)

If Respondent's colleagues had believed him, and had hired him based on his statements during the interview, it would have damaged the criminal justice system. Respondent, who was dishonest and inexperienced, would have been responsible for prosecuting criminal cases, where the defendants were facing possible incarceration. It is alarming to imagine Respondent as a first chair trial attorney, or an Associate Judge, given Respondent's willingness to make false statements.

Aggravating Factors

There are significant aggravating factors in this case, as discussed below, including that Respondent failed to accept responsibility or express genuine remorse; he denied making any false statements; he asserted that the interviewing attorneys provided inaccurate testimony; he claimed that he could not remember what he said because he was impaired during the interview; he made false statements while he was an ASA; and he gave false and misleading testimony.

Failure to accept responsibility: The Hearing Board found in aggravation that Respondent failed to accept responsibility or express remorse. (Hearing Bd. Report at 20, 22.) We agree.

In 2016, Respondent stated on his judicial application that he had tried the case, *People v. Castillo*, even though he had not tried that case. Respondent, however, refused to acknowledge that he intentionally made a false representation on the judicial application. Instead, he testified that his statement concerning the *Castillo* case "wasn't intended as a misrepresentation." (Tr. 379.)

He testified that prior to the trial, he had worked with the *Castillo* trial attorneys (Tr. 81) and, therefore, the case "was an example … that, essentially, showcased my abilities in the trial court." (Tr. 379.) The Hearing Board rejected that testimony and found that Respondent intentionally misrepresented his trial experience on the application. (Hearing Bd. Report at 3-4.) We agree. The application asked for jury trials that Respondent had tried to verdict, and Respondent intentionally listed *Castillo*, even though *Castillo* was not a jury trial that he had tried to verdict. (Tr. 379.) Respondent has failed to acknowledge his wrongdoing, accept responsibility, or express remorse for making a false representation on the judicial application.

Respondent also failed to accept responsibility or express remorse for making false statements during the interview at the McHenry Office for the position of first chair trial attorney. He testified, "I never had an intention to mislead anyone about anything at any point in time at the office." (Tr. 341-42.) He also testified that he never knowingly violated the Rules of Professional Conduct. (Tr. 364.) The Hearing Board rejected that testimony, finding that Respondent intentionally made false statements during the interview, and he violated the Rules of Professional Conduct. (Hearing Bd. Report at 16-17.) We agree.

Respondent argues that the Hearing Board placed too much emphasis on his failure to express remorse. That argument is unpersuasive. Respondent's failure to acknowledge any wrongdoing is a very serious matter, and weighs heavily on the issue of whether Respondent is

likely to engage in misconduct in the future. In our view, there is a risk that Respondent will resort to making false statements in the future to advance his own interests. We believe, however, that a one-year suspension will adequately reduce that risk and deter Respondent by convincing him that lying is simply too costly.

Testimony by the interviewing attorneys: Respondent also attempted to avoid responsibility by claiming that the five interviewing attorneys provided inaccurate or false testimony and he would not have made the statements that the attorneys attributed to him. Respondent testified that, in his opinion, Michael Combs, the attorney who did the investigation, wrote down what he thought Respondent said, but Combs got it wrong; and then Combs' summary became the narrative that all of the attorneys adopted. (Tr. 52-53.)

Respondent testified that he did not remember making the statements identified by the attorneys, and he did not believe he would have made those statements. (*See e.g*., Tr. 51-53, 58-60, 327-28, 383-84; 389.) For example, Respondent testified: "I don't think that I would have said any of those statements that were attributed to me [by the interviewing attorneys], because none of them were true." (Tr. 383); "[T]o have said those things and with that degree of specificity, … candidly, I just don't think that that's what occurred." (Tr. 387); "I don't remember saying those things, and I don't believe that I would have said those things." (Tr. 389); "[L]ike the statement … that I tried 12 to 15 cases at [the Appellate Prosecutor's Office], I don't think I ever would have said that." (Tr. 53); "[W]ould I have said that I went and tried cases with Pam [Wells] specifically? No." (Tr. 384); and "I never would have said that I tried [the *Vasquez*] case." (Tr. 383).

Thus, according to Respondent, he did not make any false statements, and the interviewing attorneys were wrong to testify that he did. The Hearing Board rejected that

argument, as do we. The Hearing Board found that the attorneys' testimony was credible, and that Respondent's testimony was not. (Hearing Bd. Report at 14.) We agree.

Alcohol and prescription drugs: Respondent testified that his lack of memory resulted from his use of alcohol and prescription drugs on the day of the interview and around that time. (Tr. 319, 323.) He testified that, although he did not have a specific memory of what he consumed on the morning of the interview, he generally took his prescription medications in the morning, which included Adderall, Xanax, Oxycodone, Inderal, Ambien, Wellbutrin or Lexapro, and sometimes a nasal spray. (Tr. 321-22.) He testified that he had consumed at least two alcoholic beverages and an Ambien the night before the interview, as well as the prescription medications that he was routinely taking. (Tr. 322-23.)

The interviewing attorneys, however, testified that Respondent did not appear to be impaired or intoxicated on the day of the interview. (*See e.g.*, Tr. 98-99, 131, 166, 200, 221, 231.) Additionally, Daniel Wilbrandt testified that, on the morning of the interview, he worked with Respondent, and he did not see any indication that Respondent was under the influence of alcohol or medication. (Tr. 98-99.) Randi Freese testified she had never seen Respondent in an impaired condition at the office. (Tr. 146.) When Respondent was asked whether he felt impaired as he entered the interview, he replied, "I don't recall, specifically feeling that way." (Tr. 324.) The Hearing Board concluded that the evidence was insufficient "to find that Respondent's misconduct or memory lapses were causally connected to alcohol and prescription drug consumption." (Hearing Bd. Report at 20.) Once again, we agree with the Hearing Board's conclusion.

We note that when he met with Kenneally and Gara on May 3rd, Respondent did not deny that he had made the statements at issue; he did not say that he was unable to remember making those statements; and he did not say that he had been impaired during the interview. (Tr.

176, 240, 242, 376.) When he met with Daniel Wilbrandt, Respondent did not say anything about using alcohol on the day of the interview (Tr. 114); and when he met with Randi Freese, he did not say that he was unable to remember what he said during the interview. (Tr. 146.)

Instead, during his meetings with the interviewing attorneys, Respondent repeated the false statements he had made; he defended what he said; and he gave evasive answers. It was not until May 9th, two weeks after the interview, that Respondent said, for the first time, that he had consumed alcohol and prescription medicine the night before the interview, and that he did not really remember what happened during the interview. (Tr. 248-50, 254.) It appears that Respondent's story changed and evolved over time. The Hearing Board concluded that Respondent "raised the possibility of impairment in an effort to bolster his purported inability to remember what he said during his interview." (Hearing Bd. Report at 14.) We agree.

Dishonesty while an ASA: Respondent was working as an ASA at the McHenry Office at the time of the interview. By making false statements, Respondent violated the trust placed in him by the McHenry Office, and the public, that he would act honestly and ethically in his position as an ASA. The Hearing Board stated, "As an experienced attorney and an assistant State's Attorney at the time of the interview in question, Respondent should have been well aware of his obligation to conduct himself with honesty. Instead, he disregarded that obligation in an effort to advance his career." (*Id*. at 19-20.) We agree.

State's Attorney Patrick Kenneally testified that honesty is "a bedrock principle" in any legal office. (Tr. 245.) Kenneally also testified that "in my line of work [in the State's Attorney's Office], … we need to be able to trust people implicitly." (Tr. 241.) Respondent ignored his responsibility to be honest, and his actions jeopardized the reputation of the McHenry Office.

Daniel Wilbrandt, who was a Chief of the Criminal Division, also testified about the need for an ASA to be truthful, stating:

> [In] our position as an officer of the Court, especially being a prosecutor having a badge and taking an oath … [we have] to be truthful even … if it's not helpful to our case or to us personally …. [W]e're charged with the task of representing victims, witnesses, [and] the people of McHenry County. We take that seriously, and [if] somebody … has lied to us, … that would be unacceptable for that position, or … to go in front of a court and make arguments.

(Tr. 114-15.) Respondent was representing his own interests, rather than the interests of the people of McHenry County. We find that Respondent's conduct while he was an ASA is an aggravating factor.

We also find it troubling that Respondent was abusing alcohol and prescription drugs while he was working as an ASA, and he was secretly drinking at work. Respondent testified that he was often consuming alcohol during the day (Tr. 47); he was drinking alcohol at the office (Tr. 320); he kept alcohol in a water bottle in his backpack, along with whatever medications he needed for the day (Tr. 321); and he took his medications in the morning. (Tr. 321-22.)

According to Respondent he had difficulty remembering things because of his abuse of alcohol and drugs. He testified, "[T]here were times during that time period I had full days, weeks, [and] weekends go by, … and I would just have absolutely no memory …. [of] things that I did or said, or events that I went to." (Tr. 320.) That was not a good situation for Respondent as an ASA. There is no evidence that Respondent sought help or counseling while he was working as an ASA, or that he advised the McHenry Office about this issue. His misuse of alcohol and drugs while he was on duty as an ASA is concerning.

Respondent argues that his misconduct did not cause any harm and there were no negative consequences. We reject that argument because Respondent's false statements threatened the integrity of the McHenry Office and the legal profession. *See In re Crisel*, 101 Ill. 2d 332, 343,

461 N.E.2d 994 (1984) (the Court found that false representations made by a State's Attorney "threaten[ed] the integrity of the legal profession and the administration of justice.").

Additionally, attorneys in the McHenry Office were forced to unnecessarily expend time and energy as a result of Respondent's misconduct. The interviewing attorneys spent hours investigating Respondent's false representations, documenting and reporting his statements, participating in follow-up meetings with Respondent, and testifying concerning his misconduct, and his cases had to be reassigned to other ASAs after he was fired.

Respondent's testimony: The Hearing Board found that Respondent provided false testimony at the disciplinary hearing, which was a significant factor in aggravation. (Hearing Bd. Report at 20.) We agree. The Hearing Board's findings concerning respondent's testimony include the following:

- Respondent "gave testimony that was contradictory, false, and misleading." (Hearing Bd. Report at 14.)
- "Respondent … [was] neither credible nor candid." (*Id*.)
- Respondent's "memory of the events in question was selective, [and] he was evasive in his responses." (*Id*.)
- Respondent's testimony was "vague and self-serving." (*Id*. at 14-15.)
- "Due to Respondent's disingenuous demeanor and our assessment that he was unable or unwilling to answer questions in a straightforward manner, we found Respondent's testimony lacking in credibility and candor." (*Id*. at 15.)
- "Respondent's testimony about his purported impaired condition on the day of his interview [was] less than candid." (*Id*. at 14.)
- "Respondent did not testify truthfully [during the disciplinary hearing] when he repeated his assertions that he was a first chair attorney in felony matters [in Cook County] while practicing under a Supreme Court Rule 711 temporary law license." (*Id*. at 20-21.)
- "Respondent's testimony shifted throughout the hearing, from stating he could not remember whether he consumed alcohol and prescription medication that day to stating he was sure he was impaired at the time of his interview." (*Id*. at 14.)
- Respondent "acknowledges having said, in the days following his interview, that he embellished his work history. Yet, he also suggests that the [interviewing] attorneys' recollections of his statements were the result of a false or incorrect

> narrative that Combs created, and the other four attorneys adopted. We cannot logically reconcile Respondent's contradictory testimony and [we] find it indicative of an attempt to avoid the consequences of his misrepresentations." (*Id*. at 14.)

We agree with the Hearing Board's findings concerning Respondent's credibility, candor, forthrightness, and sincerity, and the lack thereof.

In sum, we conclude that there are significant aggravating factors in this case.

Respondent argues that a lower sanction is warranted because his misconduct involved only two brief isolated incidents: a false statement on a judicial application in 2016; and false statements during an interview and follow-up conversations in 2019. Although we recognize the limited nature of the misconduct, Respondent's propensity to resort to dishonesty in order to advance his own interests, including during his testimony in 2023, convinces us that a one-year suspension is needed to impress upon him the seriousness of his wrongdoing and to deter him from engaging in similar misconduct in the future.

Mitigating Evidence

Respondent argues that a reprimand, censure, or a suspension of less than six months is warranted given the extensive mitigating evidence in this case. We disagree.[1]

We recognize that there is substantial mitigating evidence here. Respondent engaged in charitable work and was active in several bar associations. He was involved with the Chicago Angels, a charitable organization that works with foster families. He helped found the Chicago Angels, and he raised funds and planned events for the organization. He was also involved with the McHenry County Bar Association, the Illinois Prosecutors Bar Association, the Illinois State Bar Association, and the Appellate Lawyers Association.

According to Respondent, he successfully addressed his substance abuse issues by participating in a detoxification program, getting into counseling and therapy, and attending

Alcoholics Anonymous meetings and Narcotics Anonymous meetings. Additionally, Respondent has overcome serious personal difficulties, including the tragedy of his infant son's death, his wife's health problems, and his divorce. Moreover, Respondent has no prior discipline, and he cooperated with the disciplinary proceedings, except to the extent that his testimony was less than truthful, as discussed above.

Respondent worked in the public sector throughout his career. He held responsible positions at the Appellate Prosecutor's Office, where he worked for five years, and as a law clerk for Justice Hutchinson, where he worked for six years. Justice Hutchinson testified as a character witness on behalf of Respondent, and described him as an amazing attorney with the law, an amazing writer, an amazing advocate, and a quick learner. (Tr. 397-98.) She also testified that she knew his character for honesty and truthfulness from his work in her office. (Tr. 401.)

Jeffrey Kaplan, the Clerk of the Second District Appellate Court, also testified as a character witness on behalf of Respondent. Kaplan testified that Respondent is a top-notch oral advocate (Tr. 419), and Respondent has shown incredible strength of character, having gone through a great deal of difficulty and tragedy over the last few years, including the death of his newborn son, all of which Respondent handled with remarkable grace. (Tr. 422.) Kaplan also testified he has never known Respondent to lie; Respondent has a deep respect for the law; and Respondent has a sterling reputation in the court community. (Tr. 423.)

The substantial mitigating evidence in this case demonstrates that Respondent has the ability to act responsibly, if he elects to do so. We believe that a one-year suspension will strongly motivate Respondent to practice law ethically and honestly.

Relevant Legal Authority

We have considered the cases cited by the Hearing Board and the parties, as well as cases we found with factual similarities, as discussed below. Based on our review of relevant cases, we are convinced that a one-year suspension is the appropriate sanction.

Cases cited by the Hearing Board: In recommending a one-year suspension, the Hearing Board cited two cases, *Posterli* and *Haasis*, in which the attorneys made false statements about their work history. We believe that those cases provide guidance here.

In *In re Posterli*, 1989PR00520 (Hearing Bd., July 19, 1990), *recommending a lower sanction*, (Review Bd., Feb. 15, 1991), *petition for leave to file exceptions allowed, and the Hearing Board's recommendation approved and confirmed*, M.R. 7407 (May 24, 1991), the attorney was suspended for six months. He created two resumes that contained false information about his work history and his academic record. He obtained a job based on one of those resumes, and the law firm included his false information in a brochure. In mitigation, he accepted responsibility, expressed remorse, cooperated, had no prior discipline, and the Hearing Board and Review Board found that he was unlikely to engage in misconduct in the future.

In *In re Haasis*, 2017PR00049, *petition to impose discipline on consent allowed*, M.R. 029011 (Dec. 4, 2017), the attorney was suspended for six months. She submitted employment applications and resumés to an employer, in which she falsely represented her work history. She was hired based on those materials. She also falsely represented that she could not provide her prior salary information because she had signed non-disclosure agreements. In mitigation, she accepted responsibility, expressed remorse, cooperated, agreed to discipline on consent, and had no prior discipline.

We believe that *Posterli* and *Haasis* provide a good starting point for the sanction here. Like Respondent in this case, the attorneys in *Posterli* and *Haasis* each engaged in a pattern of fabricating their qualifications for legal positions. Unlike Respondent, the attorneys in *Posterli* and *Haasis* accepted responsibility and expressed remorse. We conclude that a longer suspension – one year instead of six months – is warranted in the present case given the significant aggravating factors here, which are absent in *Posterli* and *Haasis*.

Additional cases: We believe that the cases discussed below, *Win*, *Williams*, *Thebeau*, *Groezinger*, and *Arrigo*, also provide guidance concerning the appropriate sanction in this case.

In *In re Win*, 2015PR00112, *petition to impose discipline on consent allowed*, M.R. 28238 (October 13, 2016), the attorney was suspended for one year for making a false statement to the court and then attempting to conceal it. While he was an Assistant Attorney General, Win falsely represented to a federal judge that he had provided notice of a hearing, and a copy of a court order, to prison officials concerning a particular case, which he had not done. He then created a fake letter to support his false statement, and he filed a false affidavit with the court reiterating his false statement. He also repeated his false statement to his supervisor. Win made the same false representations to the ARDC, but admitted his misconduct to the ARDC shortly thereafter. The Consent Petition stated, "In aggravation, Respondent's employment as an Assistant Attorney General should have made him particularly sensitive to his responsibilities to the court and the judicial system." (Petition at 1-2.) In mitigation, Win accepted responsibility and expressed remorse; he had no prior discipline; he was active in a bar association; he provided *pro bono* services to indigent individuals; and he had been practicing law for less than two years.

In *In re Williams*, 111 Ill. 2d 105, 488 N.E.2d 1017 (1986), the attorney was suspended for two years. He submitted an insurance claim falsely representing that his car had been stolen, and he made false statements to the police. He received $10,410 based on his false claim. He was convicted of mail fraud. In mitigation, he had no prior discipline during his 15-year career; he performed 250 hours of court ordered community service; he provided *pro bono* services; and he presented eight impressive character witnesses. Williams had been suspended on an interim basis for more than two years before the Court issued its opinion, and the Court stated that his suspension would end immediately. That issue is not present here.

In *In re Thebeau*, 111 Ill. 2d 251, 489 N.E.2d 877 (1986), the attorney was suspended for one year for making false representations in a probate case. Thebeau represented three sons of the decedent, and the main asset of the estate was a house worth $25,000. The brothers agreed that one brother would purchase the house by making installment payments. However, Thebeau falsely represented to the court that the purchase of the house involved a single payment, rather than installment payments, in order to facilitate closing the estate. Additionally, one of the clients signed his brothers' names on quitclaim deeds, with their permission, which Thebeau agreed he could do, and Thebeau notarized those signatures. In mitigation, he expressed remorse; he had closed his law practice two years earlier; the misconduct related to only one matter; he was trying to help his clients conclude the probate case quickly; and he was not acting for his own benefit.

In *In re Groezinger*, 2004PR00143 (Hearing Bd., Oct. 25, 2005), *approved and confirmed*, M.R. 20606 (April 10, 2006), the attorney was suspended for one year for making false statements in a malpractice case that was filed against her by a former client. Groezinger falsely represented to opposing counsel, and in a pleading, that she had never represented the client, and

she attempted to create a false fee agreement showing that another attorney represented the client. She also made false statements to the ARDC and gave false testimony at the disciplinary hearing. In aggravation, she showed no remorse; she engaged in a pattern of dishonesty, and she failed to understand the wrongfulness of her misconduct. In mitigation, she had no prior discipline; she provided *pro bono* services; and a character witness testified to her reputation for honesty and integrity.

In *In re Arrigo*, 2006PR00045, *petition for discipline on consent allowed*, M.R. 21373 (March 19, 2007), the attorney was suspended for one year, until further order of the Court. The attorney, who was a colonel in the U.S. Air Force Judge Advocate's office, prepared a fake job performance evaluation, which overstated his responsibilities and accomplishments, in order to obtain a promotion to Brigadier General, and he forged his supervisor's signature on the evaluation. He also lied to another supervisor about the signature on the report. In mitigation, he had a 29-year legal career with an unblemished record; he had been an officer in the Air Force for 25 years; he admitted his misconduct, expressed remorse, and agreed to discipline on consent; he had retired from the Air Force with an honorable discharge; and he had retired from the practice of law. In aggravation, he participated only minimally during the disciplinary proceedings, which resulted in the suspension continuing until further order of the Court. That issue is not present here.

Cases cited by Respondent: Respondent argues that a reprimand, censure, or a suspension of less than six months is warranted based on relevant case law, and he cites the five cases discussed below, *Harasymiw*, *Magar*, *Czarnik*, *Mellonig*, and *Spiegel*, in support of that argument. We find that these cases are unpersuasive.

In *In re Harasymiw*, 1993PR00401, *petition to impose discipline on consent allowed*, M.R. 9397 (Dec. 9, 1993), the attorney made a false statement on a single loan

application. There was substantial mitigation, including that the misconduct had occurred twelve years earlier; her husband had suffered brain damage during surgery, which impacted her ability to repay the loan; she accepted responsibility; and she had a long history of service to charitable, community, and religious organizations. She was suspended for two months.

In *In re Magar*, 1999PR00079, *petition to impose discipline on consent allowed*, M.R. 16581 (April 21, 2000), the attorney submitted a loan application, in which falsely inflated her rental income, and falsely denied being delinquent on a mortgage. She also created two false leases to support of her false statement about her rental income. She obtained a loan, but fully repaid it six months later. She self-reported her misconduct to the ARDC; she accepted responsibility; and she was remorseful. She was suspended for five months.

In *In re Czarnik*, 2016PR00131 (Hearing Bd., Nov. 28, 2018), *recommendation adopted*, (Review Bd., May 15, 2019), *approved and confirmed*, M.R. 029949 (Oct. 7, 2019), the attorney signed another person's name to two documents and sent the documents to a client. In mitigation, he cooperated in the disciplinary proceedings; he was a young attorney and was overwhelmed by his caseload; his misconduct was an aberration; there was favorable character testimony; and the Hearing Board found he was unlikely to engage in misconduct in the future. He was suspended for four months.

In *In re Mellonig*, 2011PR00142 (Hearing Bd., April 10, 2013), the attorney was working as a clerk for a law firm, and his registration was not current, so he was not authorized to practice law. At two court hearings, he falsely stated that he was co-counsel in the case, and that he was appearing on behalf of a party. In aggravation, the Hearing Board rejected his testimony that he did not realize he was not authorized to practice law. In mitigation, he understood the

misconduct, expressed remorse, the misconduct had virtually no impact, he gained no benefit from the misconduct, and three character witnesses testified. He was reprimanded.

In *In re Spiegel*, 2004PR00130, *petition to impose discipline on consent allowed*, M.R. 20298 (Sept. 26, 2005), the attorney neglected a client's case, which resulted in the case being dismissed. After the client complained, Spiegel sent a letter to the ARDC in which he made several false representations. In mitigation, he cooperated after his initial response; he returned the client's funds; he had no prior discipline, and he accepted responsibility. He was censured.

We find that Respondent's misconduct and the aggravating factors in this case are substantially more egregious than in the cases cited by Respondent.

In sum, we believe that a one-year suspension is commensurate with Respondent's misconduct and consistent with discipline that has been imposed for comparable misconduct.

CONCLUSION

Respondent's false statements were a flagrant violation of his obligation to act honestly as an attorney and an ASA. We conclude that a one-year suspension will serve the goals of attorney discipline, including protecting the public, preserving public confidence in the legal profession, and deterring Respondent and other attorneys. For the foregoing reasons, we recommend that Respondent be suspended for one year.

Respectfully submitted,

George E. Marron III
Scott J. Szala
Michael T. Reagan

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 May 9, 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] We recognize that a suspension of six months or more will trigger the obligation to comply with Supreme Court Rule 764, which mandates that attorneys who are suspended for six months or more must take certain actions, including providing notice of their discipline to clients, courts, and others. We have considered this issue in making our recommendation. We believe that a suspension of less than one year in this case would be insufficient to deter Respondent, and we do not view Rule 764 as a basis for imposing a lower sanction. We believe that requiring Respondent to comply with Rule 764 is appropriate, even if Respondent is working as a law clerk, which might limit the number of individuals and entities that he would have to notify.

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

In the Matter of: **SCOTT IAN JACOBSON,** Respondent-Appellant, No. 6301751.	Commission No. 2022PR00038

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 May 9, 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/ Michelle M. Thome
By: Michelle M. Thome
Clerk

FILED

May 09, 2024

ARDC CLERK