In re McStephen Olusegun Adewale Solomon
Respondent-Appellee

Commission No. 2021PR00012

Synopsis of Review Board Report and Recommendation
(November 2023)

The Administrator brought a two-count complaint against Respondent. Count I charged Respondent with failing to act with reasonable diligence in representing a client in a mortgage foreclosure case and failing to keep the client informed about the status of that case, in violation of Rules 1.3, and 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010). Count II charged Respondent with dishonestly converting $12,400 of client funds, and dishonestly failing to return client funds promptly, in violation of Rules 1.15(a) and 8.4(c).

The Hearing Board found that Respondent committed all of the charged misconduct, except for dishonestly failing to return client funds promptly. The Hearing Board recommended that Respondent be suspended for one year until further order of the Court ("UFO"), with the suspension stayed after six months by a one-year period of probation, subject to conditions.

The Administrator appealed, challenging the Hearing Board's sanction recommendation, and asking the Review Board to recommend a one-year suspension, UFO, with no stay or probation. Respondent cross-appealed *pro se*, also challenging the Hearing Board's sanction recommendation, and asking this Board to issue a reprimand, or recommend a suspension fully stayed by probation.

A majority of the Review Board recommended that Respondent be suspended for one year, UFO, with the suspension stayed after five months by a one-year period of probation, subject to conditions. One Review Board member, concurred in part, and dissented in part, adopting the Hearing Board's recommendation and two of the conditions recommended by the majority, but contrary to the majority, requiring compliance with all disclosures of Illinois Supreme Court Rule 764.

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

In the Matter of:

MCSTEPHEN OLUSEGUN ADEWALE SOLOMON,

Respondent-Appellee,

No. 6310211.

Commission No. 2021PR00012

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a two-count complaint against Respondent. Count I charged Respondent with failing to act with reasonable diligence in representing a client in a mortgage foreclosure case and failing to keep the client informed about the status of that case, in violation of Rules 1.3, and 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010). Count II charged Respondent with dishonestly converting $12,400 of client funds, and dishonestly failing to return client funds promptly, in violation of Rules 1.15(a) and 8.4(c).

Following a disciplinary hearing on July 20, 2022, at which Respondent appeared *pro se*, the Hearing Board found that Respondent committed all of the charged misconduct, except for dishonestly failing to return client funds promptly.

The Hearing Board recommended that Respondent be suspended for one year until further order of the Court ("UFO"), with the suspension stayed after six months by a one-year period of probation, subject to conditions. In other words, the Hearing Board recommended a six-month suspension, followed by a one-year period of probation, where a violation of probation

would result in a suspension until further order of the Court. The Hearing Board's Report was filed on February 15, 2023.

At the disciplinary hearing, the Administrator called two witnesses – Edith Raices and Respondent. The Administrator's Exhibits 1 through 16 were admitted into evidence. Respondent testified on his own behalf, and his Exhibits 1 through 7 were admitted into evidence. The parties also entered into a Joint Stipulation for the Admission of Exhibits and a Joint Stipulation of Facts. (Adm. Ex. 17, 18.)

The Administrator appealed, challenging the Hearing Board's sanction recommendation, and asking this Board to recommend a one-year suspension, UFO, with no stay or probation. Respondent cross-appealed *pro se*, also challenging the Hearing Board's sanction recommendation, and asking this Board to issue a reprimand, or recommend a suspension fully stayed by probation. The only issue on appeal is the appropriate sanction.

For the reasons that follow, a majority of the Review Board recommends that Respondent be suspended for one year, UFO, with the suspension stayed after five months by a one-year period of probation, subject to conditions. One Review Board member, concurs in part, and dissents in part, adopting the Hearing Board's recommendation and two of the majority's conditions, with the suspension being stayed after six months instead of five months, and requiring compliance with all disclosures of Illinois Supreme Court Rule 764

BACKGROUND

Respondent

Respondent was admitted to practice law in Illinois in 2012. He has been a solo practitioner throughout his career, with a focus on immigration, municipal law, litigation, real estate, and family law, and he was an adjunct professor for five years. He has no prior discipline.

Respondent's Misconduct

Respondent neglected a client's case in a foreclosure action, and he failed to keep his client informed about the court proceedings. He also dishonestly converted $12,400 from rent payments that belonged to his client. The facts in this matter are set out in greater detail in the Hearing Board's Report.

Failure to Litigate the Foreclosure Case

From 2013 to 2018, Respondent represented a client, Edith Raices, in a mortgage foreclosure case pertaining to a house that she owned in South Holland, Illinois. Respondent also represented her in matters concerning the rental of that house.

Respondent met Raices in 2013 when she hired Respondent as an adjunct professor at South Suburban College in South Holland, Illinois. Respondent taught courses at the college for five years, from 2013 to 2018. Raices was a professor and Department Chair at the college, and she was Respondent's supervisor throughout that period. They became good friends.

In early 2013, U.S. Bank filed a foreclosure action against Raices' house. In October 2013, Raices asked Respondent to represent her in the foreclosure action, which he agreed to do.

The mortgage on Raices' house was in arrears because, in 2011, Raices had sold her house to a fraudulent company that failed to pay the mortgage. The owners of that company were subsequently convicted of committing fraud in connection with the purchase of distressed properties. The company defrauded Raices by paying her a nominal sum for the property and falsely representing that the company would pay the mortgage and purchase the house from the bank at a discounted price, so that Raices could walk away from the house with no debt and no

harm to her credit. After purchasing the property, the company rented out the property, thereby obtaining income from the house.

The company, however, did not pay the mortgage or purchase the house from the bank as promised. The company also failed to transfer the title to the property, so Raices was still the owner of the house when U.S. Bank filed the foreclosure action in 2013.

Raices and Respondent agreed that he would represent her in the foreclosure action as a favor and would not charge her any fees. They also agreed that Raices would pay any litigation costs, and she paid Respondent $980, which included certain costs. They did not have a written fee agreement.

In early December 2013, Respondent filed his appearance and a verified answer, in which he asserted an affirmative defense alleging third-party fraud. By the end of December 2013, Respondent had determined that Raices still owned the property. In early January 2014, Respondent attended a court hearing, at which the bank withdrew its pending motion for a default judgment.

Although the case continued from January 2014 until June 2018, Respondent did not take any other action to litigate or negotiate the case. He did not appear in court again or file any pleadings. He did not keep Raices informed about the case or discuss any legal strategy with her.

In June 2017, the bank filed a group of motions, which included a motion for summary judgment, and motions for the foreclosure and sale of the property. Respondent received those motions and notice of the court date for a hearing on those motions. Respondent, however, did not respond to the motions or appear in court. The court granted those motions in September 2017. In March 2018, the bank sold the house for $108,000.

In May 2018, the bank filed another group of motions, which included a motion for a final judgment approving the sale of the house, and a motion requesting a deficiency judgment against Raices in the amount of $314,236. Respondent did not respond to those motions or appear in court. In June 2018, the court granted those motions. A deficiency judgment for $314,236, with interest as provided by statute, was entered against Raices.

In June 2018, Respondent learned that the house had been sold, and in December 2018, he told Raices about the sale. Respondent never told Raices that the court had entered a deficiency judgment against her. She did not learn about the deficiency judgment until July 2022.

The Hearing Board rejected Respondent's testimony that his failure to litigate the case was a strategic legal decision, finding that that his testimony was implausible, and it was inconsistent with other evidence in the record. (Hearing Bd. Report at 7-8.) The Hearing Board found that Raices' testimony, on the other hand, was credible, and it was "straightforward, unwavering, and consistent." (*Id*. at 7.)

Conversion of $12,400

After Raices sold the house in 2011, the company rented the house to a tenant, Tiffany Daniels, and she was still renting the house in 2013. Raices and Respondent agreed that he would collect the rent and manage any issues concerning the tenancy. They also agreed that Respondent would represent Raices as a favor and would not charge her any fees. They did not have a written fee agreement.

Respondent established a trust account to hold the rent payments. He told Raices that he would hold all of the rent payments in the trust account until the foreclosure case ended. Respondent said the rent payments had to be held in escrow because, if the bank won the case,

those funds would belong to the bank. The tenant, Daniels, made rent payments totaling $47,100, which were deposited into the trust account.

Between June 2014 and March 2018, Respondent made nine separate withdrawals, totaling $12,400, from the trust account for his own personal benefit. Respondent also withdrew $2,000 that he gave to Raices, based on her request, which funds are not at issue on appeal. Respondent took the $12,400, without authority, knowing that those funds did not belong to him.

The trust account holding the rent money was at Chase Bank. In the summer of 2018, the trust account was compromised, resulting in unauthorized transactions totaling approximately $33,000. By September 2018, however, Chase Bank had returned approximately $31,000 of those funds. Respondent then had a total of $40,000 of rent payments in a client trust account at Chase Bank.

In December 2018, Respondent told Raices that the bank had sold the house, and falsely represented that all of the rent money was gone because the bank had taken those funds. In fact, Respondent had $40,000 of rent payments in his client trust account at Chase Bank, which he did not disclose to Raices. Shortly thereafter, in January 2019, Raices sent a letter to the ARDC, asserting that Respondent had stolen the rent money from her.

At the disciplinary hearing, Respondent admitted he used that $12,400 for his own benefit, without authorization from Raices. He testified, however, that he was entitled to take funds out of the trust account because the tenant, Daniels, owed him legal fees.

The Hearing Board rejected that testimony because the tenant, Daniels, was not his client and she never paid any legal fees into the trust account; Respondent did not have a fee agreement with Daniels; the lease he prepared for Daniels had no provision for payment of legal

fees; the money in the account belonged to Raices; and he told Raices that no funds would be withdrawn from the account until the foreclosure case ended. (*Id*. at 14-18.)

Respondent also testified that he was entitled to withdraw and spend $5,000 because he had mistakenly deposited into the account $5,000 from another client matter. The Hearing Board rejected that testimony. Respondent had agreed to hold that $5,000 in escrow for the other client matter, and he never made a $5,000 withdrawal; all of the withdrawals were in smaller amounts. The Hearing Board concluded that Respondent dishonestly converted the full $12,400, knowing that those funds did not belong to him. (Hearing Bd. Report at 8, 13-17.) The Hearing Board noted, however, that even if Respondent had been entitled to withdraw and spend $5,000, Respondent still dishonestly misappropriated $7,400, and the Hearing Board's analysis and conclusion remained the same. (*Id*. at 28, n.1.)

In September 2021, Respondent paid $40,000 to Raices. At the time of the disciplinary hearing, Respondent still owed restitution of $4,788 to Raices. After the disciplinary hearing, however, Respondent paid that $4,788 to Raices, so there is no restitution outstanding.

HEARING BOARD'S FINDINGS AND RECOMMENDATION

Misconduct Findings

The Hearing Board made the following findings:

Respondent violated Rule 1.3, which requires attorneys to "act with reasonable diligence and promptness in representing a client." Respondent failed to diligently represent his client, Edith Raices, in that he failed to attend court dates; he failed to file any motions or responses to motions filed by the bank; he failed to pursue Raices' affirmative defense of third party fraud; and he took no steps to negotiate with the bank. (Hearing Bd. Report at 6-8.)

Respondent violated Rule 1.4(a)(3), which requires attorneys to "keep clients reasonably informed about the status of the matter." He failed to tell Raices what was happening in the foreclosure case or consult with her about any legal strategy. (*Id*.)

Respondent violated Rule 1.15(a), which requires attorneys to "hold property of clients or third persons … separate from the lawyer's own property." Respondent misappropriated $12,400 that he was holding in a trust account for Raices. (*Id*. at 13-15.)

Respondent violated Rule 8.4(c), which prohibits attorneys from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation." Respondent acted dishonestly by converting $12,400 from the trust account for his own benefit. (*Id*. at 15-18.)

The disciplinary complaint also charged Respondent with engaging in dishonest conduct in violation of Rule 8.4(c) by failing to promptly repay the rent funds to Raices. The Hearing Board, however, found there was not sufficient evidence to prove that Respondent acted dishonestly. (*Id*. at 15-18.) That issue is not on appeal.

Mitigation and Aggravation Findings

In mitigation, the Hearing Board found that Respondent cooperated with the disciplinary proceeding, made substantial restitution, and had no prior discipline. The Hearing Board found that Respondent was inexperienced when he began representing Raices in 2013, having been licensed for less than a year, and he had no guidance or supervision thereafter because he was a solo practitioner. The Hearing Board also found it mitigating that Respondent expressed the desire to gain additional knowledge and skills; he testified that he does not hold client funds in his law practice; and he no longer handles transactions like the one that led to his misconduct. (Hearing Bd. Report at 18-19, 23-24.)

In aggravation, the Hearing Board found that Respondent does not understand the Rules of Professional Conduct; he does not fully comprehend his ethical obligations; he does not fully acknowledge or recognize what he did wrong; and he does not understand the seriousness of his misconduct. The Hearing Board also found that Respondent failed to express any regret for the harm he caused Raices, including that his misconduct essentially left Raices without representation and caused her stress. (*Id*. at 19-23.)

Recommendation

The Hearing Board recommended that Respondent be suspended for one year, UFO, stayed after six months by one year of probation, with conditions designed to improve Respondent's law office management and client communication skills. The conditions include: (1) supervision by another attorney; (2) an independent audit of Respondent's trust account; (3) maintenance of complete records for the client trust account; and (4) completion of the ARDC Professionalism Seminar. (*Id*. at 25-27.) Violation of the probationary conditions will result in a suspension, UFO, and Respondent will be required to apply for reinstatement prior to being allowed to practice law.

SANCTION RECOMMENDATION

The only issue on appeal is the appropriate sanction for Respondent's misconduct. The Administrator argues that a one-year suspension, UFO, with no probation, is warranted given the serious nature of the misconduct and aggravating factors. Respondent argues that a reprimand or a suspension stayed in its entirety by probation is the appropriate sanction.

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, 1200 (2003), while keeping in mind that the purpose of discipline is not to punish the attorney but rather to protect the public, maintain the integrity of the legal profession, 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, a majority of the Review Board recommends that Respondent be suspended for one year, UFO, stayed after five months by one year of probation, with the conditions recommended by the Hearing Board, along with an additional condition concerning notification to clients. One member of the Review Board recommends that the Hearing Board's recommendation be adopted in full, thereby recommending that Respondent be suspended for one year, UFO, stayed after six months (instead of five months) by probation with the conditions recommended by the Hearing Board.

Respondent argues that a reprimand or a suspension stayed in its entirety by probation is the appropriate sanction, given the mitigating factors in this case, including that his misconduct was limited to one client; he cooperated fully in the disciplinary proceedings; he has no prior discipline; and he made full restitution. We have given careful consideration to Respondent's arguments, but we conclude that a minimal sanction is insufficient to deter Respondent from engaging in future misconduct.

At the same time, we also disagree with the Administrator that a UFO sanction, which is not stayed by probation, is warranted. We believe that Respondent's misconduct was not so severe that it warrants a UFO sanction, with no probation. We agree with the Hearing Board that a UFO sanction without probation would be punitive. (Hearing Bd. Report at 24.)

The Hearing Board engaged in a well-reasoned, thorough, and conscientious analysis of the facts and the law and the Hearing Board had the opportunity to observe Respondent testify. We agree with the Hearing Board's recommendation, with the exception that we recommend that the suspension be stayed after five months instead of after six months.

Notification to Clients

We are recommending that the suspension be stayed after five months, rather than six months, because a six-month period of suspension triggers Supreme Court Rule 764, which would require Respondent to provide notice of his discipline to clients, courts, opposing counsel in court cases, certain governmental agencies, and others. We believe that requiring Respondent to do so is unnecessary in this case, particularly because his misconduct related to only one client, and did not involve his representation of any other clients during the ten years that he has practiced law.

Requiring Respondent to advise his clients and others that he had been disciplined has the potential to drastically disrupt and harm his legal practice and therefore seems unduly harsh in this case. In order to protect Respondent's clients, however, we recommend that Respondent be required to comply with the more limited notification provisions of Rule 764(c)(2),(3), and (4), so that Respondent will have to notify his clients that he cannot represent them for five months; they have the right to retain another attorney; and their files are available to them.

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.

Respondent's misconduct took place over a period of five years, which included his failure to litigate the foreclosure case; his failure to keep Raices informed about the case; and

his conversion of funds. Respondent also falsely represented to Raices that he was working on the case and that he was going to court. Moreover, in 2018, Respondent falsely represented to Raices that the bank had taken all of the rental funds, when, in fact, Respondent was holding $40,000 of those funds. Ultimately, the bank sold Raices' house and obtained a deficiency judgment of $314,000 against her.

Respondent misappropriated funds from the trust account, without authority, knowing that those funds did not belong to him and that Raices, who was his client and his close friend, was trusting him to hold those funds. We agree with the Hearing Board that Respondent's conversion of funds was serious, regardless of whether the amount was $12,400 or $7,400. In either case, Respondent acted dishonestly and placed his own interests ahead of Raices' interests.

Aggravating Factors

The Hearing Board found, and we agree, that Respondent's misconduct was aggravated by several significant factors, including his failure to fully understand the seriousness of his misconduct; his failure to fully acknowledge or recognize what he did wrong; his failure to express any regret for the harm he caused Raices; and his failure to "fully grasp his ethical obligations, particularly as they relate to handling client funds and charging attorney's fees." (Hearing Bd. Report at 23.)

Also in aggravation, Respondent attempted to justify or minimize most of his wrongdoing, and portions of his testimony were unreliable. Respondent testified unconvincingly that his failure to litigate the foreclosure case was part of his legal strategy. The Hearing Board rejected that testimony, finding that it was implausible and appeared to be "an afterthought to hide his neglect." (Hearing Bd. Report at 7-8.) The Hearing Board also rejected Respondent's testimony that he was legitimately entitled to withdraw and spend $12,400 from the trust account.

We are convinced that the recommended sanction is appropriate, given the serious nature of respondent's misconduct and the aggravating factors.

Mitigating Factors

We also believe that the recommended sanction properly balances the serious nature of the misconduct and the mitigating factors. The mitigating factors include the following:

- The charged misconduct was limited to only one court case and only one client.
- Respondent has now practiced law for ten years, without any other disciplinary action.
- Respondent cooperated in the disciplinary proceedings.
- He made full restitution to Raices, repaying all of the rent money owed to her.
- He testified that he does not hold client funds in his law practice, and he no longer handles transactions like the one that led to his misconduct.
- The Hearing Board found that Respondent was "sincere in his expressed desire to gain knowledge and skills that were absent or deficient in his representation of Raices." (Hearing Bd. Report at 20.)
- The Hearing Board found it mitigating that Respondent testified that he has learned a lot since he began representing Raices and he is willing to learn more. (*Id.* at 18.)
- The Hearing Board also found it mitigating that Respondent had practiced law for less than a year when he agreed to represent Raices. (*Id.* at 18.)

We believe that the mitigation in this case weighs against a harsher sanction. We conclude that the recommended sanction is sufficient to impress on Respondent the seriousness of his misconduct.

Probation is Appropriate in this Case

The Administrator argues that the recommended one-year suspension, UFO, should not be stayed by a period of probation, given that Respondent's misconduct was intentional, because probation cannot adequately monitor or prevent dishonest conduct. The Administrator is correct that there are cases in which requests for probation have been rejected where the conduct

was intentionally dishonest. *See*, *e.g.*, *In re Odom*, 2001PR00069 (Review Bd., Sept. 10, 2004) at 17-18, *petition for leave to file exceptions denied*, M.R. 19772 (June 9, 2005) (stating, "Intentional deceit for an attorney's own purposes is not a condition which can be easily monitored, and we have consistently declined to recommend probation in cases involving dishonesty."); *In re Maciasz*, 2006PR00080 (Review Bd., May 12, 2010) at 14, *petition for leave to file exceptions denied*, M.R. 23960 (Oct. 13, 2010) (stating probation serves no purpose where the "conduct was deliberate and not the type of activity that would be remedied through supervision").

A finding of intentional dishonesty, however, does not always preclude probation, where probationary conditions can be designed to address existing problems. *See In re Gordon*, 2020PR00059 (Hearing Bd., May 26, 2021) at 10, *approved and confirmed*, M.R. 030887 (Oct. 14, 2021) (although part of Gordon's misconduct involved dishonesty, the sanction included probationary conditions aimed at improving Gordon's legal skills; the Hearing Board stated, "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) (the sanction included probationary conditions designed to improve Chiang's legal skills and monitor his law practice; the Review Board stated, "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 …. [and probation will] give the respondent an opportunity to correct the deficiencies in his or her practice, while still protecting the public.").

In this case, although Respondent's misconduct involved intentional dishonesty, his misconduct also involved deficient legal skills, a lack of professionalism, and the failure to fully understand the Rules of Professional Conduct, all of which can be addressed by probationary

conditions. The Hearing Board noted that probation will "give Respondent a chance to correct the deficiencies in his practice." (Hearing Bd. Report at 25.) We agree.

Respondent's deficient legal skills are evidenced by his failure to follow routine procedures, including his failure to prepare written retainers and fee agreements; his misguided attempt to obtain legal fees from Tiffany Daniels, who was not his client; his failure to keep a ledger, maintain records, or produce a final accounting concerning the rental payments; his depositing $5,000 into the trust account that he established to hold only rent payments; and his failure to provide copies of any legal documents or the deficiency judgment to Raices.

The recommended conditions are designed to help Respondent learn the skills that he needs in order to practice law ethically and responsibly. A supervising attorney will act as a mentor to help Respondent establish appropriate procedures to practice law and to understand his professional obligations. Respondent will be required to complete the ARDC Professionalism Seminar, which will help educate him concerning his ethical obligations. An auditor will conduct an audit of Respondent's trust account to ensure that Respondent is properly safeguarding client funds, and Respondent will be required to maintain proper trust account records. We also note that during oral argument, Respondent, who appeared *pro se*, stated that he has no objection to the imposition of probation with conditions.

We agree with the Hearing Board that a UFO provision will protect the public and the integrity of the legal profession. If Respondent fails to comply with the probationary conditions, his violation of probation will trigger the UFO provision, and his suspension will continue until he proves in a reinstatement proceeding that he has been rehabilitated.

We also recommend that an additional condition be added, namely, that Respondent be required to comply with Rule 764(c)(2), (3), and (4), so that, Respondent will have to notify his

clients that he cannot represent them for five months; they have the right to retain another attorney; and their files are available to them. Additionally, we recommend that the condition concerning payment of restitution be removed because Respondent has now made full restitution to Raices. Finally, we recommend adding a provision for clarification, stating: "If Respondent successfully completes the terms of probation, his probation shall terminate without further order of the Court."

Relevant Legal Authority

We have considered all of the cases cited by the parties and the Hearing Board, as well as the cases discussed below, and we conclude that a one-year suspension, UFO, stayed after five months by probation is the appropriate sanction. It falls within the range of sanctions imposed for misconduct in similar cases, and we believe that it will serve the purposes of attorney discipline.

In support of the argument that a UFO sanction, without probation, is warranted here, the Administrator cites two cases, *In re Maros* and *In re Huff*, in which the attorneys neglected cases and a UFO sanction was imposed. *See In re Maros*, 1994PR00430 (Review Bd., March 20, 1996), *approved and confirmed*, M.R. 12639 (Sept. 24, 1996) (Maros neglected three client matters, failed to keep clients informed about the status of their matter, made misrepresentations about the status of client matters, failed to pay $1,600 in restitution, and failed to deposit $750 in client funds into a trust account; in aggravation, Maros failed to file an answer to the disciplinary complaint; failed to comply with discovery; and failed to file a brief on appeal); *In re Huff*, 2014PR00059 (Hearing Bd., Feb. 23, 2015), *approved and confirmed*, M.R. 27323 (May 14, 2015) (Huff neglected two client matters, made false statements to his clients, and misappropriated $4,255 of client funds; in aggravation, he failed to fully cooperate in the disciplinary proceedings; Huff testified that he had practiced law for 40 years and he did not think

he should be practicing law anymore; the *Huff* Hearing Board concluded that Huff should demonstrate that he was mentally and physically fit before he resumed practicing law).

The Hearing Board in this matter found that those cases are distinguishable because the misconduct in those cases is more egregious, and the aggravating factors are more significant than in this matter. We agree. We also note that in *Huff*, the attorney testified that he did not think he should continue practicing law. We also note that UFO sanctions were not imposed in comparable cases, discussed below, which involved similar misconduct.

The Hearing Board in the instant matter relied on three cases, *In re Bertha*, *In re Newcomb*, and *In re Hopkins*, in which attorneys neglected client matters and/or mishandled client funds. (Hearing Bd. Report at 24-25.) We agree with the Hearing Board that those cases provide guidance here. *See In re Bertha*, 2012PR00098 (Review Bd., Feb. 19, 2014), *leave to file exceptions allowed*, M.R. 26678 (June 6, 2014) (one-year suspension, UFO, stayed after four months by probation, with conditions designed to improve Bertha's office management and his understanding of his ethical obligations; Bertha dishonestly converted $1,000 of client funds and mishandled escrow funds in seven other transactions; he never had a client trust account or an operating account; in mitigation, he accepted responsibility and was remorseful; he was willing to correct his practices; and he made restitution); *In re Newcomb*, 2004PR00020 (Hearing Bd. Jan. 12, 2005), *approved and confirmed*, M.R. 20087 (June 10, 2005) (18-month suspension, stayed after three months, by probation with conditions designed to correct Newcomb's law practice deficiencies; Newcomb neglected four cases, which were dismissed; she made false representations to a client; and she failed to disclose three pending legal malpractice cases to the ARDC; in mitigation, Newcomb accepted responsibility, she had no prior discipline, two character witnesses testified on her behalf, and her misconduct was not intentional); *In re Hopkins*,

2006PR00077 (Hearing Bd., June 11, 2008), *approved and confirmed,* M.R. 22557 (Oct. 8, 2008) (one-year suspension stayed after six months by probation with conditions designed to improve Hopkins' office procedures; Hopkins neglected three client matters, gave false assurances to clients, failed to return two unearned fees, and misused $2,350 in client funds; one client lost five buildings for tax delinquency due to Hopkins' negligence; and another client lost a personal injury case because Hopkins failed to produce discovery; in mitigation, Hopkins had no prior discipline, he cooperated, and a character witness testified on his behalf).

Additionally, we have considered four other cases, discussed below, in which the attorneys failed to diligently represent clients and engaged in additional misconduct, where the sanctions involved suspensions that were stayed by probation.

In *In re Smith*, 168 Ill. 2d 269, 297, 659 N.E.2d 896 (1995), the attorney was suspended for 17 months, stayed after five months by probation designed to improve Smith's office management. Smith neglected five client matters, failed to properly communicate with clients, failed to refund an unearned fee, and failed to fully cooperate in the disciplinary proceedings. In mitigation, Smith attempted to complete his clients' cases and return unexpended costs and fees. The Court found that "the 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 *In re Wills*, 2021PR00021, *petition to impose discipline on consent allowed*, M.R. 031010 (Feb. 10, 2022), the attorney was suspended for one year, UFO, stayed after five months by probation. Wills failed to appear in court for two cases. One case was dismissed for lack of prosecution, and the other case resulted in a default judgment against his client. Wills also

lied to the clients about the status of their cases, and he failed to return unearned fees. In mitigation, he expressed remorse, had no prior discipline, and had certain mental health problems.

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, stayed after six months with conditions of probation designed to improve his legal skills. He failed to file an appellate brief in a criminal appeal, which caused undue delay in resolving his appeal and placed the client's interests at risk. The pleadings that Gordon did file were unprofessional. Additionally, he falsely represented to his client that he had filed the appeal, and he did not return unearned fees. He also fabricated a document to make it appear that the brief had been filed. In aggravation, he provided that fabricated document to the ARDC; he failed to show any remorse; and he did not present any mitigating evidence, except that he had no prior misconduct.

In *In re Chiang*, 2007PR00067 (Review Bd., Jan. 30, 2009), *petition for leave to file exceptions denied*, M.R. 23022 (June 8, 2009), the attorney was suspended for five months, UFO, stayed after three months, with conditions of probation designed to improve his legal skills and monitor his law practice. Chiang failed to provide competent representation in seven immigration cases, and in one of those cases Chiang's client was denied asylum because Chiang failed to file the appropriate application. Chiang also filed inadequate appeals in six other immigration cases. Additionally, he made false statements in pleadings and made false accusations against certain judges. In aggravation, he did not understand the seriousness of his misconduct and he did not accept responsibility. In mitigation, he sincerely tried to help his clients, he was familiar with the language and customs of his immigration clients, and he had no prior discipline.

Finally, we have also considered cases involving the conversion of a relatively limited amount of money, which resulted in limited sanctions. *See In Re Lvden*, 1997PR00093,

petition to impose discipline on consent allowed, M.R. 14458 (March 23, 1998) (two-month suspension for converting $2,263 of client funds in two matters); *In re Merriwether*, 138 Ill. 2d 191, 561 N.E.2d 662 (1990) (three-month suspension for converting $2,250, and lying about it); *In re Reidy*, 1998PR00032 (Hearing Bd. Nov. 17, 1999), *approved and confirmed*, M.R.16435 (Jan. 24, 2000) (four-month suspension for converting $4,200 and co-mingling personal funds with client funds). We note that Respondent converted more money than the attorneys in those cases, and engaged in additional misconduct, so that a more serious sanction is warranted in this case.

The Dissent

We recognize that, as set out in the dissent, our colleague believes that the recommended suspension should be stayed after six months, rather than after five months, so that all of the notice provisions of Rule 764 will apply. We respectfully disagree.

Although the dissent argues that our recommendation is not supported by the record, we believe that we can properly draw the conclusion that requiring Respondent to notify clients, courts, and others of his discipline seems unduly harsh and akin to punishment, based upon the Hearing Board's findings and proposed sanction. Additionally, although the dissent points out that neither party requested the sanction that we are recommending, we are not constrained by the parties' arguments. *See Nave v. Heinzmann*, 344 Ill. App. 3d 815, 820, 801 N.E.2d 121 (5th Dist. 2003) ("The trial court and this court are not limited to the arguments of the parties."); *People v. Zimmerman*, 2018 IL App (4th) 170695 ¶ 142, 107 N.E.3d 938 (2018) ("The decision whether to look beyond the arguments of the parties lies within the trial court's sound discretion.") We believe that our recommendation better satisfies the disciplinary goals than the sanctions requested by the parties. We also note that in *In re Rollins*, cited in the dissent, the Review Board recommended a five-month suspension, even though neither party requested that sanction. *See In re Rollins*,

2021PR00054 (Review Bd. March 29, 2023), *petition for leave to file exceptions denied,* M.R. 031768 (September 21, 2023).

Moreover, although the dissent asserts that we should adopt the Hearing Board's recommendation, we note that the standard of review for the Hearing Board's sanction recommendation is *de novo*, and we have applied that standard in this matter. *See In re Storment*, 2018PR00032 (Review Bd., January 23, 2020) at 15*, petition for leave to file exceptions denied*, M.R. 30336 (May 18, 2020). We have the responsibility to make the recommendation that we deem appropriate, which we have done in this case. Our respect for the excellent report prepared by the Hearing Board does not diminish our obligation to make our own analysis and recommendation.

The dissent also argues that our recommendation does not follow either the letter or the spirit of the law. As discussed above, there are similar cases involving comparable misconduct that provide guidance in this matter, including cases in which a five-month suspension was imposed, so that the recommendation here does satisfy the letter and spirit of the law, as the cited cases show. (*See supra* at 17-19). Additionally, we believe that imposing a probationary condition requiring Respondent to provide notice to his clients that he cannot represent them for five months protects the public and satisfies the letter and the spirit of the law.[1]

We also believe that Respondent's *pro se* representation on appeal was competent and professional. (*See* endnote ten in the dissent, suggesting that Respondent, who was *pro se*, was less than competent and professional.) We believe that Respondent handled the oral argument well, which included making clear and comprehensible arguments. We recognize that some attorneys, including Respondent, may not be familiar with disciplinary law and its practices and procedures, so that it is not surprising that a *pro se* respondent may be unaware of the benefit of

citing cases or calling character witnesses. We do not believe that Respondent's *pro se* representation weighs against him or demonstrates an inability to practice law competently or ethically. We also note that the Hearing Board and the Administrator did not assert that Respondent was not competent to practice law.

Finally, the dissent cites *In re Rollins* in support of the argument that a suspension stayed after five months is not an appropriate sanction. The attorney in *Rollins*, however, was suspended for five months. Rollins attempted to defraud his law firm of $63,000 by fabricating false documents and lying to his law firm, and then attempted to conceal his misconduct by creating additional false documents. His misconduct jeopardized his new law firm, which was still trying to build its reputation. Given the very serious nature of his misconduct, Rollins was suspended for five months, but he was not required to notify anyone about his suspension. Although there were more mitigating factors in *Rollins* than are present in this case, the recommended sanction here is harsher than the sanction imposed in *Rollins*, in that the recommended sanction includes a one-year period of probation, and failure to comply with the probationary conditions will result in a suspension UFO.

CONCLUSION

In sum, we believe that the recommended sanction is the appropriate discipline for Respondent's misconduct. The probationary conditions are designed to address deficiencies in Respondent's legal practice and educate Respondent concerning his ethical obligations, and a probation violation will trigger the UFO provision. We believe that this sanction serves the goals of attorney discipline by protecting the public, acting as a deterrent to Respondent and other attorneys, and helping to preserve public confidence in the legal profession.

Accordingly, we recommend that Respondent be suspended for one year, UFO, stayed after five months by a one-year period of probation, subject to the conditions recommended by the Hearing Board, with the condition concerning restitution being removed, and two conditions being added, namely that:

1. Respondent shall comply with the provisions of Rule 764(c)(2), (3), and (4), which includes notifying clients that he cannot represent them for five months; they have the right to retain another attorney; and their files are available to them; and

2. If Respondent successfully completes the terms of probation, his probation shall terminate without further order of the Court.

Respectfully submitted,

J. Timothy Eaton
Charles E. Pinkston, Jr.

Scott J. Szala, concurring in part and dissenting in part:

OVERVIEW

The Review Board's majority opinion acknowledges that "[t]he Hearing Board engaged in a well-reasoned, thorough, and conscientious analysis of the facts and the law and the Hearing Board had the opportunity to observe Respondent [Solomon] to testify." (Review Bd. Report, at 10.) Despite this strong statement (in which I concur), the majority rejects the unanimous Hearing Board's recommended sanction of a suspension of one year, until further order of Court (UFO), stayed by a one-year period of conditional probation after six months with conditions designed to improve Respondent's law office management and client communication skills (Hearing Bd. Report, at 20, 25-27). Instead, and significantly, the majority recommends a suspension stayed after five months, and with some additional conditions (Review Bd. Report, at

22-23). For the reasons discussed below (including extensive and supporting endnotes), the majority's recommendation of a five-months suspension, a sanction not sought by Respondent nor the Administrator, is more than a month's difference between the two suspension recommendations; rather, it is one that has significant "real world" consequences for Respondent, clients, the public-at-large, and attorneys in general for this case and future cases. Consequently, I concur in part, and dissent in part, to the majority's opinion.

The Majority's Selective Application of Rule 764 is Inappropriate; The Hearing Board's Recommendation of a Six-Month Suspension is Appropriate.

The majority's recommendation of a suspension after five months, is subject to two conditions, the most significant one being that Respondent is required only to comply with some, but not all, of the key provisions of Illinois Supreme Rule 764. Specifically, the majority recommends that Respondent comply only with Rule 764(c)(2) (notice to clients that the respondent cannot represent them during the disciplined period–five months); Rule 764(c)(3) (notice to clients that they can retain another attorney); and Rule 764(c)(4) (notice to clients that their files and records are available to them). (Review Bd. Report, at 20.)[2] As the majority candidly and properly acknowledges, it does not recommend the entirety of Rule 764's sanctions, including Respondent's required notice of his discipline to "clients, courts, opposing counsel in court cases, certain governmental agencies, and others." *Id.* at 10-11. Tellingly, and among other Rule 764 provisions, the majority's opinion fails to include Rule 764(c)(1), requiring notice to the clients of the "action taken by the supreme court." According to the majority's opinion, this and other omissions from Rule 764's requirements resulting from a six-months suspension allegedly could "drastically disrupt and harm his [Respondent's] legal practice" and would be "unduly harsh" for "misconduct related to only one client" during his ten years of law practice. *Id*. Significantly, the majority's assertion of dire consequences from this purported disruption and harm is unsupported

by the record on the Rule 764 issue, including any testimony by Respondent, any written briefs submitted, or oral arguments made by the parties, or any specific question posed by the majority at the Review Board oral argument. For these and other reasons discussed herein, the majority's selective applicability of Rule 764 is inappropriate.

Accordingly, and as discussed hereafter, the Hearing Board's six-months suspension recommendation with conditional probation is warranted by the history of Rule 764, Respondent's repeated ethical lapses or questionable conduct during the more than eight years of his dealings with the one former client, Edith Raices (including allowing an uncontested deficiency judgment of more than $314,000 to be entered against her),[3] his questionable testimony under oath before the Hearing Board, and his violations of Supreme Court of Illinois Rules of Professional Conduct, Rules 1.3, 1.4(a)(3), 1.15(a), and 8.4(c). Since the majority's recommendation does not sufficiently "protect the public, maintain the integrity of the legal profession, deter other misconduct, and protect the administration of justice from reproach" (Review Bd. Report, at 9), (citing *In re Timpone,* 157 Ill. 2d 178, 197 (1993) and *In re Discipio,*163 Ill. 2d 515, 528 (1994)),[4] the Hearing Board's six-months suspension with conditional probation recommendation is appropriate.

The History of Illinois Supreme Court Rule 764 Mandates Full Compliance with the Rule.

To better understand my recommendation disagreement with the majority, the history of Rule 764 and its specific subsections are addressed. In 1973, the Illinois Supreme Court adopted then-Supreme Court Rule 764 [1973 Rule], wherein a disbarred attorney or Court-ordered suspended attorney must notify all clients of pending matters "of the fact that he cannot continue to represent them."[5] "*[T]he language of the [1973] rule does not literally require the attorney to state the reason why he cannot continue to represent a client, but only the 'fact' that he cannot."*

See Albert E. Jenner, Philip W. Tone, and Arthur M. Martin's "Historical and Practice Notes" for the newly-adopted Rule 764 (emphasis added) [1973 Notes]. Disbarred or court-ordered suspended attorneys were also required to submit an affidavit that they had complied with the foregoing provisions and would maintain records of such compliance."[6]

In 1989, Rule 764 was dramatically amended substantively, providing greater protection and transparency for clients and the public-at-large, adding the current detailed lettered paragraphs and numbered subsections (Rules 764 (a)-(j)), and deterring (hopefully) other attorneys from similar wrongful conduct [1989 Rule]. Specifically, since 1989, Rule 764 has required an attorney disbarred, disbarred on consent, or suspended for six-months or more, to comply with Rule 764(a) (detailed maintenance of records)[7]; Rule 764(b) (disciplined attorney's withdrawal from the law office and removal of indicia as a lawyer); Rule 764(c)(1)-(4) (notification to all clients of the discipline taken by the Supreme Court, that the attorney cannot represent the client during the disciplined period, that clients have a right to another attorney, and the client's files are available for review, respectively); Rule 764(d) (notification to the clerk of the Court and Administrator of the respondent's client list); Rule 764(e) (notification to other courts of respondent's pending cases and the discipline action taken by the Supreme Court); Rule 764(f) notification to others of respondent's discipline actions taken by the Supreme Court (e.g., associated attorneys, attorneys of record, and unrepresented parties in respondent's other cases, other jurisdictions in which the respondent is licensed, and governmental agencies before which respondent can practice); and Rule 764(g) (affidavit of compliance with the foregoing provisions by the disciplined attorney) (emphasis added).

As discussed in more detail, under the existing facts and history of Rule 764, the Court should reject the majority's five-months suspension recommendation that only requires

compliance with Rule 764(c)(2)-(4)) and adopt the sanction recommendations of the Hearing Board for all of Rule 764 provisions. In short, to correct the limitation of the 1973 Rule, wherein a disbarred attorney (or court-suspended attorney) was only required to notify clients of the "fact" of the non-representation period of time (but not the "reason" for it), the 1989 Rule 764(c)(1) specifically required an attorney suspended for six months or longer to notify clients of "the action taken by the supreme court." By omitting compliance with Rule 764(c)(1), the majority's opinion effectively seeks to reinstate the 1973 Rule requiring notice to Respondent Solomon's clients only of the "fact" of his non-representation period, but not the "reason" for it. In my view, this omission fails to follow of the letter and spirit of all of the 1989-1990 Rule 764 amendments, and the *Timpone* and *Discipio* factors of protecting the public, maintaining the integrity of the legal profession, deterring other attorney misconduct, and protecting the administration of justice from reproach.

In sum, the record is devoid of any evidentiary support for the majority's selective applicability of the majority's Rule 764 recommendation. Because of the detailed findings, conclusions, and sanction recommendations of the Hearing Board in its 28-page report, I conclude that the Hearing Board, in recommending the six-months suspension provision, likely considered Rule 764 in its entirety. Without an evidentiary record to the contrary (and Respondent has presented no evidentiary harm to his future practice in response to the Administrator's one-year suspension recommendation), the majority's failure to require compliance with all of Rule 764 – including the 1989-90 new or modified amendments to Rule 764(a), (b), (c), (d), (e), (f), & (g) – should be rejected. The current Rule 764 has been in existence for more than 30 years and should be enforced here to provide greater protection and transparency to clients and the public, maintain

the integrity of the legal profession, deter other attorneys from future misconduct because of the required disclosure and compliance rules, and protect the administration of justice from reproach.

The majority attempts to distinguish *In re Towles*, 1997PR00090 (Review Bd. Report, Aug. 19, 1999), *petition for leave to file exceptions denied*, M.R. (Nov. 22, 1999), wherein the Review Board refused to recommend Rule 764 notification requirements as part of a suspension of less than six months and citing Rule 772. (Review Bd. Report, at 21, n.1.) The majority's attempted distinction misses the mark. Without citing the 1973 Rule, the *Towles* Review Board addressed the existing 1989 Rule, and specifically stated:

> Rule 764 (134 Ill. 2d R. 764) is expressly addressed to attorneys who are sanctioned with at least a six-month[s] suspension. This fact indicates that the Court intended this Rule, and the duties specified in it, would only apply to attorneys who are disciplined at that level of severity. In doing so, the Court struck a balance between the competing concerns of the disciplined attorney, his or her clients, the court systems, and the disciplinary system. The Court determined that these competing concerns were best served by requiring client notification and compliance with the other conditions of Rule 764 (134 Ill. 2d R. 764) only from attorneys who have been disbarred, disbarred on consent, or suspended for at least six months. As the Court has decided how to strike this balance, the Hearing Board is bound by that decision.

(*Towles* Review Bd. Report, at 11-12.) The majority omits the Review Board's footnote statement that: "We note that client notification is not expressly included in the probation conditions set out in Supreme Court Rule 772(b) (134 Ill. 2d 764)." (*Id.* at 11, n.1.) More than twenty years after *Towles*, Rule 772(b) currently lists ten probation conditions, none of which cite or incorporate Rule 764's notification requirements.

Accordingly, in my opinion, the majority's imposition of selective Rule 764 requirements for its five-months recommended suspension is inappropriate.

A Review Of The Hearing Board's Facts And Conclusions
Supports Its Recommendations, as Modified Here.

Although the majority properly summarizes certain significant Hearing Board's "facts" and "conclusions" (Review Bd. Report, at 3), these points demonstrate why the recommendation of a six-months suspension (and its Rule 764 requirements), rather than a five-months suspension, is appropriate. I concur with following summary statements of the majority (Review Bd. Report, at 12) and highlight and italicize them for emphasis here and in the endnotes to explain further my sanction recommendations and additional comments. Specifically, the majority agrees with the Hearing Board that Respondent's misconduct was aggravated by several significant factors, including: *"his failure to fully understand the seriousness of his misconduct; his failure to fully acknowledge or recognize what he did was wrong*[8]*; his failure to express any regret for the harm he caused Raices*; and *his failure to 'fully grasp his ethical obligations*, particularly as they relate to handling client funds and charging attorney's fees.*'"* *Id.* (emphasis added). Moreover, *"*in aggravation, *Respondent attempted to justify or minimize most of his wrongdoing, and portions or his testimony were unreliable. Respondent testified unconvincingly that his failure to litigate the foreclosure case was part of a legal strategy,"* finding that it was *"implausible,"* and appeared to be an *"'afterthought to hide his neglect.'"*[9] *Id.* (emphasis added). Finally, the Review Board agreed that the Hearing Board properly concluded that Respondent dishonestly converted money from the client trust account, whether $12,400 or $7,400, because Solomon "knew the funds in the account did not belong to him." *Id.* at 6-7, 12 (citing Hearing Bd. Report, at 8, 13-17, 28, n.1).

A recent Illinois Supreme Court disciplinary case, decided after oral argument in *Solomon*, is instructive. In *In Re James Thomas Rollins*, 2021PR00054 (Review Bd. March 29, 2023), *petition for leave to file exceptions denied,* M.R. 031768 (September 21, 2023), the Court

adopted the five-months suspension recommendations of the Hearing and Review Boards. In *Rollins*, the Review Board rebuked Rollins for his dishonesty in defrauding his law firm but adopted the Hearing Board's sanction recommendation because of key mitigating factors, not present in *Solomon*. Specifically, the *Rollins* Review Board stated: "In terms of mitigation, *Respondent [Rollins] acknowledged his misconduct, accepted responsibility, and expressed genuine remorse*." (Review Bd. Report, at 8) (emphasis added). It quoted from the *Rollins* Hearing Board Report which stated: "'[W]e found his [Rollins'] regret to be deep and genuine. We also found Respondent's testimony to be forthright and candid and note that he did not make excuses for his actions but rather accepted full responsibility for them. We find that Respondent understands the wrongfulness of his conduct.'" *Id.* (citing *Rollins* Hearing Bd. Report, at 8). The *Rollins* Review Board opinion, in which I concurred, stated further: "'Although we consider the sanction *de novo, we give the Hearing Board's finding on this [mitigation] issue substantial weight since the Hearing Board had the benefit of seeing Respondent's testimony in person and observing the two individuals who provided testimony concerning Respondent's good character.'"*[10] *Id.* (emphasis added). *Accord, Rollins* Review Board, at 6 (stating "the Hearing Board's findings regarding candor, intent, understanding of the misconduct, and other fact-finding judgments are ordinarily entitled to considerable weight because the Hearing Board is able to observe the witnesses' demeanor and judge their credibility.") (citing, *inter alia, Timpone*). Unlike the *Rollins* Hearing Board, the *Solomon* Hearing Board found Respondent not to be credible in several instances, including giving "unreliable" and "implausible" testimony and not expressing "genuine remorse" by attempting "to justify or minimize most of his wrongdoing." (Hearing Bd. Report, at 12.) Thus, *In Re Rollins*, supports my position here by giving deference to the *Solomon* Hearing Board's factual determination on the facts and mitigation issues.

Conclusion and Recommendations

In conclusion, the Hearing Board's six-months suspension recommendation with conditional probation, as modified herein, should be adopted and the majority's five-month suspension recommendation should be rejected. As demonstrated above, the Hearing Board and my recommendations are supported by the history of the significant and substantive amendments to Rule 764 in 1989, changing the 1973 Rule; Respondent's substantially suspect testimony under oath at the Hearing Board; the absence of any evidentiary harm to Respondent from imposing all of the Rule 764 requirements (as opposed to speculation); the majority's agreement that the Hearing Board drafted a "well-reasoned, thorough, and conscientious analysis of the facts and the law" and had "the opportunity to observe Respondent testify" (Review Bd. Report, at 10); and at least four of the five *Timpone* and *Discipio* factors, i.e., to protect the public, maintain the integrity of the legal profession, deter other misconduct, and protect the administration of justice from reproach. I understand the majority's discussion of certain mitigating factors (Review Bd. Report at 12-13) and its desire to minimize the sanctions for Respondent by not triggering all of the disclosure and compliance requirements of Rule 764. However, as stated, the evidentiary record does not warrant a deviation from, or selective application of, Rule 764, a fundamental rule amendment, adopted more than thirty years ago. When the Administrator argued for a one-year suspension,[11] Respondent sought other sanction relief, but he failed to introduce any evidence of harm to his future law practice from applying the Rule 764 requirements and the issue was neither briefed, nor argued orally at the Review Board. Accordingly, Respondent must accept the consequences of his defense. In my view, Respondent's testimony under oath at the Hearing Board should not be rewarded; did not maintain the integrity of the legal profession; and did not protect the administration of justice from reproach. Under the sanctions recommendations of the Hearing

Board and me, Respondent will receive leniency by serving only a six-months suspension (and not one year) and, after complying with Rule 764 and completing the probationary conditions, Respondent will have a better understanding of the Supreme Court Rules and be better equipped to resume the practice of law – successfully, ethically, and professionally.

Another recommendation is appropriate here. Absent a mandated Supreme Court rule change (which the Court may want to consider), it would be helpful for the Review Board (at least for this member) in serious sanction disciplinary cases (i.e., those not involving relatively minor infractions or serious injury to clients, the legal profession, or the public) if, in the future, the Hearing Boards expressly state whether Rule 764 requirements were considered in their sanction recommendations and, if so, how (e.g., recommending a five v. six-months suspension, testimony elicited under oath, briefing by the parties, or discussions during oral arguments or presentations). Although a few Hearing Boards have discussed the applicability of Rule 764, all boards may want to consider doing so in the future. The detailed *Solomon* and *Rollins* Hearing Board Reports demonstrate that these boards engaged in careful deliberations and likely considered Rule 764, but an explicit discussion of this issue would be of assistance. Similarly, in future serious discipline cases, it may be of assistance to the Supreme Court for all Review Boards to state whether the Rule 764 requirements were considered, and if so, how (including possible consideration of the aforesaid or other factors), as both the majority and I have tried to do in our respective opinions here (and as a few other Review Boards have done in other cases).

Finally, since the Administrator and majority (not the Respondent) have cited applicable, but contrary supporting sanction case law (Review Bd. Reports, at 13-19) (as the Administrator and respondents regularly do in other Illinois ARDC cases), I end with a poignant quotation from *Discipio*: the Supreme Court "must preserve public confidence in the integrity of

the legal profession…[and] although a degree of uniformity and consistency has been acknowledged as appropriate, each case must be considered on its individual facts and merits." 163 Ill. 2d at 528 (emphasis added). To that end, I have seriously considered the individual facts and merits, the case law, and the importance of Rule 764 in recommending my sanction for Respondent. In future Illinois ARDC disciplinary cases, citations to, and the debate over, alleged comparable disciplinary sanction case law may need to be re-examined, and the Supreme Court's opinions and the sanctions imposed in *Timpone* and *Discipio* re-read and reflected upon, if as *Discipio* mandates, public confidence in the integrity of the legal profession is to be preserved.

For the reasons stated above, I concur in part, and dissent in part.

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 November 30, 2023.

/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] Majority

We recognize that in *In re Towles*, 1997PR00090 (Review Bd., August 19, 1999), *petition for leave to file exceptions denied*, M.R. 16173 (Nov. 22, 1999), the Review Board refused to recommend that notification requirements be imposed as part of the sanction because the recommended suspension was less than six months, the threshold set by Rule 764. The Review Board, however, stated, "A respondent who is placed on probation can be required to comply with various conditions. See Supreme Court Rule 772(b) (134 111. 2d R. 772(b)). We express no opinion on whether conditions of probation could include a client notification requirement." *Id*. at 11, n.1. We believe that *Towles* is inapplicable here, since that case did not involve probation and the Review Board specifically stated that it was not addressing the issue of whether probationary conditions could include client notification requirements.

[2] Dissent

The majority's opinion adopts the Hearing Board's detailed probationary conditions, but with three modifications: the addition of the selective Rule 764 provisions, the elimination of the restitution requirement (now paid), and a "clarification" provision that "[i]f Respondent successfully completes the terms of his probation, probation shall terminate without further order the Court." (Review Bd. Report, at 15, 20.) I concur with the latter two changes, and dissent from the first one.

[3] According to Raices, after she had filed her complaint against Solomon, Respondent telephoned her shortly before the February 2022 Hearing Board proceedings, tried to "work something out" and "threatened" to subpoena her to the hearing; Raices ended that call with the direction not to have him contact her again. Moreover, sometime before that telephone call (in unspecified dates), Respondent "called [her] a couple of times in a harassing kind of way, a threatening, and whatnot." R. 73, 76-77, 137-138.

[4] The frequently-cited *Timpone* and *Discipio* factors also provide that the Court's "purpose is not to punish the attorneys." (Review Bd. Report, at 9.) I am sympathetic with that "purpose," recognizing that Respondent is a solo practitioner and has not been previously disciplined. (Review Bd. Report, at 2, 12.) *However, the "not to punish the attorney" factor is only one of the five factors to consider in imposing a disciplinary sanction, and at least four of them weigh against the Respondent.* Furthermore, as shown below, the Court-imposed sanctions in *Timpone* and *Discipio* should serve as reminders that the recommendations of the Hearing and Review Boards are just that – "recommendations."

In *Timpone*, the respondent was found liable for numerous acts of misconduct and rule violations, including commingling client funds, conversion of client funds from the attorney trust fund, and failure to maintain proper records (facts similar to the *Solomon* case). Significantly, the *Timpone* Court noted that the Hearing Board *"is in a superior position to resolve factual disputes…[and the latter's] findings regarding the credibility of witnesses, and any other fact-finding judgments are entitled to great deference…[because] the Hearing Board is able to observe the witness' demeanor and judge their credibility."* 157 Ill. 2d at 197 (citations omitted) (emphasis added). Nevertheless, the Court rejected the Hearing Board's suspension recommendation of one year and UFO, and the Review Board's suspension recommendation of six months; instead, the Court imposed a three-years suspension (with the Administrator arguing orally for a significant suspension). *Id.* at 178, 194, 199. In the instant case, the Hearing Board was best able to determine the credibility of Respondent Solomon, which should enhance the weight and importance of that board's suspension recommendation. *See also, In re Rollins* discussion, *infra.*

In *Discipio*, the respondent was found liable for improper division of fees and aiding the unauthorized practice of law. 163 Ill. 2d at 517. The Administrator sought a three-months suspension, while the Hearing and Review Boards both recommended censures. Nevertheless, the Court rejected these sanction recommendations and imposed a two-years suspension, stating that a "*sanction may appropriately consider the deterrent value of attorney discipline and the need to impress upon others the significant repercussions of errors such as those committed by respondent....*" *Id.* at 520, 528, 530 (emphasis added). In the instant case, Respondent Solomon's sanction for his misconduct should serve as a deterrent to other attorneys. *See Solomon* Hearing

Bd. Report, at 25 (stating that the recommended sanction should be *"sufficient to serve the goals of attorney discipline and deter others from committing similar misconduct"*) (emphasis added).

[5] Then Ill. Rev. Stat., Ch. 110A, ¶ 764 (1973) (predecessor to the current rule and without lettered paragraphs or numbered subsections), provided, in relevant part: "Within 21 days after an attorney has been disbarred or disbarred on consent, or when ordered by the Court in any case of suspension . . . the attorney shall notify. . . all clients to whom he is responsible for pending matters, of the fact that he cannot continue to represent them."

[6] In 1973, then Chapter 110A, ¶ 764 also provided in relevant part: "Within 35 days after an attorney is disbarred . . . or when ordered by the Court in any case of suspension . . . he shall file an affidavit . . . upon the Administrator, stating he has fully complied with the foregoing provisions of the Rule . . . [and] keep and maintain records evidencing compliance with this Rule . . . ." 1973 Notes, *Id.*

[7] See Illinois Supreme Court Rule 764 "Historical Notes" for a listing of the 1989-1990 amendments. In 1990, Rule 764 was amended to require a disbarred or suspended attorney to keep records for seven years, and not just five years. *Id.;* Rule 764(b)(4). Rule 764 has not been amended since 1990.

[8] *"[A]lthough Respondent expressed remorse, it is unclear from his testimony what he is remorseful for, given that he does not seem to comprehend what aspects of his conduct constituted misconduct. Instead of showing genuine remorse, which comes from an understanding and acknowledgement of wrongdoing, Respondent attempted to justify or minimize most of his actions. Thus, we do not give much weight in mitigation to his statement that he is remorseful."* (*Solomon* Hearing Bd. Report, at 21) (emphasis added). In oral argument before the Review Board, and at the urging of at least one panel member, Respondent generally avoided relitigating the facts and conclusions of the Hearing Board, apologized to Raices and the ARDC, and expressed some remorse for his conduct, wise appellate decisions, but late, and these revisions cannot overcome his questionable Hearing Board testimony.

[9] The *Solomon* Hearing Board specifically stated: "[*W]e find it implausible* that an attorney – even an inexperienced one – would knowingly allow a judgment of over $300,000 [$314,236.69 with interest] to be entered against a client, with the purported intention of negotiating with the bank after the judgment had been entered. *We are not required to accept testimony that is inherently improbable and contrary to human experience …. [citation omitted]. Respondent's explanation for this inaction strains credulity and appears to be an afterthought to hide his neglect*. We therefore reject it and find, instead, that he neglected Raices' matter." (Hearing Bd. Report, at 7-8) (emphasis added). Solomon also testified or asserted, contrary to Raices, that he kept her apprised of the court foreclosure proceedings and the entry of the deficiency judgment. *The Hearing Board made "credibility determinations" of this "contradictory testimony": Raices' testimony was found to be "straightforward, unwavering, and consistent," while much of Solomon's testimony was found to be "vague, ambiguous, and internally inconsistent." Id.* at 6-7 (emphasis added). Furthermore, oral and written documentary testimony "directly contradicted Respondent's testimony that allowing a foreclosure and deficiency judgment was part of a legal strategy." *Id.* at 7.

[10] I am troubled by Respondent Solomon's decision and judgment to represent himself *pro se* throughout these proceedings, his testimony under oath at the Hearing Board, his two briefs totaling only nine substantive pages, his failure to cite any case law in his briefs or at the Review Board's oral argument (as competent attorneys would do), his failure to call any character witnesses (as occurred in *Rollins*), or his possible distraction in practicing law by other activities during the pendency of these serious professional disciplinary proceedings (see Respondent's Motion for Continuance before the Hearing Board because he was running for public office, C64-67). Respondent's most recent less-than-professional representation of himself (e.g., by failing to cite any cases in his own disciplinary action) reinforces my sanction recommendation and underscores that currently, as he demonstrated at the Hearing Board, Solomon still fails to "fully grasp his ethical obligations" (Review Bd. Report, at 12) (citing the Hearing Bd. Report, at 23).

The majority "believe[s] "Respondent's *pro se* representation on appeal was competent and professional," including handl[ing] oral argument well." (Review Bd. Report, at 21.) The majority also speculates that "some attorneys, including Respondent, may not be familiar with disciplinary law and procedures, so that it is not surprising that a *pro se* respondent may be unaware of citing cases or calling character witnesses." *Id.* Respectfully, for several reasons, I disagree.

First, Respondent *knew* of his obligation to cite supporting authorities and *waived* his right to do so. *Compare* Rules of the ARDC Disciplinary Proceedings, Commission ("Com") Rule 302 (f)(1) & (f)(5) & (g) (requiring "Points and Authorities" of the points argued and authorities cited) *with* Respondent's/Appellee's initial appellate brief (filed May 17, 2023) (striking the words *"And Authorities"* from his *"Points And Authorities"*) and stating: *"I do not wish to make or present any legal arguments or cite to any authority in my Brief here."* (p. 2) (Emphasis added).

Second, Respondent knew of right to cite cases at the Hearing Board because the ARDC's trial counsel cited four cases in his closing argument (Tr. 248, 252-54); Respondent did not address or distinguish these cases, or ask leave to file a written response to them.

Third, beginning the first year in law school, students learn the ethical obligation of competent attorneys to cite cases in *written briefs and oral arguments*. At the time of the February 2022 Hearing Board proceeding, Respondent has been practicing law for almost a decade. (Tr. 163.)

Fourth, Respondent may have taken liberties with the evidentiary record. According to ARDC's appellate counsel at the Review Board hearing, Respondent made written and oral representations outside the record which, in my view, would run afoul of Com Rule 302(f)(5) (stating "Points not argued are waived and shall not be raised in the reply brief or oral argument."). *See* (1) "Respondent's current statements have not been substantiated and have not been tested." (Oral Recording at 6:35 *et seq.*); and (2) Respondent's "Facts are not in the record." (Oral Recording at 46:00 *et seq.*). At the Review Board, Respondent did not dispute ARDC's appellate counsel's statements.

Fifth, the Hearing Board's and the majority's imposition of office management and client communication conditions is some evidence that Respondent has practiced law in less than a competent fashion.

In sum, to protect the public, as *Timpone* and *Discipio* demand, notice to Respondent's clients of the Supreme Court action under Rule 764(c)(1) for a six-months suspension, and the other Rule 764 requirements, should be mandated. The recommended probationary conditions are designed to address Respondent's deficiencies in his legal practice and to educate him concerning his ethical obligations (Hearing Bd. Report, at 25-27; Review Bd. Report, at 22-23), conditions to which I concur and, hopefully upon completion, should assist Respondent in his future law practice.

[11] Although the one-year suspension recommendation of the Administrator has not been adopted here, the record reflects, and I personally read or observed, that the briefs submitted, and oral arguments made by its counsel at the Hearing and Review Boards were professionally done.

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

In the Matter of: **MCSTEPHEN OLUSEGUN ADEWALE SOLOMON,** Respondent-Appellee, No. 6310211.	Commission No. 2021PR00012

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 Respondent-Appellee listed at the address shown below by e-mail service on November 30, 2023, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellant by e-mail service.

McStephen Olusegun Adewale Solomon
Respondent-Appellee
maxlawilin@gmail.com

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.

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

FILED

November 30, 2023

ARDC CLERK