2020 IL Cts Com 002

(No. 19 CC 1)

In re CIRCUIT JUDGE MAURICIO ARAUJO
of the Circuit Court of Cook County, Respondent.

Order entered November 6, 2020

SYLLABUS

On June 5, 2019, the Judicial Inquiry Board filed a three-count complaint with the Illinois Courts Commission, charging respondent with conduct that was prejudicial to the administration of justice and that brought the judicial office into disrepute in violation of the Code of Judicial Conduct, Illinois Supreme Court Rules 61, 62, and 63. In summary, the complaint alleged that on two separate occasions in 2012, respondent made unwanted sexual advances toward a court reporter while alone with her in the confined space of an elevator at the Domestic Violence Courthouse in Chicago. Additionally, the complaint alleged that in 2016, respondent made unwelcome sexual advances toward, and attempted unwanted physical contact with, a Chicago Police Officer while she was in his chambers seeking a signature on a search warrant. Finally, the complaint alleged that in 2018, respondent made inappropriate and sexually suggestive comments about an Assistant State's Attorney after she appeared before him in court, and in the presence of another Assistant State's Attorney, and that all of these incidents described a pattern of inappropriate conduct toward women that respondent encountered in a professional setting and in his official capacity, and that forced the women to alter their professional habits.

Held: Where respondent resigned from office after an evidentiary hearing and after findings of fact and conclusions of law were made, the Commission did not further consider the imposition of discipline.

Sidley Austin LLP, of Chicago, for Judicial Inquiry Board.
Robinson, Stewart, Montgomery & Doppke LLC, of Chicago, for Respondent.

Before the COURTS COMMISSION: THEIS, Chair, AUSTRIACO, HULL, McBRIDE, O'BRIEN, PETERSON, and WOLFF, commissioners. ALL CONCUR.

ORDER

In 2008, respondent was elected Judge of the Cook County Circuit Court, Sixth Judicial Subcircuit, and was subsequently retained in 2014. In September 2018, respondent was placed on administrative leave in connection with the allegations presented in a three-count complaint filed on June 5, 2019, by the Judicial Inquiry Board (Board). The Board charged respondent with conduct that was prejudicial to the administration of justice and that brought the judicial office into disrepute in violation of the Code of Judicial Conduct, Illinois Supreme Court Rule 61, Canon 1 (eff. Oct. 15, 1993); Rule 62, Canon 2(A) (eff. Oct 15, 1993); and Rule 63, Canon 3(A)(3), (A)(9) (eff. Oct. 15, 1993).

Count I of the complaint alleged that respondent had engaged in unwanted sexual advances toward a court reporter on two separate occasions in the Spring of 2012 while alone with her in the confines of an elevator at the Domestic Violence Courthouse in Chicago where respondent presided over a courtroom. These inappropriate and harassing advances allegedly caused the court reporter distress and trauma, and ultimately led her to seek a transfer to a different location to avoid further contact with respondent.

Count II alleged that in the Summer of 2016, respondent made unwelcome sexual advances toward, and attempted unwanted physical contact with, a Chicago Police Officer while she was in his chambers at the George N. Leighton Criminal Courts Building seeking a signature on a search warrant. Respondent allegedly attempted to kiss her on the mouth and then physically moved her hand to his backside, telling her to "touch his butt." These inappropriate and harassing advances caused the officer distress and trauma, and ultimately led her to change her professional habits to avoid being alone with respondent again.

Count III alleged that that in 2018, respondent made inappropriate and sexually suggestive comments about an Assistant State's Attorney after she appeared before him in court, and in the presence of another Assistant State's Attorney.

The complaint further alleged that these incidents described a pattern of inappropriate conduct toward women respondent encountered in a professional setting. The complaint further alleged that through the described pattern of inappropriate conduct toward women respondent encountered in a professional setting and through each incident, respondent violated Rules 61, Canon 1, Rule 62, Canon 2(A), and Rule 63, Canons 3(A)(3) and (A)(9).

The Courts Commission conducted a contested evidentiary hearing over two days, on September 28 and 29, 2020, at which the Commission heard witness testimony and stipulations of the parties and admitted certain exhibits. The following relevant evidence was adduced at the hearing.

Count I

Carolina Shultz testified that in 2011 she was a court reporter working at the Domestic Violence Courthouse at 55 West Harrison Street in Chicago. She began working there in December 2009. The court reporters' office was on the fourth floor of the building, which was also the top floor. She recalled having been previously introduced to respondent. She knew that he was a new judge in the building, but she did not recall any specific details of that initial introduction. She had never socialized with respondent outside of work and was not on a first name basis with him.

Schultz testified to two separate unwanted sexual encounters with respondent in the elevator at the courthouse in the Spring of 2011. When she originally reported the incidents, she believed that they had occurred in 2012, but after reviewing some work-related documents, she realized that she was no longer working at that location in 2012. With respect to the first encounter, although Schultz could not recall the time of day or the specific day of the week, she knew that it was a workday during business hours, and that she was in the elevator alone with respondent. The parties stipulated that although the judges had a separate restricted elevator, it was not uncommon to see judges use the public elevator bank. Shultz did not recollect what specific floor she got on

or who got on the elevator first, but she remembered that she and respondent had some initial small talk, and then the tone of the conversation quickly changed.

Respondent became overly friendly and asked her, "how much?" Based on the way he looked at her up and down, the way he talked to her, and his body language, she understood the question to mean how much for sex. Shultz stated that respondent's tone was overly personal, as if trying to "pick her up" in a social setting. She did not recall exactly how she responded, but she was shocked by the sexual nature of the conversation. She returned to her office and mentioned the incident to the main court reporter. She testified that she chose not to report the incident to a supervisor at that time because there were no witnesses to the incident.

Shultz further testified that a few weeks later she was again in an elevator with respondent alone during business hours. He asked her if she had thought about what he had said before. She told him she had a boyfriend so that he would understand that she was not interested, and she also mentioned that respondent was married. According to Shultz, respondent shrugged his shoulders and said, "so what?" She thought about reporting the incident, but she decided not to because she was concerned about the ramifications on her career and the lack of witnesses.

In response to these incidents, Shultz testified that she changed her behavior at work. She avoided elevators as much as possible and avoided the court reporter break room on the second floor where respondent's courtroom was located. When she could not avoid the elevator, she tried to make sure there were other people around her. Shortly after these encounters, Shultz transferred to the Daley Center. She stated that the request for the transfer was her first opportunity for a transfer, and that it was motivated by the interactions with respondent and the stressful environment he created for her. In 2018, Shultz reported the encounters with respondent after seeing an article about respondent in the media and felt it was important to share what had happened to her.

She acknowledged that in her complaint to the Judicial Inquiry Board, and in her interview with the Board she stated that respondent asked her how much money she wanted for sex with him. This statement contrasted with her testimony at the hearing where she stated that respondent said, "how much?" implying that he wanted to know how much for sex, and that she understood his question in that context.

Respondent testified that he had been a judge since 2008. He was assigned to the Domestic Violence courthouse in 2010 or 2011. His courtroom was on the second floor. While working at the courthouse, he primarily used the restricted elevator for judges, but may have used the public elevators as well. He did not recall any specific time he used the public elevator other than when he went to lunch a few times with another female judge. He denied knowing Shultz and denied that the incidents occurred. He did not have any recollection of any court reporters in the building and did not remember running into any of them. His courtroom did not have a court reporter.

Count II

Chicago Police Officer Karen Rittorno testified that she had been a police officer for over 18 years. In August of 2016, she was assigned to the gang investigations unit. Her work involved obtaining search warrants which required not only approval from the State's Attorney's office, but

also a judge's signature. Some warrants, such as John Doe warrants, also required an informant be presented to the judge and questioned. She had interacted with respondent previously in connection with other search warrants, but she had no personal relationship with him. On August 15, 2016, she texted respondent to ask if he was available to authorize a search warrant. He had a reputation for promptly returning officers' calls, and it was not uncommon for her to have his cell phone number for this purpose and had texted other judges in this same way.

Rittorno testified that when respondent indicated he was available she drove to the criminal courts building on 26th and California with Officer Wrobel and the informant. Officer Wrobel stayed with the informant and Rittorno entered the courthouse to have the warrant initially reviewed and assigned a number by the State's Attorney's Office per protocol. After that, she went to respondent's courtroom. It was about 1 p.m. and court was not in session. She walked through the courtroom and knocked on the door to respondent's chambers. Respondent told her to come in. Rittorno was in plain clothes but had on her protective vest and her duty belt.

Rittorno further testified that as she walked into the chambers, respondent came around his desk to greet her and she stated that he immediately invaded her personal space and tried to kiss her on the lips. She was in shock and used a technique she learned in the police academy, referred to as a "back sir," which involved extending her arm out, and stepping back to re-evaluate the situation and create distance from respondent. She admonished respondent, "aren't you married?" He said, "well yeah," and she moved over to the window hoping to get her partner's attention from the squad car, but the windows were tinted. She then asked respondent if he wanted her to bring the informant to him or whether he wanted to go out to the squad car. He told her to bring the informant in to the courthouse.

As she left the chambers to get the informant, respondent was in front of her, she had the paperwork in her right hand and he reached back toward her left hand and said, "here, touch it." She said, "touch what?" and he said, "touch my butt." Again, in disbelief, she pushed respondent out of the way, made her way around him, and went back to the squad car.

She stated that she considered herself a "tough cookie," having worked in the worst areas in the City and on the worst search warrants and having worked with men her entire career. She stated that she was not going to give respondent that power over her and that she just walked out. She told her partner in the car that respondent tried to kiss her. According to Rittorno, her colleague shook his head and laughed about it. She then went back to respondent with her partner and the informant and respondent signed the warrant.

After the incident, she told members of her team and her sergeant about the incident. Rittorno testified that it was kind of a joke in the police community to the effect of "hey call your judge next time you need a search warrant signed." She did not take any further action to report respondent at that time.

Rittorno testified to one other unusual interaction she recalled with respondent after that date. She was with other members of her team on a routine search warrant. They met respondent at the 14th District police station and he walked up to the squad car. Rittorno offered respondent her seat. He responded to the effect of "oh, I get to sit where you're sitting." "Do I get to sniff your

seat, too?" Rittorno stated that she looked to her partners for a reaction and they smirked. She told responded that she did not think he wanted to sniff her seat because she had been working all day and it had been a long day. Rittorno testified that the guys laughed, and respondent got in the car and handled the warrant.

She stated that in her profession "you have to suck it up." Although she interacted with respondent after that incident to obtain other search warrants, she made sure she was with another officer and never alone with him again. She subsequently elected to come forward with her allegations after watching the Cosby trial and after she became aware of respondent's reported comments about a female Assistant State's Attorney.

She acknowledged that in her written complaint to the Board, she did not mention respondent grabbing her hand, but stated that the written complaint was merely a summary of what happened. She also acknowledged that in her deposition she considered the hand grabbing important to explain why she thought that respondent had been trying to kiss her on the lips as opposed to merely a friendly peck on the cheek.

The parties stipulated that if Michael Wrobel were called as a witness, he would testify that he was a Chicago Police Officer. In the Summer of 2016, he was assigned to a team that included Rittorno and four other officers. He and his team came to respondent for approval of warrant applications on several occasions. He did not have any knowledge of or recollection of the incident on August 15, 2016, as described by Officer Rittorno in her complaint to the Board.

Respondent testified that he knew Rittorno and acknowledged signing the warrant on August 15, 2016, but he did not remember the circumstances of signing it. He would usually sign search warrants for officers after court hours in the parking lot at 26th and California, or he would have the officers meet him at various locations. They would seek the approval from the State's Attorney office first and then call him afterwards because they would not want to keep him waiting. When the officers came during business hours, he would meet them in the parking lot unless it involved a confidential informant. In that case, the officer would come to his chambers. The search warrant he signed on August 15, 2016, involved a John Doe informant and not a confidential informant. He testified that these types of warrants were typically handled outside in the parking lot, to protect the informant's identity.

He considered Rittorno a friend and remembered on a specific instance, giving her a hug and kiss on the cheek at some point he believed prior to August 15, 2016, and telling her to "be safe out there." He recalls her admonishing him that he was married, and that he responded, "yeah." Respondent testified that his actions were not sexual. He did not recall the date of this occurrence. He had interacted with Rittorno and her team on multiple occasions and thought of their relationship as crossing over from merely professional into a friendship. They had several personal conversations. He knew she was not married, he believed she was dating someone, and that she loved dogs. He thought of Rittorno as a friend and invited her to his annual summer party he would have with his family and friends. Other officers attended the party, but Rittorno did not attend. Respondent further testified that his gesture of physical affection, to give a female friend a hug and kiss on the cheek, was part of his Columbian culture. He stated that there were about five

female officers he felt friendly enough with to give them a hug and kiss on the cheek. He believed that there were two or three male officers he was friendly enough with to give hugs to as well.

With respect to the encounter at the 14th District, respondent recalled that Rittorno's partners were talking about how sweaty they were from being out all day and recalled that Rittorno might have said that he could have her seat. Respondent then said to her, "I get the stinky seat, or the smelly seat."

Count III

The parties stipulated that if called to testify Christina Kye would state that she was an Assistant State's Attorney with the Cook County State's Attorney Office and had held that position since 2009. In September 2018, she was assigned to respondent's courtroom. Respondent had recently taken over that courtroom when another judge had retired, and Kye understood this position to be a promotion for respondent. Prior to this assignment, her only experience with respondent was one or two appearances before him in bond court.

On the morning of September 11, 2018, she was in respondent's courtroom for the case management call. She saw ASA Nina Ricci appear before respondent with respect to a pending motion on a murder case, which had been previously assigned to the now retired judge. The interchange was respectful and courteous. Ricci left the courtroom with ASA Joseph Hodal, who was also assigned to that courtroom.

Immediately after ASA Ricci left the courtroom, ASA Kye saw respondent speaking to his clerk. Kye noticed the interaction because respondent spoke to the clerk in Spanish in open court and his body language was tense. She heard him say words to the effect of "she acted like she didn't even know me. She didn't congratulate me or anything." According to Kye, respondent sounded bitter. Kye understood that he expected to be congratulated for his promotion to the new courtroom. Respondent did not use any names as he made these comments, but he was directing his attention to the doors that ASA Ricci had just left. Later that day, Kye told ASA Hodal and another colleague about respondent's comments to his clerk. Sometime after that date, Kye was asked to meet with the Chief of Special Prosecutions and the Deputy Chief of Prosecutions to answer questions about her observations.

Kye is not fluent in Spanish, but she can understand conversation. She used Spanish professionally in participating in forensic interviews with Spanish-speaking children as part of her work in the Children's Advocacy Center from about January to July 2016. Additionally, in her current role she interacts with Spanish-speaking victims and can carry on basic conversation, in which the victim speaks Spanish to Kye, and she responds in English. She generally understands about 70 percent of the conversation.

Akash Vyas testified that he was an Assistant State's Attorney with the Cook County State's Attorney Office and had held that position for almost 13 years. In September 2018, he was assigned to the Complex Narcotics Unit. On September 11, 2018, he went to respondent's courtroom to obtain an authorization on a consensual overhear. Respondent called him into his chambers.

According to ASA Vyas, respondent appeared to be frustrated or agitated; he said words to the effect of "you would think that if you went to law school with somebody, they would say hi to you." Respondent may have referred to the person as a "she," but Vyas did not recall. He also thought respondent referred to the classmate as a "bitch," but was not certain. Vyas told respondent that maybe the person did not recognize him in his robe. Vyas was cut off by respondent's words to the effect of "my law school class was only 50 people." They talked briefly about the consensual overhear and respondent signed some documents. Respondent then stated words to the effect of "maybe it's because I didn't have sex with her." There was a brief pause and then respondent said, "or maybe it's because I had sex with her." Vyas obtained the signatures he needed and left the courtroom.

Later that day, ASA Vyas had a conversation with his colleague, ASA Hodal, about respondent's comments and demeanor and learned that respondent was referring to ASA Ricci and that respondent had similarly complained about Ricci following her appearance before him that morning. ASA Kye was also present for the conversation. Vyas subsequently reported the incident to the Chief and Deputy Chief of Prosecutions.

The parties further stipulated that if called as a witness, Joseph Hodal would testify that he was an Assistant State's Attorney with the Cook County State's Attorney Office and had been in that position since 2004. In September 2018, he was assigned to respondent's courtroom. Prior to the assignment, ASA Hodal did not know respondent, but during his limited experience in respondent's courtroom, respondent's demeanor in open court was courteous and respectful.

On the morning of September 11, 2018, Hodal was in respondent's courtroom for the case management call. While there, he observed ASA Ricci enter the courtroom. Hodal thought respondent acknowledged her presence as if pleasantly surprised to see her. Hodal observed Ricci interact with respondent on a murder case. The interchange was professional. Ricci then asked Hodal to step outside the courtroom to discuss the murder case. Hodal remarked to Ricci that respondent seemed surprised to see her. Ricci explained that they had gone to law school together 25 years prior and that respondent had made a crude comment of a sexual nature to her at that time.

Later that day, Hodal had a conversation with ASA Kye and relayed to her what ASA Ricci had told him about her experience with respondent in law school. ASA Kye then relayed to Hodal the comments respondent made to his clerk in Spanish. ASA Hodal inferred that respondent was talking about ASA Ricci in his comments to the clerk.

ASA Hodal would further testify that later that day, ASA Vyas came to his office to speak to him. ASA Kye was also present. Vyas told them about comments respondent made to him while he was in respondent's chambers to review a request for a consensual overhear. Specifically, Vyas relayed that respondent made comments to the effect that someone he went to law school with should have said hello or given him proper congratulations, and that maybe they did not acknowledge him because he may or may not had sex with them in law school. ASA Hodal concluded, based on the information he had received from Ricci and Kye and Vyas that respondent had been referring to Ricci when he made these comments in chambers to Vyas.

As a result of these conversations, Hodal contacted ASA Ricci to tell her about the comments. Hodal suggested that Ricci seek a substitution of judge in the murder case she was handling before respondent because Hodal believed the comments indicated a possible bias against Ricci. The next day he discussed the occurrence with the Chief of Special Prosecutions and the Deputy Chief, including the conversations he had with Kye, Vyas, and Ricci.

ASA Ricci testified that she had been an ASA with the Cook County State's Attorney Office since 1998. She had attended Loyola University of Chicago for law school and respondent was a classmate in her law school section of about 50 students. They were not friends, but they attended some social gatherings. She recalls a law school social gathering at a nearby bar that both attended. He whispered in her ear a crude sexual comment and made sexual advances. She did not respond to the comment and had no further contact with respondent that night or after law school other than a phone call she received from him related to his running for judge, occasionally passing him in the halls, and obtaining a continuance on a case.

On the morning of September 11, 2018, she appeared before respondent on the murder case. It was the first time she appeared before respondent since the prior judge assigned to the case had retired. She then stepped outside the courtroom to speak about the case with her colleague, ASA Hodal.

While outside the courtroom, Hodal mentioned respondent's reaction to Ricci when she entered the courtroom that day, and Hodal wanted to know why respondent might have had that reaction to her. ASA Ricci told him that she knew respondent from law school and told Hodal about a sexual comment respondent made to her while in law school.

About an hour or two later, Ricci got a phone call from ASA Hodal. He told her that after she left the courtroom, ASA Kye overheard respondent talking to the clerk about her in his courtroom. She then received another call from Hodal later that day. Hodal told her that respondent had a derogatory conversation in chambers with ASA Vyas about her. Hodal relayed that respondent was angry that she did not congratulate him on his courtroom promotion and that when Vyas said that maybe she did not recognize respondent in his robe, respondent said something to the effect of "maybe it's because I slept with her in law school or maybe it's because I didn't."

ASA Ricci was surprised and concerned about receiving a fair hearing in her murder case and the potential for judicial bias. She went to speak with her supervisor and suggested that she obtain a substitution of judge, which was ultimately granted. She was also embarrassed by having to recount what respondent said to her to her colleagues, and embarrassed that her colleagues were aware of what respondent had said about her, and embarrassed that she had to read about it in the media.

Respondent testified that ASA Ricci came before him in his courtroom in her professional capacity, and that he did have a conversation with his clerk after ASA Ricci left the courtroom. He was aware that there were people in the courtroom. He said to his clerk in Spanish that Ricci did not greet him and that she treated him as a stranger. He had expected a greeting from her. He also acknowledged that when speaking with ASA Vyas about the consensual overhear he repeated his complaint about her failure to greet him, he agreed that he stated that "one would think if you went

to law school with someone they would greet you," and did not deny making the sexual comment that maybe he did or did not have sex with Ricci. He agreed it was inappropriate to speak to ASA Vyas in this way and that he was placed on administrative leave in response to this incident.

At the close of the evidence, and after closing remarks by both parties, the Commission deliberated on the merits of the complaint. The Commission made a ruling from the bench, finding that the Board met its burden of proof on all three counts and that respondent engaged in a pattern of inappropriate and harassing behavior toward women with whom he interacted in professional settings in violation of the Code of Judicial Conduct. With respect to determining what, if any, discipline to impose, the Commission continued the hearing to allow the parties to brief the matter and present further argument. In the interim, respondent chose to resign his office.

ANALYSIS

Section 15(c) of the Illinois Constitution empowers the Commission to hear and decide complaints filed by the Board regarding alleged violations of the Code of Judicial Conduct, and to determine under what circumstances discipline is to be imposed. Ill. Const. 1970, art. VI, § 15(c). Generally, the proceedings before the Commission are governed by the provisions of the Code of Civil Procedure and the Rules of Evidence applied in civil cases. Ill. Cts. Comm'n. R. Proc. 9 (eff. June 27, 1999). The Board bears the burden to prove the allegations of wrongdoing by "clear and convincing evidence," which has been described as more than a preponderance of the evidence. *Id*.; *In re Vecchio,* 4 Ill. Cts. Com. 92, 97 (1998) (citing *In re Karns, Jr*., 2 Ill. Cts. Com. 28, 33 (1982)). The standard has been defined as evidence that causes the factfinder to believe that the truth of the facts asserted is "highly probable." See *Parsons v. Winter*, 142 Ill. App. 3d 354 (1986); see also Illinois Pattern Jury Instructions, Criminal (4th ed. 2000), No. 4.19; *In re Lober*, 288 Kan. 498, 505 (2009).

Whether the Board has met that standard is a question of fact, which requires the Commission to make credibility determinations, weigh the evidence, draw reasonable inferences, and resolve conflicts in the evidence. See Illinois Pattern Jury Instructions, Civil, No. 1.01(A)[5] (2011) ("In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case."). We must then determine whether the established facts demonstrate conduct on the part of respondent that is incompatible with the Code of Judicial Conduct.

Sufficiency of the Evidence

We find the testimony presented by the Board regarding the three separate charges of inappropriate conduct toward women in a professional setting to be truthful and credible. With respect to Shultz, the Commission had the opportunity to observe her demeanor and the manner of her testimony. It was evident that she worked as a court reporter in the same courthouse at a time when respondent was assigned there, and it was entirely plausible to find herself in the courthouse elevator with respondent alone. The stipulated testimony of the other court reporter corroborated that it was not uncommon for judges to use the public elevator. Respondent indeed conceded that he used the public elevator at least on one occasion that he recalled.

Additionally, we find Shultz' memory of the material facts was distinct, direct, and convincing. She expressed no doubt that the comment, "how much" was meant to be a sexual overture and was confirmed by the second interaction with respondent. Furthermore, Shultz had no motive, bias, or interest in coming forward to testify to these matters, and she had no history of making any unsupported allegations of this type in her years working as a court reporter.

Respondent contends that the evidence regarding these incidents merely consists of Shultz' assertions, essentially her word against his. He denies knowing her, and he directs us to a lack of corroboration to satisfy the clear and convincing standard. We recognize that the incident as described was not witnessed by anyone else, but it is well settled that the uncorroborated testimony of one eyewitness can satisfy the even higher burden of guilt beyond a reasonable doubt, even if contradicted. See, *e.g.*, *People v. Gray*, 2017 IL 120958, ¶ 36. Moreover, common sense and logic dictate that unwanted sexual advances are not likely to occur in a public place around other witnesses.

Respondent additionally directs our attention to the seven-year delay in coming forward. We recognize the delay, but we are also cognizant of the power dynamic involving a judicial officer and the ramifications on her career, as Shultz testified. See, *e.g.*, *In re Seaman*, 627 A.2d 106, 118 (N.J. 1993) (noting expert testimony that shame, humiliation, and fear can contribute to under-reporting of sexual harassment). Accordingly, we find the Board has presented sufficient evidence to support count I by clear and convincing evidence that respondent made unwanted sexual advances toward the court reporter.

With respect to Rittorno, again, respondent points out inconsistencies in her testimony and challenges credibility. We find the complaining witness to be credible. We had the opportunity to observe her demeanor and the manner of her testimony. She testified that she had known respondent in a professional capacity as a police officer. She testified in significant detail that respondent's advances were physical in nature and detailed her specific reaction in response to them. The advances were unwanted, and she felt disrespected by his behavior in chambers.

Respondent clearly recalled a physical encounter in which he hugged and kissed Officer Rittorno on the cheek, but he then sought to minimize it. Although respondent's account was that it was an innocuous and friendly gesture between friends, and part of his culture, he acknowledged that Officer Rittorno admonished him about being married, evidencing that Officer Rittorno expressed concern about respondent's conduct at the time. There was no attempt to correct Rittorno's impression. This interchange lends credibility to the officer's testimony that the physical conduct was more than merely an innocuous friendly gesture.

Additionally, respondent did not deny that the physical contact may have occurred on August 15, 2016. Officer Rittorno's interaction with respondent on that date and other dates involved his performance of a judicial function—the approval of a search warrant -- where he was responsible for making an independent, neutral judgment whether to sign a warrant. We find this context significant in resolving conflicts in the evidence. Furthermore, as with Shultz, we find Officer Rittorno had no motive, bias, or interest in coming forward with her testimony, and no past record of similar unsupported allegations in her over 18 years as a Chicago Police Officer.

We recognize that Officer Rittorno omitted the hand grabbing and the comment about touching respondent's butt in her written complaint to the Board. She did, however, include that information in her statements to the Board and in her testimony before the Commission. She explained that the written complaint was merely a summary of the incident. Although Officer Wrobel did not recall the incident, the clear and convincing standard does not require a showing by absolute certainty. The evidence need not be undisputed. We are reasonably satisfied that the evidence presented on count II leads to a firm conviction that the material allegations presented by the Board are true and satisfy the clear and convincing standard.

Lastly, we find the Board has presented clear and convincing evidence to support count III. It is undisputed that ASA Ricci appeared before respondent on September 11, 2018, and immediately following her appearance respondent commented to his clerk in Spanish about not being appropriately greeted by ASA Ricci, whom he had gone to law school with 25 years ago. He then relayed the same complaint in front of ASA Vyas while authorizing a consensual overhear. When Vyas offered that maybe the lawyer did not recognize respondent in his robe, respondent made the comment that, "maybe it's because I didn't have sex with her or maybe it's because I did." ASA Vyas, after speaking to his colleagues Hodal and Kye about the incident, all came to the realization that respondent was referring to ASA Ricci. Ricci was told about the inappropriate sexual comments. In response, she informed her supervisors and sought a substitution of judge on the murder case she had pending before respondent, which was granted.

Respondent acknowledges the comments about ASA Ricci were inappropriate, offensive, and sexualized, but he attempted to minimize the comments as an offensive response to something he misunderstood. We find the evidence clearly established that respondent improperly demeaned and sexualized a lawyer in the presence of her colleague.

Additionally, we are cognizant that under cross-examination there was a dispute about certain documents that were requested shortly before trial by Shultz and Rittorno. We find that their failure to tender these documents did not prejudice respondent or diminish the witnesses' credibility in any significant way.

Conduct Violated Code of Judicial Conduct

The Board alleged that through the above pattern of inappropriate conduct toward women he encountered in a professional setting, respondent violated the Code of Judicial Conduct, Rules 61, Rule 62, Canon 2(A), Rule 63, Canon 3(A)(3), and Canon 3(A)(9). Those rules provide in pertinent part as follows:

> "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective." Ill. S. Ct. R. 61.

> "A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Ill. S. Ct. R. 62, Canon 2(A).
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> "A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's discretion and control." Ill. S. Ct. R. 63, Canon 3(A)(3).
>
> "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so." Ill. S. Ct. R. 63, Canon 3(A)(9).

As we have expressed, the single overriding rationale behind these rules is the preservation of public confidence in the integrity and the independence of the judiciary. "Intrinsic to all provisions of this code are precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system." Illinois Code of Judicial Conduct, *preamble*.

Notably, these standards for judicial behavior are clearly and intentionally higher than the standard for others. Judges are held to a heightened burden of ethical behavior. See *In re O'Shea*, No. 18-CC-3 (Sept. 27, 2019). As explained by the Massachusetts Supreme Judicial Court, although " a judge is entitled to lead his own private life free from unwarranted intrusion," because he is subject to constant public scrutiny, "he must adhere to standards of probity and propriety higher than those deemed acceptable for others. More is expected of him and, since he is a judge, rightfully so." *In re Troy*, 306 N.E.2d 203, 235 (1973); See also *In re Disciplinary Action Against McGuire*, 2004 ND 171, ¶ 23 ("A judge must expect to be the subject of constant public scrutiny.") Each case must be evaluated on its own facts. See *In re Perrin*, No. 10-CC-2 (Sept. 9, 2011).

We are satisfied that more was expected of respondent. We find respondent's inappropriate sexual advances, attempted unwanted sexual contact, and inappropriate sexually suggestive comments about a lawyer in the presence of a colleague to be a violation of the above rules. The conduct was wrong and clearly inconsistent with the high standards expected of judges, and inconsistent with the promotion of confidence in the integrity of the judiciary. The conduct toward these women in a professional setting was also undignified. We further find the pattern of inappropriate conduct had a negative impact on the functioning of the work environment for these women, necessitating a shift in their demeanor and leading them to alter their professional work habits in light of respondent's behavior. When these rules are violated, public confidence in the judiciary is diminished.

Additionally, we find that the respondent's conduct violated respondent's duty to perform his judicial duties without bias. "A judge who manifests bias on any basis in a proceeding impairs

the fairness of the proceeding and brings the judiciary into disrepute. A judge must be alert to avoid behavior that may be perceived as prejudicial." Ill. S. Ct. R. 63, Canon 3(A)(9), *Committee Commentary*. Particularly troubling is that respondent's admitted conduct toward ASA Ricci impacted the proper administration of justice by requiring ASA Ricci to seek a substitution of judge, and by affecting her representation of her client, the State of Illinois. We are also troubled by the appearance of impropriety in respondent's behavior toward Officer Rittorno. Respondent was performing the important judicial function of authorizing search warrants, which requires independence and neutrality. His inappropriate behavior in this setting created at least a perception by a reasonable person that the judge failed to carry out his judicial responsibilities with integrity and with the required appearance of impartiality. See *In re Disciplinary Action Against McGuire*, 2004 ND 64, ¶ 23 ("The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired."); see also Ill. S. Ct. R. 63, Canon 3(A)(9), *Committee Commentary* ("A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment").

In sum, the respondent's conduct as proved by clear and convincing evidence, was prejudicial to the administration of justice and brought the judicial office into disrepute.

Furthermore, where respondent retired after the Commission announced its findings of fact and conclusions of law, we do not further consider the imposition of judicial discipline. It is so ordered.