In re Mark A. Shlifka
Respondent-Appellant
Commission No. 2023PR00076

Synopsis of Review Board Report and Recommendation
(October 2025)

The Administrator filed a three-count disciplinary Complaint against Respondent, who was the First Assistant in the Kendall County State's Attorney's Office at the time of the charged misconduct. Count I alleged that Respondent engaged in misconduct that constituted a conflict of interest and was prejudicial to the administration of justice, in violation of Rules 1.7(a)(2) and 8.4(d) of the Illinois Rules of Professional Conduct (2010). Counts II and III alleged that Respondent engaged in criminal acts, which reflected adversely on his fitness as an attorney, in violation of Rule 8.4(b).

The Hearing Board found that the Administrator proved that Respondent engaged in the misconduct charged in Counts I and II, but not Count III. The Hearing Board recommended that Respondent be suspended for three years.

Respondent appealed, arguing that: (1) the Hearing Board erred in finding that he committed a criminal act as charged in Count II; (2) Respondent's Exhibit 18, which related to Count II, should have been admitted; and (3) a lower sanction should be imposed.

The Review Board found that the Administrator failed to prove that Respondent committed a criminal act as charged in Count II, and therefore Count II should be dismissed. In light of that ruling, the issue concerning the admission of Respondent's Exhibit 18 was moot. The Review Board recommended a three-year suspension, retroactive to April 24, 2023, the date on which Respondent resigned from his position as a prosecutor, and voluntarily stopped practicing law.

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

In the Matter of:

MARK A. SHLIFKA,

Respondent-Appellant,

No. 6198254.

Commission No. 2023PR00076

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator filed a three-count disciplinary Complaint against Respondent, who was the First Assistant in the Kendall County State's Attorney's Office at the time of the charged misconduct.

Count I charged Respondent with engaging in misconduct that constituted a conflict of interest and was prejudicial to the administration of justice, in violation of Rules 1.7(a)(2) and 8.4(d) of the Illinois Rules of Professional Conduct (2010). Count I alleged that Respondent had a personal relationship with a woman (J.N.), while she was a key witness in a case that Respondent was prosecuting, and while she was a defendant in a DUI case that Respondent's subordinate was prosecuting; Respondent did not disclose the relationship until he was caught; and he caused J.N. to travel to California with him, which violated her bond conditions. Respondent admitted that he engaged in the misconduct charged in Count I.

Count II charged that Respondent committed a criminal act by taking four nude photographs of J.N. (the "four photos"), while she was asleep, which reflected adversely on his fitness as an attorney, in violation of Rule 8.4(b).

Count III charged that Respondent committed a criminal act, battery, by allegedly touching J.N., while she was asleep, in violation of Rule 8.4(b). The Hearing Board found that the Administrator failed to prove Count III. The Administrator has not objected to that finding, and therefore, Count III is not an issue on appeal.

Respondent filed an Answer in which he admitted the factual allegations and misconduct in Count I, but denied the factual allegations and misconduct in Counts II and III.

The disciplinary hearing was held on August 13, 2024 in Springfield, Illinois. Respondent appeared and was represented by counsel, who also represented Respondent on appeal.

The Administrator presented testimony from J.N., and called Respondent as an adverse witness. The Administrator presented one exhibit that was admitted under seal, made up of the four photos at issue here. Respondent testified on his own behalf, and called one other witness. He presented twenty-five exhibits, which were admitted (in whole or part) under seal, and one exhibit (Resp. Ex. 44) (Respondent's resume), which was admitted without being sealed.

The Hearing Board found that Respondent committed the misconduct charged in Counts I and II of the Complaint, and recommended that Respondent be suspended for three years.

Respondent appealed, arguing that: (1) the Hearing Board erred in finding that he committed a criminal act as charged in Count II; (2) Respondent's Exhibit 18, a flash drive containing explicit video recordings, should have been admitted as an exhibit relating to Count II; and (3) a lower sanction should be imposed.

The Administrator argues that the Hearing Board's findings should be affirmed, and the Hearing Board's recommendation should be adopted.

For the reasons set forth below, we find that the Administrator failed to prove that Respondent committed a criminal act as charged in Count II, and therefore Count II should be

dismissed. The issue concerning Respondent's Exhibit 18 is moot in light of our ruling concerning Count II, and will not be addressed in this Report.

As discussed below, we recommend a three-year suspension, retroactive to April 24, 2023, the date on which Respondent resigned from his position as a prosecutor and voluntarily stopped practicing law. We believe that the recommended sanction properly balances the very serious nature of Respondent's wrongdoing with the substantial mitigation in this case.

Background

Respondent

Respondent was admitted to practice law in Illinois in 1988, and he was a prosecutor for over 34 years. He worked for the Cook County State's Attorney's Office for approximately twenty-nine years. Thereafter, between 2018 and 2023, he worked for the Kendall County State's Attorney's Office, where he was the First Assistant State's Attorney. Respondent resigned from the Kendall County Office on April 24, 2023. Respondent has no prior discipline.

Respondent's Misconduct and the Hearing Board's Findings

The Hearing Board found that Respondent committed the misconduct charged in Counts I and II of the Complaint, as discussed below. (Hearing Bd. Report at 3-9.)

Count I

The Misconduct Charged in Count I

The Hearing Board found that Respondent engaged in the misconduct charged in Count I, namely that Respondent engaged in conduct that involved a conflict of interest, and conduct that was prejudicial to the administration of justice, in violation of Rules 1.7(a)(2) and 8.4(d), as charged in Count I of the Complaint. (Hearing Bd. Report at 3-5.)

Rule 1.7(a)(2) states, "[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: …. there is a significant

risk that the representation of [a client] will be materially limited by … a personal interest of the lawyer." Rule 8.4(d) states, "It is professional misconduct for a lawyer to: …. engage in conduct that is prejudicial to the administration of justice."

Overview of the Conduct Charged in Count I

While Respondent was a prosecutor, he engaged in a personal relationship with a woman, J.N., at a time when she was the key witness in a case that Respondent was prosecuting, and while she was the defendant in a criminal case that Respondent's subordinate was prosecuting. Respondent kept that relationship secret from other prosecutors and judges. During that relationship, Respondent purchased a plane ticket for J.N., so that she could accompany Respondent to California, which meant that J.N. violated the conditions of her bond in her criminal case by leaving Illinois. (*See* Hearing Bd. Report at 2-5.) Respondent admits that his actions created a conflict of interest and was prejudicial to the administration of justice, as charged in Count I.

The Facts

During the relevant time period, Respondent was the First Assistant in the Kendall County State's Attorney's Office ("the Office"), which meant that he was the second highest law enforcement attorney in the Office. He supervised everyone in the Office, except the State's Attorney.

Respondent had a personal relationship with J.N., while he was the First Assistant. The relationship began in April 2022 and continued until March 2023, when they broke up. During that time, J.N. was a witness in a case that Respondent was prosecuting. She was also a defendant in a criminal case that was prosecuted by an Assistant State's Attorney, who was being supervised by Respondent.

J.N. was the key witness in a domestic battery case that Respondent was prosecuting against J.N.'s former boyfriend, who was charged with choking J.N. In March 2022, the ex-boyfriend had a bench trial; Respondent was the prosecutor; and J.N. testified against her ex-boyfriend. He was convicted.

In April 2022, Respondent began his personal relationship with J.N., which lasted until March 2023. The sentencing for the ex-boyfriend was pending when Respondent began his relationship with J.N.

In May 2022, the ex-boyfriend was sentenced. Respondent handled the sentencing, but he did not disclose to the court that he was in a relationship with J.N. The ex-boyfriend was sentenced to 70 days of periodic imprisonment and 30 months' probation, and he was ordered to pay $1,993 in costs and fines.

In February 2021, J.N. was charged with aggravated driving under the influence ("DUI"), and driving while her license was revoked, which were both felonies. Her case was pending through at least April 2023.

In April 2023, shortly after Respondent's relationship with J.N. ended, Respondent was present in court while a conference was being held in J.N.'s criminal case. Respondent was there on an unrelated case. However, Respondent did not leave the room during J.N.'s conference, and he did not inform the court or the prosecuting attorney about his prior relationship with J.N.

In December 2022, while J.N. was on bond in the DUI case, Respondent and J.N. went to California, where they spent the weekend. J.N.'s bond prohibited her from leaving the state. Despite that, Respondent asked J.N. to accompany him to a legal conference in Palm Springs, California, which she agreed to do. Respondent purchased an airplane ticket for her, so that she could travel with him. By leaving the state, J.N. violated her bond conditions, which were set by a

Kendall County Judge in the DUI case. Respondent did not report J.N.'s bond violation to the judge or prosecutor in the DUI case.

Respondent and J.N. broke up in March 2023. The relationship came to light in April 2023 because J.N. obtained a protective order against Respondent, and she filed a civil lawsuit against Respondent and the Office.

At that point, the State's Attorney confronted Respondent about his relationship with J.N., which Respondent acknowledged. Respondent was going to be fired, but he was given permission to resign instead. Respondent resigned from the Office on April 24, 2023. Respondent testified that he did not disclose the relationship until he was caught because he knew having a relationship with J.N. violated his ethical duties and Office policy.

After the misconduct was discovered, the court appointed a special prosecutor to handle the two matters involving J.N., namely, the case against her ex-boyfriend, and J.N.'s criminal case.

The Hearing Board found that "Respondent's misconduct was particularly egregious because he betrayed the public trust given to him as the second-highest law enforcement officer in Kendall County." We agree.

Count II

The Hearing Board found that Respondent engaged in a criminal act by taking the four photos of J.N., while she was asleep, which reflected adversely on Respondent's fitness as an attorney, in violation of Rule 8.4(b), as charged in Count II of the Complaint. (Hearing Bd. Report at 6-9.) Rule 8.4(b) states, "It is professional misconduct for a lawyer to: …. commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

The Anti-Recording Statute

The Hearing Board found that Respondent committed a criminal act by violating Illinois criminal statute 720 ILCS 5/26-4, Sections (a-5) and (a-10) ("the Anti-Recording Statute"), as charged in Count II.[1] That Statute prohibits a person from knowingly taking videos or photographs of another person, under certain circumstances. The Statute states the following, in relevant part:

> • Section (a-5) states: "It is unlawful for any person to knowingly make a video record [or take a photograph] … of another person in that other person's residence without that person's consent;"
>
> • Section (a-10) states: "It is unlawful for any person to knowingly make a video record [or take a photograph] … of another person's intimate parts for the purpose of viewing the body of … that other person without that person's consent."
>
> (Note: Section (e)(2) states: "For purposes of this Section, …. 'Video record' means and includes any … photograph[.]")

As the Hearing Board explained, Section (a-5) has four elements: (1) knowingly taking a photograph; (2) of another person; (3) in that person's residence; and (4) without that person's consent; and

Section (a-10) also has four elements: (1) knowingly taking a photograph; (2) of another person's intimate parts; (3) for the purpose of viewing the body of that other person; and (4) without that person's consent. (Hearing Bd. Report at 8-9.)

The Hearing Board also explained that both Sections of the Statute require proof that the person taking the photos acted '"with the knowledge that [the person being photographed] has not consented, either expressly or impliedly, to being recorded."' (*Id*. at 8) (*quoting People v. Maillet*, 2019 IL App (2d) 161114, ¶ 50, 145 N.E.3d 25 (2019)). In this case, the issue of consent, and the issue of Respondent's knowledge, are the key issues in determining whether Respondent violated the Anti-Recording Statute.

The Facts

On February 25, 2023, Respondent took four nude photographs of J.N., while she was asleep. Respondent testified that, about half an hour before he took the four photographs, J.N. asked him to take intimate photographs of her, and she posed on her bed for him, while he took intimate photographs of her. Respondent's exhibits included several of those photos. (See Resp. Ex. 19 A-D.) After Respondent took the photos of J.N. posing on her bed, they began having sex, but J.N. fell asleep, and Respondent stopped his actions. He then took the four photographs of J.N., while she was asleep.

Respondent and J.N. were in an on-going personal relationship at the time the four photos were taken in February 2023. Their relationship began in April 2022 and continued until March 2023. Respondent testified that he had been in love with J.N., and the record shows that J.N. sent emails to Respondent saying that she loved him.

Respondent and J.N. both testified that during their relationship they had taken photographs and videos of their sexual activities. J.N. testified that she had previously given Respondent consent to record intimate activities between them. Respondent testified that, during their relationship, J.N. sent him nude photos and partially nude photos of herself. Respondent's exhibits included several such photographs from between April 2022 and January 2023.

J.N. testified that she did not give Respondent permission to take the four photographs at issue because she was asleep when he took the photos. She testified that she did not remember what happened that night because she was blacked-out drunk, but Respondent later told her that she had passed out during sex. Respondent testified that J.N. fell asleep, but was not blacked-out drunk. He testified that he believed taking the photos was consensual, based on everything in his relationship with J.N. (Tr. 141-42.) He also testified that J.N. had previously asked him "to send pictures like that to her." (*Id*.)

Respondent and J.N. both testified that they used a cell phone to take photos and videos of their sexual activities, and J.N. kept that phone in her bedroom. Respondent took all of the photos that night, including the four photos at issue, on the same cell phone that he ordinarily used to take intimate photos and videos of J.N. That phone could not be used to make calls; it was used solely to take photos and videos. J.N. testified that the phone contained certain intimate photos and videos that she had consented to, which she had previously seen. J.N. had the password to access the photos on the phone. After Respondent took the four photos, he left the phone at J.N.'s, as he usually did.

In sum, Respondent and J.N. had an on-going personal relationship, in which they agreed to taking intimate photos and videos as part of their consensual sexual activities. On the night in question, shortly before midnight, J.N. asked Respondent to take photos of her. Over the next thirty minutes, J.N. posed for Respondent on the bed, while he took intimate photos of her; they started to have sex, but J.N. fell asleep; and Respondent then took four additional photos of J.N. on the bed, after she fell asleep.

The Hearing Board's Findings Concerning Mitigation and Aggravation

In terms of mitigation, the Hearing Board noted that Respondent was a prosecutor for over 34 years; he was on the Board of Directors of the Illinois Prosecutors Bar Association; and he has no prior discipline. (Hearing Bd. Report at 11-12, 15.)

In terms of aggravation, the Hearing Board found that Respondent held a position of public trust; he harmed the Office; he kept his relationship with J.N. secret; he tried to shift the blame to his wife and J.N.; he created a risk of harm to J.N. by taking her to California; and he failed to take responsibility or express remorse in terms of the misconduct charged in Count II. (*Id*. at 10-15.)

Recommendation

The Hearing Board recommended that Respondent be suspended for three years. (Hearing Bd. Report at 12-17.)

Analysis

The Hearing Board's factual findings generally will not be disturbed on review unless they are against the manifest weight of the evidence. *See In re Winthrop*, 219 Ill. 2d 526, 542, 848 N.E.2d 961(2006). A factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding appears unreasonable, arbitrary, or not based on the evidence. *See In re Storment*, 2018PR00032 (Review Bd., Jan. 23, 2020) at 7, *petition for leave to file exceptions denied*, M.R. 030336 (June 8, 2020). Questions of law, including interpretation of rules, are reviewed under a *de novo* standard. *See In re Thomas*, 2012 IL 113035, ¶ 56, 962 N.E.2d 454, 466 (2012). The Review Board is responsible for correcting errors in the application of the facts to the law. *See In re Owens*, 144 Ill. 2d 372, 377, 581 N.E.2d 633 (1991).

On appeal, Respondent admits to the misconduct charged in Count I, but argues that the Hearing Board erred in finding that he violated the Anti-Recording Statute, as charged in Count II. Respondent also argues that the Chair erred by refusing to admit one of Respondent's Exhibits relating to Count II; and Respondent argues that a three-year suspension is excessive.

We find that this case presents a mixed question of law and fact. For the reasons set forth below, under both the *de novo* standard and the manifest weight of the evidence standard, we conclude that the evidence was insufficient to prove that Respondent violated the Anti-Recording Statute, as charged in Count II, and therefore Count II should be dismissed. The issue concerning the exclusion of Respondent's Exhibit 18 is moot in light of our ruling concerning Count II.

In terms of the sanction, we agree with the Hearing Board that Respondent should be suspended for three years based on the serious misconduct charged in Count I; however, we also

recommend that the suspension be made retroactive to April 24, 2023, the date on which Respondent resigned from the Kendall County Office and voluntarily stopped practicing law, in light of the substantial mitigating factors.

In reaching our conclusions and making our sanction recommendation, we have given careful consideration to all of the parties' arguments, as well as the evidence presented at the disciplinary hearing; the caselaw presented by the parties; and the Hearing Board's Report.

Count II – The Anti-Recording Statute

As previously stated, the Hearing Board found that Respondent violated the Illinois Anti-Recording Statute, Sections (a-5) and (a-10), by taking the four photos of J.N., while she was asleep, which reflected adversely on Respondent's fitness as an attorney, in violation of Rule 8.4(b), as charged in Count II. We respectfully disagree.

Consent and Knowledge

The issue of consent, and the issue of Respondent's knowledge, are essential elements under the Anti-Recording Statute, and they are the key issues here. In finding that Respondent violated the Anti-Recording Statute, the Hearing Board stated,

> J.N. … was sleeping when [Respondent] photographed her, so we find that she could not have consented to Respondent taking those four photographs.
>
> We also find that Respondent acted with the requisite knowledge … Respondent … knew the criminal law well enough to know that J.N. … could not have legally given consent while she was sleeping.

(Hearing Bd. Report at 8-9.)

We disagree with the Hearing Board's conclusion that there was no consent merely because J.N. was asleep. We do not believe that J.N.'s being asleep is the deciding factor here. The Hearing Board's conclusion disregards the facts and circumstances that preceded J.N.'s falling asleep, as discussed below.

We also disagree with the Hearing Board's conclusion that Respondent acted with the requisite knowledge. In our view, the evidence shows that Respondent had good reason to believe that he was acting with J.N.'s consent.

"In a disciplinary proceeding, the Administrator has the burden of proving the allegations of the complaint by clear and convincing evidence." *In re Thomas*, 2012 IL 113035, ¶ 56, 962 N.E.2d 454, 466 (2012). We find that the evidence was insufficient to prove by clear and convincing evidence that J.N. did not give consent, expressly or impliedly, before she fell asleep; or to prove that Respondent had the requisite knowledge concerning whether J.N. had given consent. We also conclude that the Hearing Board's findings on these two issues are against the manifest weight of the evidence. Consequently, we find that Respondent did not violate the Anti-Recording Statute as charged in Count II.

Our conclusions concerning J.N.'s consent and Respondent's knowledge are based, in short, on the following: (1) J.N.'s actions during the thirty minutes before she fell asleep, which included J.N.'s asking Respondent to take intimate photos of her; J.N.'s posing for those photos; and J.N.'s having sex with Respondent, as discussed below; and (2) J.N.'s actions during her on-going 10-month relationship with Respondent, which included J.N.'s consenting to Respondent's taking intimate videos and photos of her; and J.N.'s engaging in consensual sexual activities with Respondent throughout their relationship, which continued through the night in question, as discussed below.

People v. Maillet

We begin our analysis with *Maillet*, the case cited by the Hearing Board concerning the issue of consent. *See People v. Maillet*, 2019 IL App (2d) 161114, 145 N.E.3d 25 (2019)). In *Maillet,* the defendant was charged with, *inter alia,* violating Section (a-5) of the Anti-Recording Statute, which makes it unlawful "for any person to knowingly make a video record [or take a

photograph] of another person in that other person's residence without that person's consent." As the Hearing Board explained, the requirements concerning knowledge and consent are the same in Sections (a-5) and (a-10) of the Anti-Recording Statute, (which are the two sections at issue here). (Hearing Bd. Report at 8.) Thus, *Maillet's* discussion of Section (a-5) is also applicable to Section (a-10).

In *Maillet*, the defendant knowingly made a video recording of his 15-year-old stepdaughter, without her consent, by hiding an iPod in a bathroom of the residence where both the defendant and his stepdaughter lived, and video recording his stepdaughter just before she took a shower. Following a bench trial, the defendant was convicted of violating the Anti-Recording Statute, Section (a-5), as well as one other count. Respondent appealed, arguing that his conviction of Section (a-5) rested upon the trial court's erroneous construction of Section (a-5). His conviction was affirmed on appeal.

On appeal, the *Maillet* court addressed the issue of knowledge and consent for Section (a-5) of the Statute, stating,

> We note that [Section (a-5)] contain[s] the *scienter* requirement that the recording be done 'knowingly.' [That section] prohibit[s] a person from 'knowingly' video recording another person, **with knowledge that the other person has not consented to such recording – either expressly or impliedly** … *Cf. People v. Ceja, 204 Ill. 2d 332, 349, 789 N.E.2d 1228, 273 Ill. Dec. 796 (2003)* (holding that consent under the eavesdropping statute 'may be either express or implied').
>
> ***
>
> Defendant argues that … [Section (a-5) does] not require criminal intent or criminal knowledge. We disagree …. [Section (a-5)] forbid[s] a person from not merely knowingly making a video recording of another person but **doing so … with the knowledge that that person has not consented, either expressly or impliedly, to being recorded.**
>
> ***
>
> Lack of consent is crucial to this criminal knowledge …. But [Section (a-5) does not require] a lack of express consent. **Consent may be express or implied** and

> the State must prove that a defendant **knew that the person he or she was recording did not expressly or impliedly consent.**

(Emphasis added.) *Id.,* at ¶¶ 35, 50, and 51.

Based on the evidence discussed below, we find that the Administrator failed to prove the crucial scienter requirement, namely, that Respondent took the four photos, "with knowledge that … [J.N. had] not consented to such [photos] – either expressly or impliedly." (*Maillet* at ¶ 35.) We also find that the Administrator failed to prove that J.N. "[had] not consented … either expressly or impliedly." (*Id*.)

In addressing the issue of consent, the *Maillet* court cited *People v. Ceja*, 204 Ill. 2d 332 (2003), a case involving the Illinois eavesdropping statute. In *Ceja*, the Illinois Supreme Court stated:

> Consent in this context may be express or implied. Consent exists where a person's behavior manifests acquiescence or a comparable voluntary diminution of his or her otherwise protected rights. **Implied consent is consent in fact, which is inferred from the surrounding circumstances indicating that the party knowingly agreed** to the surveillance. Thus, implied consent may be deduced from the prevailing circumstances in a given situation. The circumstances relevant to an implied consent will vary from case to case but will ordinarily include language or acts that tend to prove that a party knows of, or assents to, encroachments on the routine expectation that conversations are private.

Ceja, 204 Ill. 2d at 349-50 (citations omitted) (emphasis added).

The Surrounding Circumstances

Respondent and J.N. were in a personal relationship that involved consensually having sex and taking intimate photos and videos together. On the night in question, shortly before midnight, J.N. asked Respondent to take photographs of her. Over the next thirty minutes, Respondent took several intimate photos of J.N. while she posed on her bed; they began to have sex on her bed, which ended when J.N. fell asleep; and Respondent then took four additional photos of J.N., while

she was asleep on her bed. In our view, the evidence was insufficient to prove that the four photos were not part of the consensual sexual activities that J.N. and Respondent shared that night.

At the time Respondent took the four photos in February 2023, Respondent and J.N. had been in an on-going personal relationship for approximately ten months. During their relationship, Respondent left personal items at J.N.'s home, such as clothing and his guitar. They socialized together; they went out to dinner together; and they went to events together. Respondent testified that he had strong feelings for J.N. and that he had fallen in love with her. The record also shows that J.N. sent emails to Respondent saying that she loved him, even after the relationship ended. Thus, J.N. and Respondent were in an established, active, loving relationship when Respondent took the four photos that night.

Additionally, Respondent's taking the four photos of J.N. was not an isolated incident. Throughout their relationship, Respondent repeatedly photographed J.N. in an intimate manner, with her consent; J.N. also sent intimate photographs of herself to Respondent. Moreover, by agreement, they made videos of themselves while they were having sex together. J.N. testified that she had previously given Respondent consent to videotape intimate sexual activity between the two of them. Respondent took all of the photos that night on the same cell phone that he ordinarily used to take intimate photos and videos of J.N., consistent with their established consensual pattern. J.N. testified that she had previously seen certain intimate photos and videos on that phone, and she had consented to Respondent's taking those photos and videos. Respondent testified that he believed taking the four photos at issue was consensual based on their relationship.

We conclude that the Administrator failed to prove by clear and convincing evidence that: (1) Respondent did not believe that he had J.N's consent to take the four photos; and (2) Respondent's taking the four photos was not within the parameters of their on-going agreed practice of taking intimate photos, which continued through that night. Thus, we find that the

evidence was insufficient to prove that Respondent violated the Anti-Recording Statute as charged in Count II, and the Hearing Board's findings to the contrary are against the manifest weight of the evidence.

We also note that this is not a case in which Respondent was attempting to secretly take photos of J.N. After Respondent took the four photos, he left the phone at J.N.'s, as he usually did, and J.N. had the password to access those photos on the phone. Respondent did not try to hide the photos from J.N. by taking the phone, or changing the password, in order to prevent J.N. from discovering the photos.

Additionally, this is not a case in which a victim was photographed by a stranger, a paparazzi, an ex-boyfriend, an ex-spouse, a roommate, a neighbor, or some other unwanted photographer, such as the stepfather in *Maillet*. This is not a case in which intimate photos were made public or were used to embarrass or harass a victim. This is not a case in which consent was given and revoked, or a case in which an intimate relationship had ended or turned sour at the time that the photos were taken.

To be clear, this case involved a very unique set of facts and this case should not be viewed generally as precedent for issues concerning consent, unless the facts are the same as the facts here, or extraordinarily similar. We want to emphasize that our holding here should not be misused as precedent in other cases that do not have the significant key factors and surrounding circumstances identified here.

People v. Taylor

The Hearing Board cited *People v. Taylor*, 345 Ill. App. 3d 1064, 1074-75, 804 N.E.2d 116 (2004), for the proposition that "a person cannot give consent while asleep." (Hearing Bd. Report at 8.) *Taylor*, however, is not helpful here because the facts in *Taylor* are dramatically different than the facts in this case. In *Taylor*, the defendant entered the victim's home without permission;

he got into the victim's bed and touched her while she was asleep; and she jumped out of the bed screaming at him to leave. In *Taylor*, the defendant did not have an intimate personal relationship with the victim; she had not given him consent to enter her home; and she had not given him permission to touch her. The *Taylor* court stated, "No evidence showed that [the victim] had agreed to a sexual rendezvous at her home that night." 345 Ill. App. 3d at 1075. *Taylor* is inapplicable because the facts in *Taylor* have no resemblance to the facts in this case.

Respondent Did Not Violate the Anti-Recording Statute

In sum, we find there was insufficient evidence to prove: (1) that J.N. did not give consent, expressly or impliedly; and (2) that Respondent did not believe he had J.N.'s consent to take the four photos. Accordingly, we find that the Administrator failed to prove the allegations of Count II by clear and convincing evidence, and that the Hearing Board's findings that Respondent engaged in the misconduct charged in Count II are against the manifest weight of the evidence.

SANCTION RECOMMENDATION

The Hearing Board recommended that Respondent be suspended for three years. Respondent argues that a three-year suspension is overly harsh. The Administrator argues that the Hearing Board's recommendation is appropriate.

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). In making our recommendation, we consider the nature of the misconduct, and any aggravating and mitigating circumstances shown by the evidence, while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, deter other misconduct, preserve public confidence, and protect the administration of justice from reproach. *See In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003).

In the present case, we recommend a three-year suspension, retroactive to April 24, 2023, the date on which Respondent resigned from the Kendall County Office and voluntarily stopped practicing law. In our opinion, a three-year retroactive suspension will satisfy the disciplinary goals, including deterring Respondent and other attorneys, protecting the public, and safeguarding the public's confidence in the legal system.

The Serious Nature of Respondent's Wrongdoing

Respondent's wrongdoing was very serious, given his role as a prosecutor and his position as First Assistant State's Attorney, with all of the responsibilities that position entails. Respondent supervised almost all of the attorneys in the Office, and he supervised the activities of the Criminal Division. He also screened cases for felony charges, conducted internal investigations, and prosecuted all of the Office's domestic battery cases.

We start with the well-founded premise that, "It is vital … [to] preserve public confidence in the integrity of the legal profession." *In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994). Contrary to that, based on Respondent's actions, the public had good reason to question the integrity of the legal profession, and the integrity of the Kendall County Office. Additionally, prosecutors are entrusted with enforcing the law, and therefore must act with the highest level of integrity, which Respondent failed to do.

Respondent also violated the trust placed in him by the Kendall County Office. Respondent disregarded ethical rules and defied Office policy. Respondent was fully aware that his actions were unethical, but he proceeded anyway. He exercised poor judgment and made bad decisions; he placed his career and his reputation at risk; and he disregarded the potential harm of his actions. The sanction must be serious enough to deter Respondent from making such bad decisions in the future.

Respondent showed a blatant disregard for the law when he traveled to California with J.N., who violated her bond by leaving Illinois. Respondent instigated that bond violation by asking J.N. to travel with him, purchasing her plane ticket, and having her stay with him in his hotel room. Respondent kept that trip secret, and he failed to report her bond violation to the court or the Office. Respondent ignored the risk of harm to J.N., in that she could have been jailed or sanctioned for violating her bond.

Respondent's misconduct also caused the unnecessary expenditure of time, effort, and resources on the part of the Office, the court, and others. Special Prosecutors were appointed concerning the criminal case against J.N.'s ex-boyfriend, and the criminal DUI case against J.N. The Office had to fill the position of First Assistant after Respondent left, and someone else had to assume all of the responsibilities that Respondent had. The Office also had to reassign all of the cases that Respondent was prosecuting at that time, and the Office lost Respondent's institutional knowledge and experience, as well as his knowledge of the cases he was prosecuting and supervising. Moreover, the Office faced a civil lawsuit by J.N., relating to Respondent's conduct, which required time and money to defend.

Respondent also tried to shift the blame for his misconduct to his wife and J.N., at least in part. He blamed his wife for making harsh statements, which pushed him toward having an affair with J.N., and he blamed J.N. for pursuing him. Additionally, Respondent asserted that he gained no benefit from his relationship with J.N., which, as the hearing Board found, was "either disingenuous or indicative of his failure to understand the impact of his actions." (Hearing Bd. Report at 14.) Thus, we find that Respondent's misconduct was very serious.

MITIGATING EVIDENCE

We also find that there is substantial mitigation in this case, most notably that Respondent had a long, successful, and unblemished career. We believe that the mitigation in this case is a

strong indicator that Respondent will not engage in misconduct in the future, when he is allowed to practice law again.

Respondent had a distinguished 34-year career as a prosecutor. Moreover, he had never been disciplined prior to this case.

Respondent worked at the Cook County State's Attorney's Office for thirty years, which included prosecuting more than 115 jury trials, and almost half of those were murder trials. While at the Cook County Office, Respondent held various noteworthy and responsible positions, which included Felony Trial Supervisor; Administrator for the In-House Mentoring Program; Director of Continuing Legal Education; Supervisor of the Trial Technology Unit; and Executive Assistant State's Attorney. As discussed above, after he left the Cook County Office, he became the First Assistant at the Kendall County State's Attorney's Office, where he worked for five years, and had significant responsibilities.

Additionally, Respondent was an Adjunct Professor at the John Marshall Law School for seven years. He was a faculty member for three groups – the National District Attorney's Association; the Association of Governmental Attorneys; and the Illinois State's Attorneys Appellate Prosecutor's Office; and he was a Board Member of the Illinois Prosecutors Bar Association. Through those organizations, Respondent gave lectures, presentations, and in-house training workshops to attorneys. Respondent gave almost 200 lectures to groups of prosecutors around the country.

The Hearing Board gave limited weight to Respondent's legal career as mitigating evidence. Instead, the Hearing Board concluded that Respondent's legal experience should have heightened his respect for the ethical rules. (Hearing Bd. Report at 15.) We believe, however, that his career constitutes significant mitigation because it shows that Respondent obeyed the ethical

rules for decades and, although he made bad decisions in this case, he is unlikely to engage in misconduct in the future, after any sanction ends, given his lengthy and unblemished legal career.

We also consider the fact that Respondent cooperated with the disciplinary proceedings. Respondent immediately obtained counsel to represent him in the disciplinary proceedings; he accepted electronic service of the Complaint; he timely filed an Answer to the Complaint; he did not seek to delay the hearing in any way; he appeared for a sworn statement; and he actively participated in the disciplinary hearing.

Additionally, the Hearing Board concluded that Respondent failed to take responsibility for his actions. (Hearing Bd. Report at 17.) We disagree. We find that Respondent accepted responsibility for the wrongdoing charged in Count I. During his testimony at the disciplinary hearing, Respondent clearly admitted engaging in the misconduct charged in Count I. Moreover, from the very beginning, in his Answer to the Complaint, Respondent admitted the facts and violations set forth in Count I, with some clarifications and additions. Respondent admitted that he had an affair with J.N., who was a witness and defendant; he admitted that he knew J.N. was violating her bond when they traveled to California together; and he admitted that his conduct constituted a conflict of interest and was prejudicial to the administration of justice. He further admitted that he did not disclose his relationship to the State's Attorney because Respondent knew it was a violation of his ethical duties and Office policy; and he admitted that his actions undermined the Office. He made no attempt to argue that the misconduct charged in Count I was acceptable in any way. Thus, we conclude that Respondent accepted responsibility for the misconduct charged in Count I.

A Retroactive Suspension

We agree with the Hearing Board that a three-year suspension is appropriate. However, the Hearing Board concluded that there was only "minimal mitigation." (Hearing Bd. Report at 12.)

We disagree. As discussed above, we conclude that there is significant mitigation in this case, which supports a sanction that is less harsh than the three-year suspension recommended by the Hearing Board. In light of what we consider to be substantial mitigation, we believe that the suspension should be made retroactive to April 24, 2023, the date on which Respondent resigned from the State's Attorney's Office and voluntarily stopped practicing law.

We note that, according to Respondent's appellate brief, Respondent did not practice law for approximately two years, between April 2023 (when he resigned) and March 2025 (when Respondent's appellate brief was filed). According to Respondent's brief, Respondent engaged in a "self-imposed suspension from the practice of law" beginning in April 2023. (Resp. Brief at 27.) At the disciplinary hearing in August 2024, Respondent's attorney stated in closing argument, "[Respondent] hasn't practiced law since the day of his resignation." (Tr. 227); and "[Respondent] has not practiced since April of 2023." (Tr. 235.)

Respondent's resumé, which sets forth his work experience, shows that his last employment was with the Kendall County State's Attorney's Office, which ended in April 2023. (Resp. Ex. 44 at p.1.) Although Respondent did not specifically testify that he was no longer practicing law, his resumé shows that his last employment was with the Kendall County State's Attorney's Office, and Respondent testified that his resumé was accurate. (Tr. 196.)[2]

We conclude that imposing a retroactive suspension is appropriate in light of the mitigating evidence in this case. A retroactive suspension gives Respondent credit for the two years that he has not practiced law, but still prevents Respondent from practicing law for an additional period of time. In our view, a three-year retroactive suspension is sufficient to deter Respondent from engaging in similar misconduct, and will strongly motivate Respondent to practice law ethically and professionally in the future.

Relevant Legal Authority

Based on a careful review of the authority cited by the Hearing Board and both parties, we are convinced that the appropriate sanction is a three-year suspension, retroactive to April 24, 2023, the date on which Respondent stopped practicing law.

As discussed below, the cases cited by the Hearing Board in support of its recommendation provide guidance here, including ***Bretz*** (three-year suspension, almost fully retroactive); ***Thompson*** (three-year suspension, retroactive for 2½-years); ***Terronez*** (disbarment); and ***Hogan*** (disbarment). (Hearing Bd. Report at 15-17.) We also believe that two other cases, ***Scott*** (two-year suspension, almost fully retroactive), and ***Belconis*** (three-year suspension, fully retroactive) discussed below, also provide guidance here.

In ***In re Bretz***, 1996PR00118, *petition for discipline on consent allowed*, M.R. 16663 (March 24, 1999), the respondent had been the First Assistant State's Attorney in Will County. In order to benefit a friend, Bretz falsely charged a young man with a felony, even though Bretz knew that the young man had not committed the felony as charged. Bretz also hid a file, which caused the criminal investigation of an acquaintance to be suspended. Bretz was criminally convicted of attempted official misconduct relating to those two cases. In addition, he prosecuted two criminal cases before a judge, with whom he had previously worked, without informing the defendants' counsel of that relationship, and he filed a motion that contained untrue assertions, without providing notice of the motion to opposing counsel. In mitigation, Bretz had many character witnesses who testified that his reputation for truth and veracity was excellent, and he performed extensive community service; additionally, he had no prior discipline. He was suspended for three years, retroactive to the date of his interim suspension approximately three years earlier.

In ***In re Thompson***, 2022PR00059 (Review Bd., May 13, 2024), *petitions for leave to file exceptions denied*, M.R. 032293 (Sept. 20, 2024), the respondent had been a Chicago alderman.

The disciplinary Complaint charged Thompson with committing a criminal act and engaging in dishonest conduct. Thompson was convicted of tax fraud; he also made false statements to the FDIC concerning loans from a bank. His position as a public official was an aggravating factor. He presented extensive mitigating evidence. He was suspended for three years, retroactive to the date of his interim suspension 2½ years earlier. The Review Board in *Thompson* stated, "'A three-year suspension, including the time Respondent has been on interim suspension, is a substantial sanction that reflects the severity of the misconduct.'") (*Thompson* Review Bd. at 20)(citation omitted).

In ***In re Scott***, 98 Ill. 2d 9, 455 N.E.2d 81 (1983), the respondent had been the Illinois Attorney General. He was convicted of one count of tax fraud for filing a false tax return, in which he failed to report campaign contributions that he used as personal income. In the disciplinary proceeding, the Court imposed a two-year suspension, retroactive to the date of Scott's interim suspension, approximately two years earlier. The Court explained the reason for imposing a retroactive suspension in that case as follows:

> Although respondent's conviction warrants suspension, we must balance this conclusion against the mitigating evidence that has been presented. The purpose of disciplinary proceedings is to safeguard the public and maintain the integrity of the legal profession . . . . The mitigating evidence clearly demonstrates that the purpose of the disciplinary process in this case is fulfilled without a suspension longer than that already served. At the present time the respondent has been suspended from practice because of this conviction for nearly two years. This period of suspension falls within the range of the sanctions usually imposed for similar offenses.

98 Ill. 2d at 18-19.

In ***In re Belconis***, 2019PR00058 (Review Bd., May 2, 2023), *petition for leave to file exceptions denied,* M.R. 031823 (Sept. 21, 2023), the respondent (who was an attorney, but not a public official) had been convicted of engaging in a scheme to defraud lenders. Belconis had practiced law for thirty years; he cooperated with the disciplinary proceedings; and he practiced

law for ten years without incident after the misconduct ended. The Review Board concluded that the mitigating factors showed that Belconis was unlikely to engage in misconduct in the future. He was suspended for three years, retroactive to the date of his interim suspension, approximately four years earlier.

In ***In re Terronez***, 2011PR00085 (Review Bd., June 24, 2013), *petition for leave to file exceptions allowed*, M.R. 26213 (Nov. 20, 2013), the respondent had been the State's Attorney of Rock Island County. He had a personal relationship with a 16-year old girl, who was the victim of a crime, in a case that Terronez was prosecuting. He exchanged over 2,000 text messages with the girl in a matter of months, some of which were sexual in nature. He also took the girl and her 19-year old friend to Champaign, Illinois over a weekend, without their parents' knowledge, so he could attend a prosecutor's conference, and they all slept in the same hotel suite. He also illegally provided alcohol to the girls, and he repeatedly lied to State Police about his actions. He was disbarred.

In ***In re Hogan***, 2011PR00047 (Review Bd., June 26, 2013), *approved and confirmed*, M.R. 26266 (Nov. 20, 2013), the respondent had been an assistant state's attorney in Carroll County. His misconduct involved two young women. In the first instance, he made sexual advances to a 19-year-old woman who was a defendant in a case he was prosecuting, and he tried to buy her alcohol, in violation of her probation. In the second instance, he had a personal and sexual relationship with a minor who was the victim in a child pornography case he was prosecuting. He failed to appear at his disciplinary hearing. He was disbarred.

The Hearing Board found that *Bretz* and *Thompson* are similar to the instant case because they involved public officials who violated their positions of public trust and authority. We agree. We note that *Scott* also involved a public official, and *Belconis* involved serious misconduct; both cases resulted in retroactive suspensions.

The Hearing Board found that Respondent's misconduct was similar to the misconduct in *Terronez* and *Hogan* in some significant ways. The Hearing Board pointed out that, as in those cases, Respondent was in a position of authority and public trust; he engaged in a relationship with a woman who was a crime victim and a defendant; he caused harm to the Office; and he induced J.N. to violate the conditions of her bond. The Hearing Board stated, "The present matter is factually similar to Terronez and Hogan, but disbarment is not warranted here because Respondent's misconduct was less egregious and less aggravated." (Hearing Bd. Report at 15.) We agree with that analysis.

A three-year retroactive suspension falls within the range of sanctions imposed in the cases discussed above. In our view, that sanction is commensurate with Respondent's misconduct and it is consistent with discipline that has been imposed for comparable misconduct. We are convinced that the recommended sanction properly balances the very serious nature of Respondent's wrongdoing with the substantial mitigation here. We believe that imposing a longer suspension would serve no useful purpose in this case.

CONCLUSION

For the foregoing reasons, we recommend that Respondent be suspended for three years, retroactive to April 24, 2023. We conclude that the recommended sanction will serve the goals of attorney discipline, including deterring Respondent, protecting the public, and preserving public confidence in the legal profession.

Respectfully submitted,

George E. Marron III
Juan R. Thomas
Pamela E. Hill Veal

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on October 2, 2025.

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

4934-0821-4126, v. 1

[1] References to the Anti-Recording Statute refer to Sections (a-5) and (a-10), unless specified.

[2] We recognize that information outside the record is ordinarily not considered on appeal. *See In re Lascia*, 2007PR00125 (Review Bd. at 8), M.R. 23734 (May 18, 2010) ("[The Review] Board is not the fact-finder and does not consider evidence that is outside the record."). In this instance, however, Respondent's resumé indicates that, at the time of the hearing, Respondent had not practiced law since he resigned from the State's Attorney's Office in April 2023. (Resp. Ex. 44.) We also note that the Administrator did not object when Respondent's attorney stated in closing argument that Respondent had not practiced law since April 2023, and further did not object to the statement in Respondent's appellate brief that Respondent had engaged in a self-imposed suspension since April 2023. If Respondent did, in fact, practice law during the relevant time period, those statements would be serious misrepresentations, which would undermine our conclusion that Respondent is unlikely to engage in misconduct in the future.

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

In the Matter of: **MARK A. SHLIFKA,** Respondent-Appellant, No. 6198254.	Commission No. 2023PR00076

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

I, Michelle M. Thome, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by e-mail and regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601 on October 2, 2025, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

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