

In re Jeffrey Gerald Kendall
Attorney-Respondent

Commission No. 2021PR00040

Synopsis of Hearing Board Report and Recommendation
(April 2022)

The Administrator filed a two-count Complaint against Respondent. Count I charged Respondent with engaging in a sexual relationship with a client after the client-lawyer relationship commenced in violation of Rule 1.8(j). In Count II Respondent was charged with preparing a letter containing false statements and thereby engaging in dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based on the evidence and admissions by Respondent, the Hearing Board concluded that the charges were proved by clear and convincing evidence. After considering the misconduct, as well as the strong mitigating factors and minimal aggravating factors, the Hearing Board recommended Respondent receive a censure.

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

In the Matter of:

JEFFREY GERALD KENDALL,

Attorney-Respondent,

No. 6192484.

Commission No. 2021PR00040

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Count I of the Administrator's Complaint alleged that Respondent engaged in an inappropriate sexual relationship with a client in violation of Rule 1.8(j). Count II alleged he prepared a letter containing false statements in violation of Rule 8.4(c). After considering the misconduct and the mitigating and aggravating factors, the Hearing Board recommended that Respondent be censured.

INTRODUCTION

The hearing in this matter was held on February 2, 2022, by video conference before a panel consisting of Lon M. Richey, Chair, Justin L. Leinenweber, and Willard O. Williamson. Michael Rusch represented the Administrator of the Attorney Registration and Disciplinary Commission ("ARDC"). Respondent appeared and was represented by Phillip J. Fowler.

PLEADINGS AND MISCONDUCT ALLEGED

On June 4, 2021 the Administrator filed a two-count Complaint against Respondent charging him with 1) having sexual relations with a client when a consensual sexual relationship did not exist between them at the commencement of the client-lawyer relationship (Rule 1.8(j));

FILED

April 06, 2022

ARDC CLERK

and 2) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation (Rule 8.4(c)). On July 26, 2021, Respondent filed an answer in which he admitted nearly all the factual allegations as well as his violation of Rule 1.8(j). He further admitted preparing a letter with false statements but denied that his conduct violated Rule 8.4(c).

EVIDENCE

Respondent and six character witnesses testified at hearing. Administrator's Exhibits 1 and 2 and Respondent's Exhibits 1 and 2 were admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991).

Background

Respondent was licensed to practice law in Illinois in 1986. At that time, he joined the DuPage County State's Attorney office and worked there until 2007, at which time he partnered with attorney Ernest DiBenedetto to form DiBenedetto & Kendall, P.C. In January 2020, Respondent left the partnership and opened his own practice concentrating on criminal cases. (Tr. 31-33, 60-61, 79).

I. Count I charged Respondent with violating Rule 1.8(j) by engaging in sexual relations with his client Mariam Gembala when a consensual sexual relationship did not exist between them at the commencement of their attorney/client relationship

A. Summary

Respondent violated Rule 1.8(j) by commencing a sexual relationship with a client after he began representing her.

B. Admitted Facts and Evidence Considered

In 2017 Mariam Gembala was charged with the misdemeanor offense of criminal damage to property. In April 2018 Respondent met with Gembala, agreed to represent her, and accepted a \$560 retainer fee. On April 26, 2018, he filed his appearance in People v. Mariam Gembala, No. 17 CM 2718. At the time Respondent agreed to represent Gembala, he did not have an ongoing sexual relationship with her. (Ans. at par. 2; Tr. 35-36).

In May 2018, Respondent and Gembala commenced a consensual sexual relationship. Respondent was aware at the time, and has admitted throughout these proceedings, that his conduct violated the Illinois Rules of Professional Conduct. He denied exerting any pressure on Gembala or requiring any quid pro quo for his work on her case. As with all of his cases, he accorded Gembala's matter gravity and importance. (Tr. 37, 40, 48-50, 57).

Respondent represented Gembala until April 17, 2019. During his representation he filed motions and appeared at court hearings on her behalf. In November 2018, the State's Attorney dismissed the charge against Gembala and thereafter, Respondent was successful in having her arrest expunged from her record. Respondent testified he did not charge Gembala any fee after the initial retainer, and she received the best possible outcome for her case. Respondent's dating relationship with Gembala ended in early 2021. (Ans. at par. 6; Tr. 37-40, 51, 96-100).

C. Analysis and Findings

Rule 1.8(j) prohibits a lawyer from engaging in a sexual relationship with a client after the client-lawyer relationship commences. Respondent admitted that after agreeing to represent Mariam Gembala, he began a sexual relationship with her and continued with that relationship during the course of the representation in violation of the professional rules. We find, therefore that a violation of Rule 1.8(j) was proved by clear and convincing evidence.

II. Count II charged Respondent with making false statements in a letter sent to his client's prospective landlord in violation of Rule 8.4(c).

A. Summary

Respondent violated Rule 8.4(c) by making false statements in a letter regarding his client's employment and income.

B. Admitted Facts and Evidence Considered

In January 2019, at a time when Mariam Gembala was unemployed and seeking to rent a condominium in Lombard, she asked Respondent to prepare an employment verification letter for a prospective landlord stating she was an employee of his firm. Respondent agreed to do so and on January 30, 2019, he emailed a letter to Gembala's prospective landlord, Jilani Khan, advising Khan that Respondent was a managing partner at the DiBenedetto and Kendall law firm; Gembala was an employee of the firm; her salary was \$40,000 per year; and she was paid bi-weekly. At the time Respondent prepared the letter, he knew his statements regarding Gembala's employment and compensation were false. Further, he knew the Illinois Rules of Professional Conduct prohibited an attorney from engaging in dishonesty, fraud and misrepresentation. Respondent denied that his statement regarding his own employment at the firm was false. (Ans. at pars. 11, 13, 14; Tr. 40-46; Adm. Ex. 1).

Respondent testified he wanted to help Gembala because she had been renting a room from a former acquaintance who had set up cameras in his house and had shared videos of Gembala in various states of undress. To Respondent's knowledge, no police report was made of that situation. Although his purpose was to help Gembala leave an untenable living situation, Respondent knows his actions were wrong. (Tr. 44-47).

Respondent testified he assumed the information he provided to the prospective landlord would be used to determine whether to lease an apartment to Gembala. He did not believe the

landlord would suffer any harm, however, because Gembala had been employed consistently in the past; she was seeking reinstatement of her lapsed real estate broker's license; and if she were not able to pay the rent, Respondent planned to assist her. Respondent noted that from the time Gembala leased the apartment through January 2021, all rent payments were made, and only one payment was late. Respondent's conduct was reported to the ARDC by his former law partner. (Tr. 43, 52-55, 94).

B. Analysis and Findings

The evidence showed, and Respondent admitted, that he falsely stated to Gembala's prospective landlord that Gembala was employed by his law firm and was earning a salary paid to her bi-weekly. Further, he knew those statements were false at the time he made them.

Respondent raised an argument that because his dishonest conduct occurred in the context of a personal matter, it is not subject to the prohibitions of Rule 8.4(c). We reject that argument because it is well settled that attorneys are required to conduct themselves honestly in their personal lives as well as in their professional lives. See In re Chandler, 161 Ill. 2d 459, 463-64, 473, 641 N.E.2d 473 (1994) (attorney disciplined for making false statements on personal residential loan application and submitting false employment verification form); In re Lewis, M.R. 029738 (May 21, 2019) (Rev. Bd at 5) (attorney engaged in dishonest conduct by knowingly receiving insurance benefits to which he was not entitled); In re Karavidas, 2013 IL 115767, ¶ 78 (discipline for conduct outside attorney-client relationship appropriate where attorney's conduct violates the Rules by demonstrating "a lack of professional or personal honesty which renders him unworthy of public confidence"). Further, although Respondent's statements to Kahn did not relate to Gembala's criminal matter, he made the statements while representing her and he specifically identified himself to Kahn as a lawyer and partner of his law firm, and represented that Gembala worked at his firm.

In light of the evidence and Respondent's own admissions, we find he violated Rule 8.4(c) by making false statements regarding Gembala's employment and salary. A further allegation that Respondent made false statements about his own employment at his firm was denied by Respondent and not proved by clear and convincing evidence.

ADDITIONAL EVIDENCE IN MITIGATION

Respondent testified he has been candid with the ARDC from the beginning of its investigation; has admitted the facts in the Complaint and accepted responsibility for his actions; is embarrassed by his moral failing; has learned from his mistakes; and will never engage in similar conduct. He extended his deep apologies to the panel, the ARDC, the legal community, his former law partner, Ms. Gembala and most importantly, to his wife and daughter. (Tr. 49, 57-59, 89-91).

During Respondent's long tenure with the DuPage County State's Attorney's office, he served in supervisory positions, mentored young attorneys, and had responsibility for many high-profile murder cases. He was a member of the Capital Litigation Trial Bar until it was disbanded, and received an award for outstanding prosecution of capital cases from the Association of Government Attorneys in Capital Litigation. He also received internal awards as well as special commendations from communities for his work on specific cases. (Tr. 66-78; Resp. Ex. 1).

Respondent has taught classes at two law schools, presented lectures on legal topics to a number of organizations, including law enforcement agencies, and served as a moot court judge and lectured at high schools. He has also been active in the Lawyers Lending a Hand organization which provides for persons in need. When clients are not able to pay his fee, he works out a payment plan and does not always collect the full amount owed. (Tr. 76, 81, 85-88; Resp. Ex. 1).

Respondent is currently handling about 100 criminal matters and has cases set for trial in four counties. He testified that as a solo practitioner, a suspension would be devastating to his

practice and disastrous to the clients who have put their trust in him. He has no pending murder cases, nor does he have any client in custody for whom he would demand a speedy trial. (Tr. 79-84, 92-93).

Four DuPage County Circuit Court Judges and two attorneys testified regarding Respondent's character. Each of the judges worked with Respondent in some capacity before ascending to the bench and, since becoming judges, have presided over a number of his cases. Both attorneys have also worked closely with Respondent. All of the witnesses have known Respondent for at least ten years, and some for more than thirty years.

Judge Brian Telander considers Respondent to be completely honest and described him as a caring, conscientious and experienced trial attorney with great moral character. Likewise, Judge Robert Kleman views Respondent as a very honest attorney, one of the most capable lawyers he has encountered, and a credit to the profession. Both judges testified their colleagues share their opinions of Respondent's honesty. (Tr. 104-10, 115-18).

Judge Ann Walsh was mentored by Respondent at the DuPage County State's Attorney's office and described him as an excellent leader and supervisor, professional, an attorney with great acumen, and one of the most honest professionals she has ever encountered. She believes Respondent is extraordinarily remorseful. (Tr. 125-35).

Judge Paul Marchese also worked with Respondent at the State's Attorney's office. He described Respondent as a hard worker who took on some of the most difficult cases while also mentoring and assisting other attorneys. Further, Respondent was passionate about providing training for law enforcement officers and law students, was involved in charitable causes initiated by the office, and treated everyone with dignity and respect. Judge Marchese holds Respondent in very high regard and views him as incredibly honest, an exceptional trial lawyer dedicated to

his clients, ethical, and a role model. He believes Respondent's colleagues and adversaries feel the same. Judge Marchese has witnessed Respondent's remorse and candor. (Tr. 149-60).

Samuel Amirante, a retired judge and currently a practicing criminal defense attorney, described Respondent as a dedicated prosecutor and an example for young lawyers. Amirante has no doubts as to Respondent's honesty and integrity and believes everyone who knows Respondent shares that view. Further, he believes Respondent has affected many people in positive ways and the profession has a need for lawyers like him. (Tr. 165-66, 174-79).

George Grzeca, a criminal defense attorney, has served as co-counsel with Respondent on approximately 20 to 30 cases and they have covered each other's court calls. Grzeca described Respondent as an outstanding attorney with a high degree of honesty and integrity. (Tr. 138-42).

The foregoing witnesses were aware of the charges against Respondent, but those charges did not change their opinion of him. They were confident Respondent would not repeat his misconduct. (Tr. 110-12, 119, 135, 160-62, 178, 143).

Prior Discipline

Respondent has not been previously disciplined.

RECOMMENDATION

In determining the appropriate discipline, we are mindful that the purpose of these proceedings is not to punish, but to safeguard the public, maintain the integrity of the profession and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. While we strive for consistency and predictability, we recognize that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances which may mitigate and/or aggravate the misconduct. In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003). In

mitigation, we consider Respondent's acknowledgements of improper behavior, his cooperation in these proceedings, and his exemplary career with no prior discipline. Further, he expressed remorse for his conduct, which was confirmed by other witnesses who know him, and apologized for his behavior. Having listened to Respondent and observed him while testifying, we were convinced of his sincerity and deep contrition.

We also give considerable weight to the testimony of the six witnesses who spoke with passion and conviction regarding Respondent's honesty, dedication to clients, high moral character and value to the profession. Their testimony made a strong impression on us.

In aggravation, we consider the potential harm that might have resulted to Respondent's client or to her landlord as a result of his misconduct. See In re Saladino, 71 Ill. 2d 263, 375 N.E.2d 102 (1978) (discipline should be "closely linked to the harm caused or the unreasonable risk created by the [attorney's] lack of care"). We note, however, that no evidence of actual harm was presented. Gembala's case was not compromised, nor was there proof of damage to her landlord or even that the landlord relied on Respondent's letter in renting the apartment.

We turn now to the appropriate discipline for the misconduct that occurred. The Administrator urged us to recommend a 90-day suspension, while Respondent argued that a reprimand would be appropriate.

With respect to Respondent's sexual relationship with Gembala, we view the following cases as instructive, although differences are also apparent. In In re Reilly, 99 SH 70, M.R 18165 (Sept. 19, 2002) the attorney was reprimanded for engaging in a sexual relationship with her client's husband, who was also her client's opponent in divorce proceedings. No dishonesty was involved. In re Anderson, 2018PR00053, M.R. 29838 (May 21, 2019), the attorney was suspended for 30 days on consent for engaging in a sexual relationship with a divorce client and making false

statements to the Administrator about when the relationship began. A 60-day suspension on consent was imposed in In re Huyett, 2013PR00123, M.R. 26681 (Mar. 28, 2014) where the attorney, a public defender, engaged in a sexual relationship with a client and then provided false information to two judges and the Administrator as to when the relationship commenced. In contrast to the latter two cases, especially Huyett, Respondent was candid when confronted with his misdeeds and made no attempt to conceal his misconduct. Further, the mitigating circumstances in the foregoing cases were far less impactful than in the present case.

With respect to Respondent's preparation of a false verification of employment letter, we view that misconduct as serious but also recognize that it was an isolated instance of dishonesty that did not provide any proven benefit to Respondent. In other such cases, especially where the attorney enjoyed a stellar reputation and had enhanced the stature of the profession, modest sanctions were imposed. See In re Stern, 124 Ill. 2d 310, 529 N.E.2 562 (1988) (censure imposed where attorney participated in backdating letter but did not use it to his advantage); In re Davila, 99 CH 108 (Hearing Bd. Nov. 3, 2000) (reprimand imposed where attorney, who had made valuable contributions to the legal profession and the Hispanic community and enjoyed an excellent reputation, knowingly submitted false interrogatory answer to the court); In re Tenenbaum, 02 CH 49, M.R. 19947 (Mar. 18, 2005) (attorney censured for knowingly preparing false immigration documents to assist a relative and others but did not benefit financially, admitted his misconduct and expressed remorse, engaged in an isolated lapse of judgment that was an aberration in an exemplary life, and presented "overwhelming evidence" of good character); In re Toohill, 99 SH 11, M.R. 16952 (Nov. 22, 2000) (attorney censured for filing probate documents falsely stating that person died intestate; in mitigation, the attorney was attempting to

accommodate clients, presented “impressive array” of character witnesses, and had no monetary motive).

Taking into account the misconduct in this case, the mitigation and aggravation, and the relevant case law, we conclude that a censure will adequately serve the purposes of the disciplinary process. In particular, we were persuaded by the consistency of the character testimony praising Respondent for his untiring dedication to his clients and mentoring of young attorneys -- attributes which demonstrate his value to, and positive influence, on the legal profession. Further, Respondent’s deep remorse as well as the embarrassment he brought to himself and his family is assurance to us that he will never repeat his misconduct. Finally, his current caseload of criminal matters and looming trials indicate to us that the public would be damaged more by his removal from practice than his continued practice.

Accordingly, we recommend that Respondent Jeffrey Gerald Kendall be censured.

Respectfully submitted,

Lon M. Richey
Justin L. Leinenweber
Willard O. Williamson

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on April 6, 2022.

/s/ Michelle M. Thome

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