In re Mark A. Shlifka
Attorney-Respondent

Commission No. 2023PR00076

Synopsis of Hearing Board Report and Recommendation
(December 2024)

The Administrator's Complaint charged Respondent with engaging in a conflict of interest in violation of Rule 1.7(a)(2) and engaging in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) by having a sexual relationship with J.N., who was a victim in one matter and a defendant in another matter being prosecuted by the office in which Respondent was the First Assistant State's Attorney (Count I). The Complaint also charged Respondent with committing criminal acts that reflect adversely on his fitness as a lawyer in violation of Rule 8.4(b) by taking nude photographs of J.N. without her consent (Count II) and by placing his penis on J.N.'s head while she was asleep (Count III).

Based on Respondent's admissions and the evidence, the Hearing Board found that the Administrator proved Counts I and II, but not Count III, by clear and convincing evidence. The Hearing Board recommended a three-year suspension due to Respondent's serious misconduct, minimal mitigation, and significant aggravation, including betraying the public trust, engaging in a selfish pattern of misconduct, and lacking remorse for the harm he caused.

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

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

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator's three-count Complaint charged Respondent with engaging in a conflict of interest, engaging in conduct prejudicial to the administration of justice, and committing criminal acts that reflect adversely on his fitness as a lawyer, including taking nude photographs without consent and battery. These charges arose from Respondent's sexual relationship with a woman who was a victim and a defendant in two matters being prosecuted by the office where Respondent was employed as the First Assistant State's Attorney. The Administrator proved all of the charges except the count involving battery, and the Hearing Board recommended a three-year suspension.

INTRODUCTION

The hearing in this matter was held on August 13, 2024, at the Springfield office of the Attorney Registration and Disciplinary Commission (ARDC) before a panel of the Hearing Board consisting of John L. Gilbert, Stuart H. Shiffman, and Sherri Miller. Tammy L. Evans represented the Administrator. Respondent was present and was represented by Thomas M. Breen and Christopher W. Dallas.

PLEADINGS AND MISCONDUCT ALLEGED

On December 12, 2023, the Administrator filed a three-count Complaint against Respondent, charging him with engaging in a conflict of interest and conduct prejudicial to the administration of justice (Count I) and committing criminal acts that reflect adversely on his fitness as a lawyer (Counts II and III), in violation of Rules 1.7(a)(2), 8.4(d), and 8.4(b) of the Illinois Rules of Professional Conduct (2010). On January 17, 2024, 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.

EVIDENCE

The Administrator called two witnesses, including Respondent as an adverse witness, and Administrator's Exhibit 1 was admitted under seal. (Tr. 49). Respondent testified and called one witness. Respondent's Exhibits 1, 5-17, 19A-D, 21, 25-32, and 43 were admitted under seal, and Respondent's Exhibit 44 was admitted. (Tr. 102, 146-149, 151, 195).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

I. Respondent is charged with engaging in a conflict of interest and conduct prejudicial to the administration of justice by engaging in a sexual relationship with a victim and defendant in criminal cases he prosecuted and supervised, in violation of Rules 1.7(a)(2) and 8.4(d).

A. Summary

Respondent admitted, and we find sufficient evidence to prove, that he engaged in a conflict of interest and conduct prejudicial to the administration of justice in violation of Rules 1.7(a)(2) and 8.4(d) by engaging in a sexual relationship with a woman who was both the victim of a crime he was prosecuting and the defendant in a case his subordinate was prosecuting on behalf of the Kendall County State's Attorney's Office.

B. Admitted Facts and Evidence Considered

Between February 13, 2018, and April 24, 2023, Respondent was the First Assistant State's Attorney for the Kendall County State's Attorney's Office. (Ans. at par. 1). Respondent prosecuted all of the office's felony domestic battery cases and supervised everyone in the office except for State's Attorney Eric Weis. (Tr. 79, 193-94).

On February 20, 2020, a Kendall County grand jury returned an indictment against J.A. for allegedly strangling his girlfriend J.N. Respondent was assigned to prosecute this case and the additional charges arising from J.A.'s alleged domestic battery of J.N. in May 2021. Respondent and J.N. met each other through their involvement in J.A.'s case. (Ans. at pars. 2-3; Tr. 31-32, 78-82). On March 16, 2022, J.N. testified at the bench trial, and the judge found J.A. guilty of felony aggravated domestic battery and misdemeanor domestic battery. On or about March 31, 2022, Respondent began messaging J.N. on the social media platform LinkedIn. (Ans. at par. 6; Tr. 82-83). On or about April 14, 2022, they started a sexual relationship. (Ans. at par. 7; Tr. 33, 95-96). Thereafter, Respondent appeared on behalf of the State's Attorney for J.A.'s sentencing. (Ans. at

par. 8; Tr. 82). Respondent did not inform State's Attorney Weis about his relationship with J.N. (Tr. 154-56, 158).

Separately, on February 26, 2021, a Kendall County grand jury returned an indictment against J.N., charging her with felony aggravated driving under the influence and felony driving while license revoked. Kendall County Assistant State's Attorney Ryan Phelps, who was under Respondent's supervision, prosecuted J.N. in that case. (Ans. at par. 4). A condition of J.N.'s bond prohibited her from traveling out of state. (Ans. at par. 10). Nonetheless, on or about December 4, 2022, Respondent purchased a plane ticket for J.N. so she could accompany him to California for a legal conference. (Ans. at par. 9). Respondent never informed the court or the State's Attorney that he caused J.N. to leave Illinois in violation of her bond conditions. (Ans. at par. 11).

Respondent's relationship with J.N. ended in February or March 2023. (Ans. at par. 12; Tr. 7-9, 33, 169). On April 6, 2023, Respondent was present in court for a conference in J.N.'s criminal case because another case he was handling also had a conference that day. (Ans. at par. 13). He did not leave the room during J.N.'s conference or inform Phelps or the court about his prior sexual relationship with J.N. (Ans. at par. 14; Tr. 159).

On April 21, 2023, Weis put Respondent on administrative leave after learning that J.N. obtained an emergency order of protection against Respondent. She alleged that he took nude photographs of her without consent during their relationship and that she feared he would retaliate against her using "his position of authority" in the legal system. (Tr. 140-41; Res. Ex. 43). She also filed a civil lawsuit against Respondent and the Kendall County State's Attorney's office. (Tr. 143-45, 167). On April 24, 2023, in lieu of being fired, Respondent resigned as First Assistant State's Attorney. (Ans. at par. 15; Tr. 142). Respondent admitted that he did not tell Weis about his relationship with J.N. until the day of his resignation because he knew the relationship violated

his ethical duties and office policy. (Tr. 159-62). Thereafter, the court appointed a special prosecutor to handle the matters involving J.A. and J.N. (Ans. at par. 15).

C. Analysis and Conclusions

Rule 1.7(a)(2) prohibits a lawyer from representing a client while there is a significant risk that the representation will be materially limited by a personal interest of the lawyer, as this constitutes a conflict of interest. Ill. R. Prof'l Cond. R. 1.7(a)(2). Accordingly, assistant state's attorneys are prohibited from having a sexual relationship with a victim or defendant in cases they prosecute. In re Hogan, 2011PR00047, M.R. 26266 (Nov. 20, 2013) (Hearing Bd. at 17). Rule 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. Ill. R. Prof'l Cond. R. 8.4(d). When a prosecutor induces a defendant to violate a criminal court's order, it prejudices the administration of justice by undermining the criminal justice system generally and that defendant's case specifically. Hogan, 2011PR00047 (Hearing Bd. at 7-8).

Respondent admitted to violating Rules 1.7(a)(2) and 8.4(d) by engaging in a sexual relationship with J.N. while she was a victim in a case he was prosecuting and a defendant in a case his subordinate was prosecuting, and by causing J.N. to violate her bond conditions by facilitating her out-of-state travel in December 2022. We find credible Respondent and J.N.'s supporting testimony about their sexual relationship, which began in April 2022, while J.A.'s and J.N.'s criminal cases were pending, and continued through February or March 2023.

Based on the evidence and Respondent's admissions, we find that the Administrator proved by clear and convincing evidence that Respondent violated Rules 1.7(a)(2) and 8.4(d).

II. Respondent is charged with committing a criminal act that reflects adversely on his fitness as a lawyer by taking unauthorized nude photographs in violation of Rule 8.4(b).

A. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent committed a criminal act that reflects adversely on his fitness as a lawyer when he took nude photographs of J.N. without her consent in violation of Rule 8.4(b).

B. Evidence Considered

We consider the following evidence, in addition to the admitted facts and evidence described in Section I B.

Respondent testified that, during their relationship, J.N. sent him photographs of her fully and partially unclothed body, including her nude intimate parts. (Tr. 87, 90, 95-96, 102-103, 111-12). Respondent's exhibits included 8 such photographs from April 2022 and January 2023. (Res. Exs. 10, 12, 19A, 21). Both Respondent and J.N. testified that they had taken photographs and videos of their sexual activities using a cell phone that Respondent typically left at J.N.'s home. Respondent testified that the cell phone could not make or receive calls, so he used it as a camera. (Tr. 56-58, 67-68, 109-11). Respondent testified that J.N. never indicated any objection to the photographs and videos being on the cell phone. (Tr. 110-11).

After they broke up, Respondent removed his personal belongings from J.N.'s home but left the cell phone. (Tr. 34). J.N. testified that, sometime in March or April 2023, she first discovered four photographs that Respondent took on February 25, 2023, of her sleeping naked in her bed. One of these showed Respondent's penis near her nude buttocks and two others showed Respondent's penis near her face and on her forehead. J.N. testified that she did not give Respondent permission to take the four photographs, as she was "blacked-out drunk" at that time.

She testified that she did not remember what happened that night, but Respondent later told her that she had passed out during sex. (Tr. 34-48, 56-66, 69-72, 167, 170-72; Adm. Ex. 1).

According to Respondent's testimony, about a half hour before the photographs at issue were taken, J.N. asked him to photograph her posing nude on her bed. (Tr. 29, 104-108; Res. Ex. 19B-D). Thereafter, she fell asleep during a sex act, which Respondent stopped, and then he immediately took the four nude photographs of her. He admitted that J.N. did not know he was taking the photographs at that time because she was asleep, but he testified that she was not "blacked-out drunk." (Tr. 25-26, 29, 156-58). He admitted that his penis was near J.N.'s body in three of the photographs, but he denied that his penis actually touched her body. (Tr. 25). He further testified that, based on the couple's relationship history, he felt that taking these photographs was consensual and would not offend J.N. (Tr. 108-109, 139-40). He testified that he showed J.N. the photographs after she woke up the next morning, and "[s]he thought it was funny." (Tr. 30, 109).

C. Analysis and Conclusions

Rule 8.4(b) provides that 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." Ill. R. Prof'l Cond. R. 8.4(b). We may determine, based on the facts established at the disciplinary hearing, that such criminal activity occurred, regardless of whether the respondent was criminally charged or convicted. In re Mills, 07 SH 02, M.R. 23070 (May 18, 2009) (Hearing Bd. at 16-17). The Administrator charged Respondent with violating Rule 8.4(b) by taking nude photographs of J.N. without her consent, in violation of the unauthorized video recording statute.

The Illinois Criminal Code prohibits "knowingly mak[ing] a video record or transmit[ting] live video of another person in that other person's residence without that person's consent" and "knowingly mak[ing] a video record or transmit[ting] live video of another person's intimate parts for the purpose of viewing the body of or the undergarments worn by that other person without

that person's consent." 720 ILCS 5/26-4(a-5), (a-10). For purposes of this statute, a "video record" includes "any videotape, photograph, film, or other electronic or digital recording of a still or moving visual image." Id. at (e)(2). "[I]ntimate parts" are defined as "the fully unclothed, partially unclothed, or transparently clothed genitals, pubic area, anus, or if the person is female, a partially or fully exposed nipple, including exposure through transparent clothing." Id. at (a-10).

We find that Respondent committed the criminal act of unauthorized video recording, as proscribed in 720 ILCS 5/26-4(a-5) and (a-10). These subsections share three of their four elements: (1) recording a moving or still image of another person; (2) lack of consent by the recorded person; and (3) acting "with the knowledge that that person is in a place where that person has a heightened expectation of privacy and with the knowledge that that person has not consented, either expressly or impliedly, to being recorded." People v. Maillet, 2019 IL App (2d) 161114, ¶¶ 44, 50, 145 N.E.3d 25. Respondent admitted to taking the photographs of J.N. sleeping in her bed, which satisfies the first element.

While Respondent and J.N.'s testimony conflicted over whether J.N. had consented to the four photographs at issue, we do not need to make a credibility determination because a person cannot give consent while asleep. People v. Taylor, 345 Ill. App. 3d 1064, 1066, 1075, 804 N.E.2d 116 (4th Dist. 2004). Both Respondent and J.N. testified that she was sleeping when he 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. "Undoubtedly, a person has a heightened expectation of privacy in … that person's residence." Maillet, 2019 IL App (2d) 161114 at ¶ 38. We find that Respondent, an attorney with over 30 years of experience as a prosecutor, knew the criminal law well enough to know that J.N. had a heightened expectation of

privacy in the bedroom of her home and that she could not have legally given consent while she was sleeping. His testimony that he stopped his sex act with J.N. when she fell asleep bolsters our conclusion that he knew her consent ended at that time.

The final element involves various aspects of privacy. Subsection (a-5) prohibits recording in a private location. We find this element satisfied by Respondent's admission of photographing J.N. in her bedroom. Subsection (a-10) prohibits recording another person's intimate body parts for the purpose of viewing that person's body. The photographs at issue depict J.N.'s fully unclothed body, including her nude buttocks, which we find meets the definition of "intimate parts" in the statute. Based on Respondent and J.N.'s testimony that the cell phone was used to record their sexual activities, we find it evident that Respondent's purpose in taking the photographs was for viewing J.N.'s body. Thus, Respondent violated all four elements of the unauthorized video recording statute in both subsections (a-5) and (a-10).

We further find that Respondent's criminal conduct, which occurred while he was entrusted with enforcing criminal laws as a First Assistant State's Attorney, reflects adversely on his fitness as a lawyer. In re Terronez, 2011PR00085, M.R. 26213 (Nov. 20, 2013) (Hearing Bd. at 15) (citing In re Scarnavack, 108 Ill. 2d 456, 485 N.E.2d 1 (1985)). This is especially true when his crime occurred with a victim of a case he was prosecuting. In re Hogan, 2011PR00047, M.R. 26266 (Nov. 20, 2013) (Hearing Bd. at 10).

For these reasons, we find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 8.4(b).

III. Respondent is charged with committing a criminal act that reflects adversely on his fitness as a lawyer by committing battery in violation of Rule 8.4(b).

A. Summary

We find that the Administrator did not prove by clear and convincing evidence that Respondent committed the criminal act of battery.

B. Admitted Facts and Evidence Considered

We consider the admitted facts and evidence described in Sections I B and II B.

C. Analysis and Conclusions

The Administrator also charged Respondent with violating Rule 8.4(b) by committing battery by placing his penis on J.N.'s head while she was asleep, which was allegedly documented in one of the photographs Respondent took on February 25, 2023. Respondent denied that his penis touched J.N.'s head, and J.N. had no recollection because she was sleeping at that time.

We find that the Administrator did not meet the burden of proving by clear and convincing evidence that Respondent committed battery. Battery includes knowingly without legal justification making physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3(a)(2). The photograph at issue is ambiguous, as Respondent's penis could be either above or directly touching J.N.'s forehead. As the Administrator presented no other evidence that physical contact – a necessary element of the statute – occurred, we are not clearly convinced that Respondent committed battery in violation of Rule 8.4(b).

EVIDENCE OFFERED IN MITIGATION AND AGGRAVATION

Aggravation

Respondent testified that he first met J.N. for lunch in April 2022. He explained that he was married at the time and his wife had recently made a comment that "crushed" him. (Tr. 85-86). Respondent testified that J.N. kissed him at lunch, and he kissed her after lunch. Later that

day, she sent him partially nude photographs of herself, and they exchanged flirtatious messages. Although he admitted to initiating the LinkedIn messages that resulted in their lunch meeting, he testified that he did not pursue J.N. but rather she pursued him. (Ans. at par. 6; Tr. 83, 86-88, 91-92, 94-95, 122-23, 153-55, 160; Res. Exs. 10-11).

Respondent testified that he did not benefit from his relationship with J.N., but he also admitted that he had sex with J.N., developed a friendship with her, and fell in love with her. (Tr. 100, 160-64). Respondent presented 25 photographs of J.N. and him socializing together. (Tr. 149-51; Res. Ex. 1). Additionally, he testified that J.N. accompanied him to the emergency room when he experienced a medical issue around 3:00 a.m. in January 2023. (Tr. 163-64).

Respondent testified that he thought "quite often" about how his actions might reflect on his employment. He also testified to telling J.N. "several times" that, because she was a criminal defendant, his conduct was undermining the actions of the Kendall County State's Attorney. (Tr. 159-60).

Respondent presented several post-breakup emails from J.N. to him in March 2023 in which she expressed feeling used, betrayed, degraded, heartbroken, and victimized by Respondent. (Res. Exs. 26-29). In her email dated April 14, 2023, she said she still felt hurt over a month later. (Res. Ex. 30).

Mitigation

Respondent was a prosecutor for over 34 years, including 29 years at the Cook County State's Attorney's Office and 5 years at the Kendall County State's Attorney's Office. (Tr. 24, 181-94; Res. Ex. 44 at 1). He was in supervisory roles for over 20 of those years and taught extensively. He gave close to 200 presentations to attorneys nationwide, worked as an adjunct professor of law, coached mock trial teams, and served as the Director of Continuing Legal

Education at the Cook County State's Attorney's Office. (Tr. 27-28, 189-91; Res. Ex. 44). He was also a member of the Board of Directors of the Illinois Prosecutors Bar Association. (Res. Ex. 44 at 2).

Prior Discipline

Respondent has been licensed to practice law in Illinois since 1988 and has no prior discipline.

RECOMMENDATION

A. Summary

Based on the proven misconduct, the significant factors in aggravation, and minimal mitigation, the Hearing Board recommends that Respondent be suspended for three years.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. When recommending discipline, we consider the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). We seek to recommend similar sanctions for similar types of misconduct, but we must decide each case on its own unique facts. Edmonds, 2014 IL 117696, ¶ 90.

In this matter, we find several factors in aggravation and minimal mitigation. We find significantly aggravating that Respondent's misconduct occurred while he was a First Assistant State's Attorney. Prosecutors have special responsibilities to ensure that justice is served in criminal cases, and the Rules "remind prosecutors that the touchstone of ethical conduct is the duty to act fairly, honestly, and honorably." Ill. R. Prof'l Cond. R. 3.8, Comments 1, 1A. By failing to

inform the judges in J.A.'s and J.N.'s criminal cases of Respondent's sexual relationship with J.N. and his facilitation of her out-of-state travel, he withheld information that may have impacted the outcome of those cases. In fact, the court had to appoint special prosecutors for both cases after the relationship came to light. Moreover, "Respondent, as the second most powerful law enforcement attorney in [Kendall] County, had a responsibility to know and uphold the law of the State of Illinois, and the Rules of the Supreme Court." In re Bretz, 96 CH 118, M.R. 15663 (Mar. 24, 1999) (Hearing Bd. at 50). He held a position of public trust, and he broke that trust by failing to disclose his relationship with J.N., inducing J.N. to violate her bond conditions, and engaging in criminal activity while prosecuting others' crimes. Id. at 57. Respondent's behavior demonstrated an egregious disregard for the law and breach of the trust of the People of the State of Illinois.

In addition, as a victim of abuse and a defendant being prosecuted by Respondent's office, J.N. was in a vulnerable position. Respondent used his position of authority to exploit her vulnerability and her trust, which is a factor in aggravation. In re Hogan, 2011PR00047, M.R. 26266 (Nov. 20, 2013) (Hearing Bd. at 10, 15). When Respondent violated a criminal law, "especially with a victim of one of the crimes he was prosecuting, he demonstrated that he cannot be trusted to fulfill his duties as an assistant state's attorney." Id. at 10.

We also find aggravating that Respondent engaged in a pattern of knowing misconduct with a selfish motive. In re Lewis, 138 Ill. 2d 310, 342, 562 N.E.2d 198 (1990); In re Rinella, 175 Ill. 2d 504, 518-19, 677 N.E.2d 909 (1997). Respondent chose to repeatedly put his personal interests before the public's interests, in violation of his duty of loyalty to his client, the People of the State of Illinois. In re LaPinska, 72 Ill. 2d 461, 469-70, 381 N.E.2d 700 (1978). This was not an isolated lapse of judgment but rather an ongoing inappropriate relationship, which Respondent

hid from his supervisor, his coworkers, and the judges handling the criminal cases involving J.N. for a year. Respondent knowingly persisted in his unethical behavior because it benefited him with sexual gratification, companionship, and assistance with a middle-of-the-night trip to the emergency room. We find Respondent's assertion that he gained no benefit from his relationship with J.N. to be either disingenuous or indicative of his failure to understand the impact of his actions.

We find Respondent's lack of remorse and failure to take responsibility for his knowingly unethical conduct to be aggravating. Lewis, 138 Ill. 2d 310 at 347-48. Respondent blamed his wife for pushing him toward an affair with J.N. He also claimed that J.N. pursued him, even though he admitted to initiating contact with her on LinkedIn and then reciprocating her flirtations and kissing. Although Respondent had countless opportunities to stop and admit his wrongdoing, he kept his misconduct secret until confronted by his supervisor a year after it began. We are not persuaded by Respondent's attempts to deflect responsibility for his choices onto others, and we observed no remorse from him.

Another aggravating factor is that Respondent's conduct harmed J.N. – a crime victim he was supposed to protect – and his employer. In re Saladino, 71 Ill. 2d 263, 276, 375 N.E.2d 102 (1978); Hogan, 2011PR00047 (Hearing Bd. at 15). Respondent caused J.N. to fear that he would use his influence in the legal system against her and created a significant risk of harm to J.N. by facilitating the violation of her felony bond conditions. Then he "essentially made [J.N.] a victim for a second time" when he illegally took nude photographs of her without her consent. Hogan, 2011PR00047 (Hearing Bd. at 15). The emotional distress J.N. conveyed in her post-breakup emails evidenced the harm she experienced. Additionally, Respondent caused actual harm to the Kendall County State's Attorney's Office, which expended resources investigating his conduct

and terminating his employment, had to transfer the two cases involving J.N. to a special prosecutor, and faced a civil lawsuit arising from his conduct.

Potential mitigating factors include "the length of time in practice, previous misconduct, whether and when restitution is made if it is owing, community service, pro bono legal work, and the testimony of character witnesses and professional colleagues." In re Lenz, 108 Ill. 2d 445, 453-54, 484 N.E.2d 1093 (1985). We acknowledge that Respondent has no prior misconduct throughout his otherwise successful 34-year career as a prosecutor. However, we give this limited weight because Respondent's extensive experience as a supervising attorney and legal educator should have heightened his respect for the Rules of Professional Conduct, which he still knowingly violated. We also note the lack of testimony about Respondent's character, which is a significant omission, given Respondent's lengthy career in two State's Attorney's offices and his professional associations over the decades.

The Administrator requested a three-year suspension. In support, she cited In re Terronez, 2011PR00085, M.R. 26213 (Nov. 20, 2013) (disbarment); Hogan, 2011PR00047 (disbarment); Bretz, 96 CH 118 (three-year suspension); and In re Fishman, 01 CH 109, M.R. 19462 (Sept. 24, 2004) (one-year suspension). Respondent conceded that a sanction was warranted but argued that it should be less than a three-year suspension. He did not provide any supporting case law.

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. In Terronez, the State's Attorney for Rock Island County engaged in a personal relationship with, sent sexually charged texts to, and provided alcohol to a minor, who was the victim of a sexual assault that he prosecuted. Terronez, 2011PR00085 (Hearing Bd. at 2-3, 6-7). He also provided alcohol to the minor's underage friend and stayed in a hotel with them while traveling to a seminar

for prosecutors. Id. at 3. In Hogan, an assistant state's attorney took a defendant he prosecuted for underage drinking to a restaurant where he tried to buy her alcohol, in violation of her probation conditions, and then made unwanted physical advances toward her. Hogan, 2011PR00047 (Hearing Bd. at 4-5). He also developed a personal relationship with the victim in a child pornography case that he prosecuted and then committed a criminal sexual act on her. Id. at 8-10.

Like Respondent, both Terronez and Hogan caused harm by engaging in inappropriate relationships and criminal activity with victims or defendants in cases they prosecuted. Similarly, Terronez was in a position of authority and engaged in a pattern of misconduct that he hid until caught. Terronez, 2011PR00085 (Hearing Bd. at 23-24). Hogan also attempted to induce a defendant to violate her court-ordered conditions and failed to show remorse for his actions. Hogan, 2011PR00047 (Hearing Bd. at 7-8, 15-16). However, their misconduct was more egregious than Respondent's because they victimized vulnerable minors. Id. at 15, 18. Additionally, Terronez lied to the police investigating his conduct, and Hogan failed to appear at his disciplinary hearing, which are aggravating factors not present here. Terronez, 2011PR00085 (Hearing Bd. at 21-22); Hogan, 2011PR00047 (Hearing Bd. at 14-15). Thus, we do not recommend disbarment, but instead we find that a lengthy suspension is warranted.

We considered the Administrator's cited cases which resulted in suspensions. Bretz, 96 CH 118 (three-year suspension for committing criminal acts by knowingly bringing improper charges and intentionally delaying charges against two defendants as First Assistant State's Attorney, and for failing to disclose that he formerly worked with the judge in a case he prosecuted); Fishman, 01 CH 109 (one-year suspension for making non-consensual sexual contact multiple times with an associate that he supervised at his firm). See also In re Thompson, 2022PR00059, M.R. 032293 (Sept. 20, 2024) (three-year suspension for committing criminal acts including tax fraud and for

engaging in dishonest conduct, while serving as a public official). These cases further emphasize the seriousness of an attorney's ethical and criminal violations when that attorney is in a position of trust and authority.

On balance, we determine that the appropriate sanction for Respondent is a three-year suspension, which is within the range of sanctions in similar cases. 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. His knowing, selfish pattern of misconduct harmed a victim in a case he prosecuted and the Kendall County State's Attorney's Office. Moreover, he failed to show remorse or take responsibility for his actions. We believe that a lengthy suspension properly acknowledges the seriousness of Respondent's misconduct, the significant aggravating factors, and the minimal mitigating factors. It also serves as a deterrent to future misconduct, in furtherance of the purposes of the disciplinary process. For these reasons, we recommend that Respondent, Mark A. Shlifka, be suspended for three years.

Respectfully submitted,

John L. Gilbert
Stuart H. Shiffman
Sherri Miller

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on December 13, 2024.

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

4922-9942-8870, v. 1