F I L E D February 23, 2024

ILLINOIS COURTS COMMISSION,
EXECUTIVE DIRECTOR &
GENERAL COUNSEL

(No. 22 CC 04 – Respondent removed.)

In re ROBERT K. ADRIAN
Judge of the Circuit Court,
Eighth Judicial Circuit of the State of Illinois, Respondent.

Order entered February 23, 2024

SYLLABUS

On January 26, 2023 the Judicial Inquiry Board filed a three-count amended complaint with the Illinois Courts Commission, charging respondent with willful misconduct, 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; Rule 62, Canon 2(A); and Rule 63, Canon 3(A)(1), (A)(9). In summary form, the amended complaint alleged that on January 3, 2022, respondent reversed a guilty finding in an underlying criminal case to circumvent the law requiring the defendant to serve a mandatory prison sentence. The amended complaint further alleged that on January 12, 2022, respondent retaliated against a prosecutor in open court by ordering the prosecutor to leave the courtroom because the prosecutor had "liked" a post on social media that was critical of respondent's reversal of that guilty finding. Finally, the amended complaint alleged that on April 8, 2022, respondent gave false and misleading testimony before the Judicial Inquiry Board when he testified that his reason for the reversal was based on the lack of evidence presented in the criminal case and was not to circumvent the law requiring the imposition of a mandatory prison sentence upon the defendant.

Held: Respondent removed.

Michael Deno and Mary McMahon, for Judicial Inquiry Board.
Daniel Konicek of Konicek & Dillon, P.C., for Respondent.

Before the COURTS COMMISSION: ROCHFORD, Chair, AUSTRIACO, HARRIS, McBRIDE, NIXON, SOBOL and WOLFF, commissioners. ALL CONCUR.

ORDER

INTRODUCTION

A hearing in this matter was held, in person, on November 7 and 8, 2023 at 160 N. LaSalle, Floor 18, in Chicago, Illinois, before the Courts Commission (Commission), consisting of Alternate Commission Chair, Justice Elizabeth M. Rochford, and Commissioners, Aurora Austriaco, Justice Thomas Harris, Justice Margaret Stanton McBride, Judge Lewis Nixon, Judge Sheldon Sobol, and Paula Wolff. The Judicial Inquiry Board (Board) was represented by Michael Deno and Mary McMahon. Respondent, Judge Robert K. Adrian, was present and represented by Daniel Konicek of Konicek & Dillon, P.C.

PLEADINGS AND ALLEGED CODE VIOLATIONS

On January 26, 2023, the Board filed a three-count amended complaint against respondent arising out of respondent's conduct during a sentencing hearing in an underlying criminal case, his subsequent conduct toward a prosecutor in open court, and his testimony before the Board.[1]

More specifically, count I of the amended complaint alleged that on January 3, 2022, during a sentencing hearing in a criminal sexual assault case, *People of the State of Illinois v. Drew Clinton*, 2021-CF-396, respondent circumvented the law requiring the imposition of a mandatory prison sentence upon that defendant by reversing his prior finding of guilty after a bench trial and entering a finding of not guilty. The amended complaint alleged this conduct constituted willful misconduct, conduct that was prejudicial to the administration of justice, and conduct that brought the judicial office into disrepute, in violation of the Code of Judicial Conduct (Code), 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)(1), (A)(9) (eff. Oct. 15, 1993).

Count II of the amended complaint alleged that on January 12, 2022, respondent told a prosecutor, who had "liked" a post on social media that was critical of respondent, to "get out" of the courtroom because he (respondent) could not be fair with him. The amended complaint alleged this conduct constituted willful misconduct, conduct that was prejudicial to the administration of justice, and conduct 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)(1), (A)(9) (eff. Oct. 15, 1993).

And finally, count III of the amended complaint alleged that on April 8, 2022, respondent gave false and misleading testimony when he testified before the Board that he reversed his guilty finding based on a lack of evidence presented in the *Clinton* case and not because he was trying to circumvent the law requiring the imposition of a mandatory prison sentence upon the defendant. The amended complaint alleged this testimony was false and misleading, and that respondent knew it was false and misleading, because respondent reversed his guilty finding in order to circumvent the law which required respondent to impose a mandatory prison sentence upon the defendant. The amended complaint alleged this conduct constituted willful misconduct, conduct that was prejudicial to the administration of justice, and conduct 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); and Rule 62, Canon 2(A) (eff. Oct. 15, 1993).

Respondent filed an answer to the amended complaint on February 13, 2023, admitting some of the factual allegations, denying others, and denying all alleged violations of the Code.

[1] Effective January 1, 2023, the Illinois Supreme Court adopted a new Code of Judicial Conduct. The Board's amended complaint arises out of conduct occurring prior to January 1, 2023, and, therefore, the alleged Code violations are brought under the Code of Judicial Conduct that was in effect at the time of the alleged conduct (Illinois Supreme Court Rules 61 – 68, now repealed). This Order and the findings herein are made pursuant to the previous Code of Judicial Conduct, Illinois Supreme Court Rules 61-68.

EVIDENCE

The Board called five witnesses at the hearing: respondent, Gary Farha, Todd Eyler, Anita Rodriguez, and Joshua Jones. The Board's exhibits 1 through 10 were admitted into evidence. The exhibits were: Board exhibit 1: a certified transcript of the sentencing hearing on January 3, 2022; Board exhibit 2: a certified transcript of the proceedings before respondent on January 12, 2022; Board exhibit 3: the Board's 4(d) letter to respondent and attachments; Board exhibit 4: Respondent's March 15, 2022 written response to the Board and attachments; Board exhibit 5: a certified transcript of respondent's testimony before the Board on April 8, 2022 and exhibits; Board exhibit 6: respondent's answers to the Board's first set of interrogatories; Board exhibit 7: respondent's supplemental answers to the Board's Rule 213(f) interrogatories; Board exhibit 8: a certified transcript of the proceedings in *People v. Clinton* on October 13, 2021; Board exhibit 9: a certified transcript of the proceedings in *People v. Clinton* on October 14, 2021; and Board exhibit 10: a certified transcript of the proceedings in *People v. Clinton* on October 15, 2021.

Respondent testified in his own defense and called Andrew Schnack, III as a witness. Respondent's exhibits 1 and 4 were admitted into evidence. Those exhibits were: Respondent exhibit 1: an information against Drew Clinton, filed June 1, 2021, and a bill of indictment against Drew Clinton, filed June 10, 2021; and Respondent exhibit 4: a certified copy of the People's Response to Defendant's Post-Trial Motion, filed December 15, 2021.

The following evidence was presented at the hearing.

Background

Respondent was licensed to practice law in 1983. He began his legal career working at a private firm where he engaged in general practice, including criminal and divorce law. He remained at that firm for about 10 years, and during part of that time, he served as a part-time public defender. When he left the firm, he started his own general practice firm and he also served as a part-time assistant state's attorney. He continued in private practice until 2010, when he was elected circuit judge in the Eighth Judicial Circuit. He was retained as a circuit judge in 2016 and 2022. Respondent tried over 50 felony cases as a private attorney and has presided over two or three felony cases per year since becoming a judge.

Respondent is married with three adult children, who were all raised in Quincy, Illinois.

In October 2021, respondent was assigned to hear criminal cases in Adams County. Beginning on October 13, 2021, respondent presided over a three-day bench trial in *People v. Clinton*, 2021-CF-396. Adams County Assistant State's Attorney Anita Rodriguez (Rodriguez) prosecuted the case, and the defendant, Drew Clinton (Clinton), was represented by attorney Andrew Schnack, III (Schnack).

Clinton had just turned 18 years old when he was charged with three counts of criminal sexual assault against a 16-year-old victim. The first count alleged that Clinton knowingly committed an act of sexual penetration by placing his penis into the victim's vagina by the use of force or threat of force. The second count alleged that Clinton committed an act of sexual

penetration by placing his penis into the vagina of the victim when he knew the victim was unable to give knowing consent. The third count alleged that Clinton committed an act of sexual penetration by placing his finger in the vagina of the victim when he knew the victim was unable to give knowing consent.

The bill of indictment charging Clinton with the three counts described above was signed by respondent on June 10, 2021. Respondent arraigned Clinton, advised him of the charges, the possible penalties, and his rights.

On Friday, October 15, 2021, after the three-day trial, respondent found Clinton not guilty on the first two counts of criminal sexual assault and guilty on the third count of criminal sexual assault.

After the guilty finding, respondent continued the case to January 3, 2022 for post-trial motions and sentencing. Rodriguez then requested Clinton's bond be revoked because the guilty finding required a mandatory prison term. Respondent revoked Clinton's bond and he was taken into custody.

On October 19, 2021, Schnack filed two post-trial motions. The first motion requested a judgment of not guilty on count three or, in the alternative, a new trial. The second motion requested a finding that the sentencing statute, which required a mandatory minimum four-year prison term, be declared unconstitutional and that Clinton either be sentenced to probation or, in the alternative, that he be found not guilty.

On January 3, 2022, the *Clinton* case came before respondent for hearing on the post-trial motions and sentencing. After hearing arguments from both attorneys, respondent made the following statements in open court:

> The Court has considered the motions. The Court has considered the arguments of counsel and the written motions themselves. This Court is required to do justice. This Court is required to do justice by the public, it's required to do justice by me, and it's required to do justice by God.
>
> It's a mandatory sentence to the Department of Corrections. This happened when this teenager – because he was and is a teenager, was two weeks past 18 years old. He has no prior record, none whatsoever. By law, the Court is supposed to sentence this young man to the Department of Corrections. This Court will not do that. That is not just. There is no way for what happened in this case that this teenager should go to the Department of Corrections. I will not do that.
>
> The Court could find that the sentencing statute for this offense is unconstitutional as applied to this Defendant. But that's not going to solve the problem because, if the Court does that, this Court will be

> reversed by the Appellate Court, and Mr. Clinton will end up in the Department of Corrections.
>
> Mr. Clinton has served almost five months in the county jail, 148 days. For what happened in this case, that is plenty of punishment. That would be a just sentence. The Court can't do that.
>
> But what the Court can do, because this was a bench trial, the Court will find that the People failed to prove their case on Count 3. The Court is going to reconsider its verdict, is going to find the Defendant not guilty on Count 3. And, therefore, the case – the Defendant will be released from custody. Bond will be discharged.
>
> And the other thing I want to say is I cannot believe that adults that were involved in this case, parents and other adults who [were] involved in this case, took their responsibilities so lightly for these teenage kids. I cannot believe the permissiveness and the lack of responsibility taken by everyone involved in this case.
>
> This is what's happened when parents do not exercise their parental responsibilities, when we have people, adults, having parties for teenagers, and they allow coeds and female people to swim in their underwear in their swimming pool. And, no, underwear is not the same as swimming suits. It's just – they allow 16-year-olds to bring liquor to a party. They provide liquor to underage people, and you wonder how these things happen. Well, that's how these things happen. The Court is totally disgusted with that whole thing.
>
> And, Mr. Clinton, you're going to be released. Go home if you still have one.
>
> This case is adjourned. The Court will take the order in chambers.

On January 3, 2022, respondent signed a hand-written order that provided the following:

> People appear by A. Rodriguez; the defendant in person & by Andrew C. Schnack, III. Case comes before the Court for post-trial motion hearings & sentencing, if appropriate. Arguments are heard on post-trial motions. The Court, sua sponte, reverses the prior finding of guilty on Count 3 and makes a finding of not guilty. The defendant is discharged from custody instanter. Bond discharged.

Following the January 3, 2022 hearing, there were local, national, and international news reports about respondent's reversal of the guilty finding in the criminal sexual assault trial of Drew Clinton.

On January 12, 2022, at about 8:30 a.m., Adams County Assistant State's Attorney Joshua Jones (Jones) was in respondent's courtroom when respondent took the bench. Before any case was called, respondent made the following statements in open court:

> Mr. Jones, you may leave the courtroom. Mr. Jones, you may leave the courtroom. I don't get on social media but my wife does and she saw the thumbs up you gave to people attacking me. I can't be fair with you. Get out.

When respondent made these remarks, others were in the courtroom, including defense counsel, other assistant state's attorneys, defendants, a court reporter, a bailiff, a court clerk, members of the public, and members of the media. After Jones left the courtroom, respondent called a few cases on the 8:30 a.m. call and then left the bench. At respondent's request, another judge presided over respondent's 9:00 a.m. call.

The Board sent respondent a letter on February 22, 2022[2] requiring him to appear before the Board on April 8, 2022 regarding "allegations of misconduct in connection with the matter of *People v. Drew Clinton*, 2021 CF 396." The letter alleged that respondent reversed his guilty finding in the *Clinton* case in order to circumvent the law that required respondent to impose a mandatory sentence of imprisonment upon Clinton. The letter also asked respondent to be prepared to respond to questions about his conduct toward Jones on January 12, 2022.

Respondent submitted a written response to the Board on March 15, 2022, along with exhibits. The following are excerpts from respondent's response:

> After the hearing on January 3, 2022, I denied Clinton's motion regarding the constitutionality of the statute but granted the motion that the verdict was against the manifest weight of the evidence.
>
> …
>
> I based my decision on the law and my evaluation of the evidence concluding that the People did not prove beyond a reasonable doubt that C.V. was unable to consent.
>
> …
>
> The reality is that I had second thoughts on the finding of guilty shortly after the several day trial. I found haunting Clinton being in jail pending the hearing on the post-trial motions. My focus on reconsideration was the issue of consent. The People must have proven beyond a reasonable doubt C.V. was unable to consent. I finally concluded it had not.

[2] The Board's letter is dated February 22, 2021. This is clearly a typographical error, as February 22, 2021 is prior to any of the events discussed in the letter.

…

> The People, I concluded, had totally failed to prove C.V. was unable to give consent.

Respondent appeared before the Board on April 8, 2022 and testified under oath regarding his conduct in the *Clinton* case and toward Jones on January 12, 2022. Consistent with his March letter, respondent testified that the reason he reversed the guilty finding was because he had concluded the State had totally failed to prove the victim was unable to give consent. He testified he did not reverse his decision in order to thwart the law, or to keep Clinton from serving a mandatory minimum four-year prison term in the Department of Corrections.

Testimony of Respondent

Before the Board and the Commission, respondent testified that as soon as he found Clinton guilty on October 15, 2021, he began to reconsider his decision and think about whether he had made a mistake in finding Clinton guilty. Respondent characterized the guilty finding as a "rookie mistake" because instead of properly considering what the State had to prove, he ruled based on his emotions. He felt "what [Clinton] had done was pretty disgusting."

Once the post-trial motions were filed, respondent gave "serious consideration" to the case by reviewing his notes and thinking about the evidence. Although respondent testified that he reviewed his notes after the post-trial motions were filed, he also testified that he did not specifically recall taking notes during the trial. He did not order a transcript of the trial proceedings.

At some point after October 15, 2021, respondent spoke to Adams County Assistant State's Attorney Todd Eyler (Eyler) in the parking lot of the courthouse. Respondent asked Eyler if the Adams County State's Attorney, Gary Farha (Farha), was in his office, and respondent recalled saying something about the *Clinton* case being a "bad" or "tough" case. He denied telling Eyler that "something had to be done" about Rodriguez and the way she tried cases.

Respondent recalled speaking with Schnack sometime between October 15, 2021 and January 3, 2022. On that occasion, Schnack was in respondent's chambers on another case, and respondent asked Schnack whether he had spoken to Farha about the possibility of Clinton pleading to a lesser offense. Schnack told respondent that Farha was not willing to do that. Schnack suggested respondent speak to Farha himself. Respondent asked Schnack if there had been plea negotiations because respondent "knew [his] decision was wrong, and [he] was hoping that [Schnack] and the State could reach an agreed disposition of the case."

Respondent admitted that he did not have permission from anyone in the Adams County State's Attorney's Office to discuss the *Clinton* case with Schnack, but respondent saw no problem with asking Schnack about whether there had been any plea negotiations.

After the conversation with Schnack about plea negotiations, respondent spoke alone with Farha about the *Clinton* case. Respondent could not recall the date of this conversation. In his answers to the Board's interrogatories, respondent wrote that he spoke to Farha "a few days before

the January 3, 2022 hearing," but at the hearing before the Commission, respondent testified the conversation occurred "sometime before Christmas." During the conversation, respondent asked Farha if he had any discussions with Schnack about a plea. Respondent told Farha he was going to grant, or was probably going to grant, Clinton's post-trial motion requesting a judgment of not guilty on count three. In his answers to the Board's interrogatories, respondent acknowledged that he told Farha he was going to grant Clinton's post-trial motion. At the hearing before the Commission, however, respondent was unsure whether he told Farha he was going to grant, or was *probably* going to grant, the post-trial motion seeking a judgment of not guilty. Before the Commission, respondent testified he had not told Schnack or anyone other than Farha that he was going to grant the post-trial motion. Respondent denied saying anything to Farha like, "I don't want to send that kid to prison, would you agree to vacate and give him probation?"

At the hearing before the Commission, respondent also denied that he tried to negotiate a plea in the *Clinton* case, stating he only asked whether plea negotiations had taken place; he denied suggesting any specific plea or sentence. It was important to respondent to know whether there had been any plea negotiations because then he would not have to admit he had made a mistake in finding Clinton guilty.

Respondent agreed that the only proper way to correct his purported mistake of finding Clinton guilty was to reverse his earlier guilty finding and find Clinton not guilty. Nevertheless, respondent testified he considered sentencing Clinton to probation so he would not have to admit that he had mistakenly found Clinton guilty. Ultimately, respondent decided he "couldn't do that and [he] had to go ahead and find [Clinton] not guilty."

Respondent gave inconsistent testimony about when he arrived at his decision to reverse himself. Respondent testified multiple times before the Commission that he did not conclude he had made a mistake until after he heard the lawyers' arguments in court on January 3, 2022. Prior to that time, he had an idea that he was going to reverse his guilty finding, but he was keeping an "open mind" in order to hear the arguments on the post-trial motions. However, nothing respondent heard during the arguments that day changed his mind. Before the Board, though, respondent gave somewhat different answers. Twice he stated that he knew he was going to reverse his guilty finding when he went into court on January 3, 2022, but he also testified that he was going to wait until he heard the arguments before making his final decision.

Before the Board and this Commission, respondent characterized his reversal as "grant[ing] the not guilty motion," "based on all the evidence in the case." Despite this, when he reversed his guilty finding, respondent did not mention the burden of proof, the evidence, the element of "consent," the factual reasons for his reversal, or his "mistake" in finding Clinton guilty. Respondent also testified that the reason he did not mention any of these things was because he was not addressing the reasons for his reversal; he was instead addressing Clinton's post-trial motion that asserted the sentencing statute was unconstitutional. He believed the constitutionality question was still relevant, even though he knew he was going to find Clinton not guilty after hearing the arguments. Respondent believed the *Clinton* case would have been the perfect case to find the mandatory nature of the sentencing statute unconstitutional because even if Clinton were guilty, sentencing Clinton to the penitentiary would have resulted in an unfair sentence. Respondent testified that sentencing young adults to the Department of Corrections without doing

some type of psychological evaluation was a growing issue in the judicial community, and nothing prevented him from commenting on the constitutionality of the sentencing statute as it applied to Clinton. Respondent testified he was not required to provide any explanation for reversing his guilty finding, and he did not want to embarrass the victim by stating that her testimony was not supported by the evidence.

Although respondent acknowledged the only proper way to correct his purported mistake was to reverse his guilty finding and find Clinton not guilty, he testified that he "wouldn't even have considered" reversing the guilty finding *sua sponte* without a motion being filed. He stated, "…I made a decision based on motions that were filed and it caused a huge uproar, and now you're suggesting I should have done that *sua sponte*…" When pressed further and asked whether he needed a motion to reverse his guilty finding, respondent testified, "I think so, yes." He continued, saying, "[t]he fact is, [] the motions were filed and I granted the motion." When asked again whether a sitting judge can reverse himself, *sua sponte*, without a motion being filed, respondent said, "I've never really thought about it. But if I sit here and think about it, yes, I probably could."

Respondent gave similar testimony under oath before the Board when asked the following question:

> Q: And you had decided you were going to sua sponte reverse your finding of guilty and enter a finding of not guilty; isn't that right?
>
> A: No. Not sua sponte, no. I didn't – I didn't – there was a motion filed, I thought about it, and I was pretty sure that's what – I was sure that's what I was going to do once the motion was filed because that gave me the opportunity to do that.

Respondent denied reversing his guilty finding to avoid sending Clinton to prison, stating, "…I found him not guilty because he was not guilty, and I did not do it because I didn't want to sentence him to the Department of Corrections." Respondent testified that the following January 3, 2022 statements he made indicated he was reversing his decision because he did not believe the case had been proven:

> [T]he Court will find that the People failed to prove their case on Count 3. The Court is going to reconsider its verdict, is going to find the Defendant not guilty on Count 3. And, therefore, the case – the Defendant will be released from custody. Bond will be discharged.

Respondent further testified that the January 3, 2022 comments below were solely addressing the post-trial motion that claimed the sentencing statute was unconstitutional, and not his decision to reverse the guilty finding:

> It's a mandatory sentence to the Department of Corrections. This happened when this teenager – because he was and is a teenager,

> was two weeks past 18 years old. He has no prior record, none whatsoever. By law, the Court is supposed to sentence this young man to the Department of Corrections. This Court will not do that. That is not just. There is no way for what happened in this case that this teenager should go the Department of Corrections. I will not do that.

Respondent also testified that when he said, "the Court will not do that," and "I will not do that," he meant that he would not sentence Clinton to the Department of Corrections because Clinton was not guilty.

When asked what the "problem" was when he said, "that's not going to solve the problem," respondent testified he was referring to the fact that he had found Clinton guilty when he was in fact not guilty.

According to respondent, when he said 148 days in jail "[f]or what happened in this case" was plenty of punishment, he meant that 148 days in jail would have been a proper sentence had Clinton been charged with a different offense. Respondent believed there could have been more appropriate charges brought that would have permitted a sentence of 148 days in jail. However, respondent did not research the law or know if there was a lesser included offense, and he never considered the lesser included offense of criminal sexual abuse. Respondent also believed Clinton could have been charged with underage drinking, an offense that could carry a sentence of up to 364 days in the jail and fines up to $2,500, but he admitted that was not a lesser included offense of criminal sexual assault. Respondent admitted he did not know whether a judge in a bench trial could *sua sponte* enter a finding to a lesser included offense.

When asked about his comments about "female people swimming in their underwear," and that, "no, underwear is not the same as swimming suits," respondent claimed he was not speaking about the victim, but about the parents who allowed it. When asked about his statement, "… they provide liquor to underage people, and you wonder how these things happen," Respondent further stated he was speaking about the parents who hosted the party and provided alcohol to underage people. When asked what he meant by "things," he responded that "a myriad of things" can happen, including driving under the influence. He claimed he was not specifically commenting on the facts of the *Clinton* case.

Respondent testified he understood how his statements in court on January 3, 2022 could have caused concern. He stated he should have taken time to reflect on the case after closing arguments and before he ruled. Respondent generally admitted he should do a better job at taking notes as far as what he is expecting to say when he rules, even though it is not required. Respondent has learned from his "mistake." He testified this has made him a "better person" and a "better judge."

Following his reversal of the guilty finding, respondent was "blindsided" by the reaction from the press; he was called names, attacked, and people were threatening him and his family.

Sometime between the 3rd and 12th of January 2022, respondent became aware that Assistant State's Attorney Jones had "liked" a post on social media regarding respondent. Respondent testified the post said he should be removed from office, and that made him angry. Respondent had known Jones for years and he described his relationship with Jones as "very friendly." Respondent felt very hurt by Jones' "like" of the post.

Respondent admitted that when he ordered Jones out of the courtroom on January 12, 2022, his voice was "loud" and "mean sounding" because he was angry. When respondent ordered Jones out of the courtroom the first time, Jones hesitated and looked at respondent. Respondent then told Jones to "get out" a second time.

Respondent asked another judge to take over his 9:00 a.m. call because he was in "no condition to continue to preside over cases." Respondent was angry, and he had not had much sleep the night before.

Respondent acknowledged that ordering Jones out of the courtroom and telling him that he could not be fair with him was improper. However, he disagreed that his actions impeded the orderly administration of justice because no cases were continued that day and "court went on the same way that it would have." Respondent believed that asking another judge to take over his call was the right thing to do because he was "in no shape" to handle court. He did not make any rulings related to Jones while he was in an angry state.

Sometime after January 12, 2022, respondent apologized to Jones for his conduct.

Testimony of Gary Farha

Gary Farha has been the elected Adams County State's Attorney since December 1, 2016 and has been licensed to practice law in Illinois since November 1984.

On Monday, October 18, 2021, at about 3:30 p.m., Schnack came to see Farha in his office. Schnack told Farha that respondent wanted to talk to them about the *Clinton* case.

Farha went to respondent's chambers alone that afternoon. Respondent asked Farha if he would amend the charges to something that would be probationable. Farha told respondent he would not amend the charges because Rodriguez had earned his complete trust in exercising her discretion on the case. Rodriguez had been assigned to prosecute the *Clinton* case from the very beginning. It was evident to Farha from the conversation that respondent did not want to send Clinton to prison, and that respondent wanted Farha to amend the charge to something that would be probationable.

Farha testified that a charge can be amended within 30 days after a verdict, though it is not routinely done. It would have been easy, yet rather extraordinary, to reduce a charge by agreement from "aggravated criminal sexual assault" to "aggravated criminal sexual abuse" after a finding of guilty. Farha, though, trusted Rodriguez' judgment and he did not want to amend the charge.

Farha has known respondent for about 42 years and believes he is "very, very, very full of integrity." Farha has always known respondent to have an appropriate demeanor and a desire to do what is right. He believes respondent has a reputation for being fair to both sides.

Testimony of Todd Eyler

Todd Eyler is the First Assistant State's Attorney in the Adams County State's Attorney's Office and has held this position since 2016.

Eyler was generally familiar with the *Clinton* case, but he was not present for any part of the proceedings. On Friday, October 15, 2021, Eyler saw respondent in the courthouse parking lot. Respondent asked Eyler if Farha was in the office that day. Eyler said Farha was not. Eyler knew Farha was not in the office because Farha had meetings on Fridays with a service organization of which he was a member. Eyler could also see that Farha's car was no longer in the parking lot. Eyler testified respondent then said that something needed to be done about the way Rodriguez was handling sex cases – "[f]irst Wesley Ervin and now the Drew Clinton case."

Eyler "panicked" when respondent mentioned the *Clinton* case because the case was pending, and Eyler did not want to engage in any *ex parte* communication. Eyler told respondent he would let Farha know respondent wanted to talk to him. Respondent did not go into any other detail about the *Clinton* case.

On the following Monday, Eyler went to court for a scheduled appearance before respondent at 8:30 or 9:00 a.m. However, respondent did not take the bench because the case setting for that day had been in error. Nevertheless, Eyler drafted an order and took it to respondent's chambers to have it entered. At that time, respondent asked Eyler again if Farha was in the office. Eyler replied that Farha was not in the office yet, but that he would be in by 9:30 a.m. Respondent asked Eyler to let Farha know he needed to talk to him.

That same day, while Eyler was speaking to someone outside a courtroom, Eyler noticed respondent emerge from a hallway. Schnack then came down the steps from the second floor, and Eyler heard respondent say to Schnack, "Drew, do you have a minute? I need to talk to you." Schnack responded, "I need to talk to you, too. I can't do it right now. How's 11:00 or 11:30?" Respondent said, "[t]hat will be fine. I'll be in my chambers." Eyler did not know what they were meeting about or what they were going to talk about.

On January 12, 2022, Eyler was scheduled to appear before respondent on an unrelated case. Joshua Jones was Eyler's assigned trial partner on that case. That morning, there were a number of people in the courtroom, including persons who had a case scheduled, family and friends of those individuals, other attorneys, and members of the media.

When respondent took the bench, he immediately told Jones to leave the courtroom. At first, Eyler did not know who respondent was referring to. Eyler assumed someone in the gallery was acting up, but he did not see anyone yelling or acting out. Then Eyler heard respondent say Jones' name, and he realized respondent was telling Jones to "get out" of the courtroom. Eyler and Jones looked at each other for a moment, then Jones got up and walked out of the courtroom

without saying anything. Eyler was "dumbfounded" by respondent's conduct. Respondent then proceeded to handle all the cases that were on the 8:30 a.m. call.

Eyler also testified there were news articles published in the *Muddy River News* and the *Herald-Whig* about the January 12th courtroom incident.

Testimony of Anita Rodriguez

Anita Rodriguez was an Adams County Assistant State's Attorney for 35 years and was primarily assigned to handle sex offense cases. She was a practicing attorney for 42 years before her retirement in June 2022.

Rodriguez was assigned to prosecute the *Clinton* case; she prepared and presented the three-count bill of indictment for criminal sexual assault against Clinton to a grand jury on June 10, 2021. In July 2021, Schnack entered his appearance on behalf of Clinton.

A bench trial before respondent commenced on October 13, 2021. At the conclusion of the State's case, Clinton moved for a directed verdict on counts one and two, which was denied by respondent.

On October 15, 2021, after the parties made closing arguments, respondent found Clinton not guilty on counts one and two and guilty on count three. He ordered a presentence investigation report and set the matter over to January 3, 2022. Respondent granted Rodriguez' motion to revoke Clinton's bond and take him into custody.

On January 3, 2022, before the hearing on Clinton's post-trial motions and sentencing, Rodriguez met with the victim and her family to prepare them for the possible outcomes. The victim, her father, and her stepmother were present in the courtroom, as were other witnesses who had testified at the trial. Clinton had some family members or other people present in support. There were also other attorneys and members of the media present.

Rodriguez testified she did not give Schnack or respondent permission to have any conversations outside of her presence regarding the *Clinton* case. Rodriguez did not have any conversations with respondent about the *Clinton* case between October 15, 2021 and January 3, 2022.

Testimony of Joshua Jones

Joshua Jones has been an Adams County Assistant State's Attorney for 22 years and has served as the lead trial attorney in that office for the last eight years.

Jones was not involved in the prosecution of the *Clinton* case, nor was he present at any time in court during trial or sentencing.

In January 2022, he had a personal social media account on Facebook.

On January 12, 2022, he was scheduled to appear before respondent at 8:30 a.m. in an unrelated case. Due to the nature of the case, the courtroom was busier than usual that morning. Several people who had an interest in the case were present in the courtroom, as were members of the media.

Jones was sitting at the counsel table with his trial partner, Eyler, when respondent entered the courtroom. Jones then heard respondent angrily say, "Mr. Jones, get out." Jones thought respondent was speaking to someone else, so he looked around the courtroom to see who was causing a problem. Jones looked back at respondent, who then said something to the effect of, "Mr. Jones, get out. I'm not on social media, but my wife is, and I know that you liked a post that was critical of me. I can't be fair with you. Get out."

Jones was not sure what social media post respondent was referring to. There had been several social media posts about the *Clinton* case leading up to that day, and one post was from a group in Quincy known as Quanada. Quanada is a group that assists victims of sexual assault, sexual crimes, and domestic abuse. Quanada made a post on Facebook that said, "Hold rapists accountable." Because Jones felt like holding rapists accountable was part of his job as a prosecutor, he "liked" that post. That was the only social media post Jones "liked" or "disliked" regarding the *Clinton* case.

After respondent ordered him out and as Jones was still sitting at the counsel table, a bailiff came up to Jones and said, "Josh, you got to go." Jones got up and left the courtroom without saying anything. Once back in his office, Jones was "incredibly angry" and "very frustrated."

Some days later, Chief Judge Frank McCartney called Jones and asked whether it would be okay for respondent to call Jones. Jones said it was okay, and minutes later, respondent called Jones to apologize. Jones accepted respondent's apology, and they continued to talk for several minutes.

Jones has since tried cases and appeared before respondent.

Testimony of Andrew Schnack, III

Andrew Schnack, III has been licensed to practice law since 1974. He primarily practices in Quincy, Illinois and has experience trying criminal cases. He was Clinton's attorney, and he had previously handled sexual assault cases.

According to Schnack, DNA was an issue from the start in the *Clinton* case. Schnack testified that the DNA evidence supported Clinton's claim of innocence. Schnack stressed there was no evidence of semen found by the experts, and Schnack believed that left respondent with no choice but to find Clinton not guilty.

At trial, after the parties rested, neither Schnack nor Rodriguez took any time to prepare their closing arguments. Schnack testified he did a bad job during his closing argument because he did not talk enough about the prior inconsistent statements that had been made. Schnack believed

if he had taken some time to collect his thoughts before giving closing arguments, he would have done a better job. Schnack largely "blame[d] [himself] for the verdict."

Schnack denied setting up a meeting with respondent in the courthouse hallway in the presence of Eyler. However, Schnack admitted he had a conversation with respondent about the *Clinton* case at some point after October 15, 2021. On that occasion, Schnack was entering the courthouse and saw respondent. Respondent asked Schnack if he had talked to Farha about the *Clinton* case. Schnack responded, "no," and walked away. Schnack testified that respondent could have asked him about plea negotiations, but he did not remember that specifically. He believed the whole interaction lasted no more than 10 seconds.

In Schnack's view, although the *Clinton* case had an impact on everyone involved, initially there was nothing especially significant about it and there had not been a lot of news coverage. However, after respondent reversed his guilty finding, the case "exploded." Schnack described it as a "media circus," which brought his office to a standstill. *The Washington Post*, *The New York Times*, Dr. Phil, Dateline, 20/20, 48 Hours, and other television media were all reporting on the case.

Schnack testified he knows respondent very well professionally because a large part of his practice is before respondent and one other judge. According to Schnack, respondent has a reputation for being an excellent judge. Respondent is familiar with the law that is going to govern a case, he knows the issues and treats everyone fairly. He runs a "very thorough, business-like, competent" courtroom. Schnack then added it would be "tragic" to lose respondent as a judge in the Eighth Circuit.

ANALYSIS

The Commission is constitutionally empowered to adjudicate complaints filed by the Board alleging violations of the Code. Ill. Const. 1970, art. VI, § 15(e); *see People ex rel. Judicial Inquiry Board v. Ill. Courts Com.*, 91 Ill.2d 130, 134 (1982) ("[t]he Courts Commission is the body with the constitutional responsibility for applying the Rules of Judicial Conduct to particular cases").

The Constitution grants the Commission the authority to impose discipline where a judge or associate judge has engaged in willful misconduct in office, persistent failure to perform his or her duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute. Ill. Const. 1970, art. VI, § 15(e). However, "only conduct violative of the Supreme Court Rules of judicial conduct may be the subject of a complaint before the Commission." *People ex rel. Harrod v. Ill. Courts Com.*, 69 Ill. 2d 445, 470, 372 N.E.2d 53 (1977).

The Board must prove alleged violations of the Code by clear and convincing evidence, which is more than just a preponderance of the evidence. Ill. Cts. Comm'n. R. Proc. 9(b) (eff. June 17, 1999); *In re Vecchio*, 4 Ill. Cts. Com. 92, 97 (1998) (citing *In re Karns, Jr.*, 2 Ill. Cts. Com. 28, 33 (1982)). "Proof that alleged judicial misconduct is merely probable, or even more probable than not, does not justify discipline under section 15(e) of article VI of the 1970 Illinois Constitution." *In re Vecchio*, 4 Ill. Cts. Com. at 97. The clear and convincing standard has been defined as evidence that causes the factfinder to believe that the truth of the facts asserted is "highly

probable." *In re Araujo*, 19 CC 1, at p. 9 (Ill. Cts. Com. Nov. 6, 2020). Whether the Board has met this 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. *Id.*

Additionally, where the Board alleges that a judge's conduct is prejudicial to the administration of justice or brings the judicial office into disrepute, the Board must present evidence to "substantiate" those claims. *In re Vecchio*, 4 Ill. Cts. Com. at 97. "'Willful misconduct in office' normally refers to cases where a judge has acted in bad faith while acting in his judicial capacity. 'Conduct prejudicial to the administration of justice' refers to conduct that detracts from the public esteem in which the judicial office is held by reason of misconduct not related to the judge's official duties." *In re Karns*, 2 Ill. Cts. Com. 28, 34 (Dec. 17, 1982) (citing Overton, *Grounds for Judicial Discipline in the Context of Judicial Disciplinary Commissions*, 54 Chi-Kent L. Rev. 62 (1977)).

The Commission's role in this proceeding is not to retry the underlying criminal case, but to determine whether respondent's conduct violated the Code of Judicial Conduct. We take each count in turn.

Count I

Count I of the amended complaint charged respondent with circumventing the law when he reversed his guilty finding in the *Clinton* case, in violation of the following Rules of the Code of Judicial Conduct:

> "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, Canon 1.
>
> "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).
>
> "A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism." Ill. S. Ct. R. 63, Canon 3(A)(1).
>
> "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., Canon 3(A)(9).

As to count I, the Board argues that it has shown by clear and convincing evidence that respondent circumvented or "thwarted" the law, which required respondent to impose a mandatory minimum prison sentence upon Drew Clinton, when he reversed his earlier guilty finding and entered a finding of not guilty. Respondent contends he reversed his guilty finding not to circumvent the law, but because the State had failed to prove Clinton guilty of the charges. For all the reasons that follow, we find the Board has proven by clear and convincing evidence that respondent reversed his guilty finding to intentionally circumvent the mandatory prison term he was required to impose upon Clinton after his conviction of criminal sexual assault, and respondent thereby violated Rule 61, Canon 1; Rule 62, Canon 2(A); and Rule 63, Canon 3(A)(1).

The most compelling evidence of the above Code violations are respondent's own spoken words at the sentencing hearing on January 3, 2022, as well as his conduct between October 15, 2021 and January 3, 2022. We begin by recounting some of the testimony following the end of the *Clinton* trial.

The witness testimony at the Commission's hearing established that in the days immediately following the trial, respondent was thinking about the sentence he would have to impose on Clinton. Respondent testified that as soon as the trial was over, he began to consider his decision and whether he had made a "rookie mistake" by finding Clinton guilty. He wrote in his submission to the Board that he was "haunted" by the idea of Clinton sitting in jail until the sentencing hearing.

Eyler testified that the very same day the trial ended, October 15, 2021, respondent mentioned the *Clinton* case to him in the courthouse parking lot and asked Eyler whether Farha was in the office. Eyler also testified that respondent said something needed to be done about the way Rodriguez handled sex cases – "[f]irst Wesley Ervin and now the Drew Clinton case." Respondent admitted that a conversation with Eyler occurred, but he could not recall the date, even though the *Clinton* trial had just been completed. More importantly, respondent denied saying anything about the way Rodriguez handled sex cases. We find Eyler's recollection of the substance of this conversation and the date on which it occurred credible and believable, and we find respondent's testimony that he did not say anything about Rodriguez and the way she was handling sexual assault cases was untruthful. First, Eyler knew that Farha was not in the office because it was a Friday, and Farha was normally at a weekly meeting with his service organization on Fridays over the noon hour. Second, Eyler remembered the conversation with respondent because he was extremely uncomfortable and did not want to engage in an *ex parte* communication with respondent about a case that was still pending. Third, we believe Eyler was truthful because, as an attorney, he acknowledged and revealed under oath before this Commission that respondent, a judge, had initiated an improper *ex parte* communication with him. We note that, generally, *ex parte* communications between a lawyer and a judge are ethically impermissible. And finally, we find no evidence of any motive, bias, or interest Eyler would have had coming forward with his testimony, other than to tell the truth.

Additionally, Respondent admitted that he spoke separately to Schnack and Farha about plea negotiations. Although respondent was uncertain about the date these conversations occurred, respondent admitted that he asked Schnack whether he had spoken to Farha about Clinton pleading to a lesser offense. Respondent further admitted that Schnack said Farha was not willing to have

Clinton plead to a lesser offense, and that Schnack suggested respondent talk to Farha himself. Schnack verified that he had a brief conversation with respondent about the *Clinton* case; however, Schnack's recollection was that respondent had simply asked him whether he had talked to Farha about the *Clinton* case. Schnack could not recall whether respondent asked about plea negotiations specifically. Similar to respondent, Schnack could not recall the date of this conversation.

Respondent also admitted that after his conversation with Schnack, he asked Farha about plea negotiations. This sequence of events is corroborated by Farha, who testified that he went to respondent's chambers in the afternoon on Monday, October 18, 2021, after Schnack advised him that respondent wanted to talk to them (Farha and Schnack) about the *Clinton* case. During Farha's conversation with respondent, it was apparent to Farha that respondent did not want to send Clinton to prison, and that respondent wanted Farha to amend the charges to something that would be probationable. However, Farha would not agree to amend the charges because he did not want to interfere with Rodriguez' discretion and her prosecution of the case. As with Eyler, we find Farha's testimony about the substance of his conversation with respondent and the date on which it occurred truthful and credible, and that respondent's testimony about the same conversation was not. Farha had no motive, bias, or interest in coming forward with his testimony other than to tell the truth. Farha acknowledged that he and respondent had engaged in an *ex parte* communication, and additionally, Farha had no reason to either amend or reduce the charges because the State had just successfully secured a conviction for criminal sexual assault against Clinton.

The subject matter of respondent's conversations with Schnack and Farha on October 18, 2021 clearly demonstrate that respondent wanted Clinton to enter a plea to a lesser offense – one that would not require a prison sentence. Respondent admitted that he was interested in whether plea negotiations had taken place because if the State and Schnack reached an agreed disposition, then he would not have to admit that his guilty finding was a mistake. Respondent also admitted that he considered sentencing Clinton to probation so he would not have to admit that he had mistakenly found Clinton guilty. While noting the repugnance of this admission, which we discuss further in this Order, we fail to see how sentencing Clinton to probation or Clinton pleading to a lesser offense would have absolved respondent from having to admit his purported mistake – he would still be finding Clinton guilty of some offense in any event. In fact, either situation would have created a more flagrant ethical breach because Clinton would have been sentenced for a crime he did not commit (according to respondent). We also note the inconsistency in respondent's position: respondent stated multiple times that he did not conclude he made a mistake until after he heard the arguments on the post-trial motions. We cannot reconcile respondent's alleged desire to conceal his "mistake" when he had not yet concluded he had even made one. Indeed, we are convinced by Farha's testimony that respondent was actually considering a sentence of probation and was interested in plea negotiations *not* because he thought Clinton was not guilty, but because he believed probation was a more appropriate sentence for the offense he had found Clinton guilty of than a mandatory four-year prison term.

We find respondent was not believable for multiple reasons, but we start with the fact that he not only engaged in, but initiated, at least three separate and improper *ex parte* communications; first with Eyler, then with Schnack, and finally, with Farha. We find respondent's uncertainty about the dates these *ex parte* communications occurred was untruthful and calculated to hide the fact that he allowed a person he claimed was not guilty to remain in custody for several months.

Additionally, respondent's credibility was further damaged when he denied telling Eyler that something needed to be done about Rodriguez and the way she handled sexual assault cases, and when he denied that he initiated plea negotiations with Farha. Finally, and most importantly, respondent admitted that during his conversation with Schnack on October 18, 2021, he "knew [his] decision was wrong," and yet he did nothing to correct this purported injustice for months.

Thus, we reject respondent's contention that he reversed his guilty finding based on his reconsideration of the evidence and his claim that the State had failed to prove its case. In sum, as noted above and as we further explain, we find much of respondent's testimony unbelievable. Neither the January 3, 2022 hearing transcript nor the January 3, 2022 order support respondent's claims. We find the January 3, 2022 transcript establishes by clear and convincing evidence that respondent reversed his guilty finding to circumvent the mandatory prison term he was by law required to impose. Respondent's statements at the hearing were clear and unambiguous. Although respondent has asked this Commission to do so, we will not infer a different meaning to respondent's words than what his plain language conveyed, particularly when the public only heard what respondent *said*, not what he now claims he *meant*. Leaving no room for uncertainty, we set forth respondent's statements during the sentencing hearing, below.

Respondent began the sentencing hearing on January 3, 2022 by stating he was required to sentence Clinton to a mandatory prison term, but that he disagreed with sending Clinton, a teenager with no prior record, to prison:

> The Court has considered the motions. The Court has considered the arguments of counsel and the written motions themselves. This Court is required to do justice. This Court is required to do justice by the public, it's required to do justice by me, and it's required to do justice by God.
>
> It's a mandatory sentence to the Department of Corrections. This happened when this teenager – because he was and is a teenager, was two weeks past 18 years old. He has no prior record, none whatsoever. By law, the Court is supposed to sentence this young man to the Department of Corrections. This Court will not do that. That is not just. There is no way for what happened in this case that this teenager should go to the Department of Corrections. I will not do that.

Respondent testified before this Commission that when he said, "the Court will not do that," and "I will not do that," he meant he would not sentence Clinton to prison when he was not guilty. This proffered explanation, given after the fact, is not believable. To any reasonable person hearing respondent's words, respondent was refusing to sentence Clinton to a mandatory prison term "for what happened in [the] case" because he did not believe prison was a "just" sentence under the circumstances.

Respondent then discussed possible solutions to this purported dilemma. He said:

> The Court could find that the sentencing statute for this offense is unconstitutional as applied to this Defendant. But that's not going to solve the problem because, if the Court does that, this Court will be reversed by the Appellate Court, and Mr. Clinton will end up in the Department of Corrections.

Respondent testified that the "problem" he was referring to was that he had mistakenly found Clinton guilty when he was not guilty. But again, this testimony is not believable. It makes no logical sense that respondent would try to fix the "problem" he created in mistakenly finding Clinton guilty by finding the sentencing statute unconstitutional. We find the only "problem" respondent was referring to was the mandatory prison term he was required to impose. Indeed, respondent indicated the "problem" would not be solved if Clinton were to "end up in the Department of Corrections" anyway.

Next, respondent identified the manner in which he would have, or could have, sentenced Clinton, but for the mandatory sentencing statute:

> Mr. Clinton has served almost five months in the county jail, 148 days. For what happened in this case, that is plenty of punishment. That would be a just sentence. The Court can't do that.

Before the Board and this Commission, respondent contended that the above statements meant that 148 days in jail would have been a proper sentence if Clinton had been charged with a different offense. However, the only other offense respondent could identify as applicable under the circumstances was underage drinking. Respondent also claimed he was unaware of any lesser included offenses, and that he "never thought of" the lesser included offense of criminal sexual abuse. Taking respondent's comments at face value, he believed Clinton should have been sentenced to 148 days in jail for underage drinking – nothing more, nothing less. This is not believable.

Ultimately, respondent arrived at a solution to the mandatory sentencing "problem:"

> But what the Court can do, because this was a bench trial, the Court will find that the People failed to prove their case on Count 3. The Court is going to reconsider its verdict, is going to find the Defendant not guilty on Count 3. And, therefore, the case – the Defendant will be released from custody. Bond will be discharged.

Respondent's use of the conjunctive word, "but" indicates he was connecting his prior statements to his forthcoming ones. In essence, the only thing "the Court [could] do" to solve the mandatory sentencing problem was to find Clinton not guilty. Tellingly, when respondent was asked to identify what he said on January 3, 2022 that suggested he was reversing his decision because he believed the case had not been proven, respondent identified the statements above while omitting the phrase, "[b]ut what the Court can do, because this was a bench trial[.]" Respondent's assertion

that this incomplete statement suggests he was reversing his decision based on the evidence is both misleading and self-serving. His failure to include, "[b]ut what the Court can do, because this was a bench trial," alters the statement in such a way that it appears to support respondent's position. We reject this claim. Respondent said nothing about the evidence, the burden of proof, or why he thought the case had not been proven.

In sum, we reject respondent's claim that he reversed his guilty finding because the State purportedly failed to meet its burden of proof. The only reasonable conclusion that can be drawn from respondent's statements on January 3, 2022 is that respondent reversed his guilty finding to intentionally circumvent the mandatory sentencing law.

The January 3, 2022 written order also supports this finding. The order stated, in relevant part:

> Case comes before the Court for post-trial motion hearings & sentencing, if appropriate. Arguments are heard on post-trial motions. The Court, sua sponte, reverses the prior finding of guilty on Count 3 and makes a finding of not guilty.

Although there was no testimony regarding who drafted this order, respondent signed it on January 3, 2022, provided a copy to the Board with his March written response, and agreed to its admission into evidence before this Commission.

The significance of the January 3, 2022 order is this: it says, in no uncertain terms, that respondent reversed his finding of guilty "*sua sponte*." The addition of the words, "*sua sponte*" was not superfluous; this phrase has a particular meaning in the law. It refers to the court taking action on its own, not in response to a request by the parties. Black's Law Dictionary defines "*sua sponte*" as, "without prompting or suggestion; on its own motion." BLACK'S LAW DICTIONARY (11th ed. 2019). Therefore, the presence of the words, "*sua sponte*" demonstrates that respondent was *not* granting either of Clinton's post-trial motions when he reversed his guilty finding but was instead acting on his own initiative. This is also supported by the fact that the immediately preceding sentence states, "[a]rguments are heard on post-trial motions." It makes little sense, if respondent were granting one of these motions, that the order would not state as much.

However, this is the exact opposite of what respondent wrote in his submission to the Board and what he testified to before the Board and this Commission. Respondent testified repeatedly that he was granting Clinton's post-trial motion for a not guilty finding when he reversed his guilty finding, purporting to base his reversal on a careful reconsideration of the evidence and his conclusion that the State had failed to prove its case. He unequivocally denied that he reversed his guilty finding *sua sponte* and in fact said he "wouldn't even have considered" doing that. At one point during his testimony, respondent seemed unsure whether he even *could* have reversed his guilty finding *sua sponte*.

The January 3, 2022 order stands in marked contrast to respondent's testimony. In Illinois, written documentary evidence has always been accorded particular reliability and credibility. *Kennedy v. Kennedy*, 93 Ill. App. 3d 88, 92, 416 N.E.2d 1188, 48 Ill. Dec. 666 (1st Dist. 1981)

(citing *In re Estate of Wetstone*, 329 Ill. App. 533, 69 N.E.2d 713 (1946)); *see also*, *In re Estate of Conrad*, 117 Ill. App. 2d 29, 32, 254 N.E.2d 123 (1st Dist. 1969) (as a general rule, documentary evidence is highly persuasive in overcoming the effect of oral testimony, although it is not conclusive). As we have already found, respondent's testimony in other areas was inconsistent and not credible, and accordingly, we find the January 3, 2022 order more reliable than respondent's testimony. This observation serves as further support for our finding that respondent was untruthful when he testified that he was granting Clinton's post-trial motion when he reversed his guilty finding.

For all the reasons previously discussed, we find respondent's testimony was inconsistent, misleading, and untruthful on multiple points. We further find respondent's claim that he reversed his guilty finding based on his reconsideration of the evidence and his conclusion that the State had failed to prove its case to be a subterfuge – respondent's attempt to justify the reversal *post hoc*. We do not find it credible that respondent thought Clinton was not guilty. Rather, we find respondent disagreed with the law that required the imposition of a prison sentence under the circumstances. Respondent's conduct between October 15, 2021 and January 3, 2022, his spoken words at the sentencing hearing, and the January 3, 2022 order are clear and convincing evidence that respondent reversed his guilty finding to thwart and circumvent the law that required him to impose a mandatory prison term upon Clinton.

While we have reached a conclusion on the core issue before us in count I, we would be remiss if we did not comment on two other troubling aspects relating to respondent's testimony and conduct. First, we are deeply troubled by respondent's testimony that he "wouldn't even have considered" reversing the guilty finding if Schnack had not filed any post-trial motions. Although we question the veracity of this statement in light of the January 3, 2022 order that states he reversed his guilty finding *sua sponte*, we interpret respondent's testimony to mean that he would not have taken *any* action – even reversing his guilty finding *sua sponte* – if a motion had not been filed first. This is corroborated by respondent's statement that he considered at one point sentencing Clinton to probation so he would not have to admit his purported mistake. The significance of these statements is that it reflects respondent's apparent willingness to allow an innocent person – which he professed Clinton was – to be found guilty of a crime and suffer punishment. It is abhorrent that a judge presiding over a criminal bench trial, who claims to believe a defendant is not guilty, would ever consider such an outcome. To sentence a defendant for an offense he did not commit would be an affront to our criminal justice system. As the Code of Judicial Conduct makes abundantly clear, a judge must follow the law. *See* Ill. S. Ct. R. 62, Canon 2(A); Ill. S. Ct. R. 63, Canon 3(A)(1).

Additionally, although not charged, and as already mentioned above, respondent violated the prohibitions on *ex parte* communications and initiating plea discussions. *See* Ill. S. Ct. R. 63, Canon 3(A)(5) ("A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding[.]"); Ill. S. Ct. R. 402(d)(1) ("the trial judge shall not initiate plea discussions"). These are basic rules of ethics and procedure that every trial judge is expected to be familiar with and follow.

Based upon all the above, we conclude respondent refused to follow the law as charged by the Board. "It goes without saying that judges at all levels must follow the law and hold in check their natural sympathies." *People v. Busse*, 2016 IL App (1st) 142941, ¶ 2. Even more fundamentally, the Code requires judges to respect and comply with the law and conduct themselves 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). "Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us." Illinois Code of Judicial Conduct, *Preamble.* If judges are not required to follow the law, certainly we could not expect the public to do so.

Mandatory sentencing statutes serve several important purposes. One purpose is to prescribe sanctions that are proportionate to the seriousness of the offenses while recognizing different rehabilitation possibilities among individual offenders. 730 ILCS 5/1-1-2(a). There is no question that the sentencing provisions in the Unified Code of Corrections are mandatory, and they must be followed by judges. *People ex rel. Birkett v. Jorgensen*, 216 Ill. 2d 358, 362, 837 N.E.2d 69, 297 Ill. Dec. 289 (2005) (citing *People ex rel. Baker v. Cowlin*, 154 Ill. 2d 193, 196, 607 N.E.2d 1251, 180 Ill. Dec. 738 (1992); *People ex rel. Daley v. Limperis*, 86 Ill. 2d 459, 466, 427 N.E.2d 1212, 56 Ill. Dec. 666 (1981)).

Still, judicial departures from mandatory sentencing schemes have occurred and have been the subject of much precedent. The Illinois Supreme Court has long utilized the writ of *mandamus* to compel trial courts to correct their errors in sentencing. *See, e.g.*, *People ex rel. Ward v. Salter*, 28 Ill. 2d 612, 192 N.E.2d 882 (1963) (writ of *mandamus* issued to direct trial judge to enter a fine which complied with a mandatory statutory schedule); *People ex rel. Hanrahan v. Wilson*, 48 Ill. 2d 30, 268 N.E.2d 23 (1971) (writ of *mandamus* issued to compel trial judge to correct his error in sentencing defendant to probation in violation of sentencing statute); *People ex rel. Carey v. Bentivenga*, 83 Ill. 2d 537, 416 N.E.2d 259, 48 Ill. Dec. 228 (1981) (writ of *mandamus* awarded to compel trial judge to vacate order giving defendant probation and to enter sentence in accordance with law); *People ex rel. Baker v. Cowlin*, 154 Ill. 2d 193, 196, 607 N.E.2d 1251, 180 Ill. Dec. 738 (1992) (writ of *mandamus* awarded to direct trial judge to expunge sentences of probation and impose sentences that included imprisonment); *People ex rel. Glasgow v. Carlson*, 2016 IL 120544, 72 N.E.3d 340, 410 Ill. Dec. 954 (judgment of *mandamus* awarded and trial court ordered to vacate its sentencing order and resentence defendant as a Class X offender).

However, and significantly, the difference between these *mandamus* cases and the conduct described in the amended complaint, is that respondent did not simply impose a sentence outside of the range prescribed in the statute. Respondent reversed his guilty finding to thwart and intentionally circumvent the law which required a mandatory prison sentence. Respondent openly acknowledged that if he imposed a lesser sentence than the statute required, he would be reversed by the appellate court. So rather than comply with the law, he devised a way to subvert it.

Abuse of judicial discretion does not usually constitute judicial misconduct, particularly in the sentencing context. Although the legislature generally prescribes the permissible range of sentences, great discretion still resides in the trial judge to fashion an appropriate sentence within that range. *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 243 Ill. Dec. 175 (1999). And nothing in this Order should be construed as a limitation on a judge's independence and proper

exercise of judicial discretion. Further, there is no dispute that "[a] court in a criminal case has inherent power to reconsider and correct its own rulings, even in the absence of a statute or rule granting it such authority." *People v. Mink*, 141 Ill. 2d 163, 171, 565 N.E.2d 975, 152 Ill. Dec. 293 (1990). "So long as a case is pending before it, a trial court has jurisdiction to reconsider any order which it has previously entered." *Mink*, 141 Ill. 2d at 171, citing *People ex rel. Daley v. Crilly*, 108 Ill. 2d 301, 305, 483 N.E.2d 1236, 91 Ill. Dec. 601 (1985); *People v. Van Cleve*, 89 Ill. 2d 298, 432 N.E.2d 837, 59 Ill. Dec. 893 (1982); *People v. Heil*, 71 Ill. 2d 458, 376 N.E.2d 1002, 17 Ill. Dec. 673 (1978). However, there are exceptions to this rule, including when a judge makes a decision in bad faith; or, in other words, for any purpose other than the judge's faithful discharge of judicial duties. Cynthia Gray, *Bad Faith Sentencing*, 29 JUDICIAL CONDUCT REPORTER, 1, 1 (2007); *see also*, *In re Keith*, 3 Ill. Cts. Com. 38, 71 (Jan. 21, 1994) (where the conduct of a judge goes beyond mere error and the judge is "consistently, brazenly, and outrageously demonstrating a pattern of violation of the canons of judicial conduct, a case has been presented which demands the imposition of sanctions against the judge"); and *In re McDunn*, 01 CC 2 (Nov. 27, 2022) ("mere errors of law or simple abuses of judicial discretion should not be the subject of discipline," but, "when a judge grossly disregards law that is 'clear on its face,' discipline may be warranted," citing *People ex rel. Harrod v. Ill. Courts Com.*, 69 Ill. 2d 445, 471-2, 372 N.E.2d 53 (1977)).

Here, we find that respondent acted in bad faith and engaged in willful misconduct, conduct prejudicial to the administration of justice, and conduct that brought the judicial office into disrepute when he intentionally circumvented the law by reversing his prior guilty finding. "Acting in disregard of the law and the established limits of the judicial role to pursue a perceived notion of the higher good … is not 'good faith.' … [A]lthough judicial officers should strive to do justice, they must do so *under the law* and within the confines of their adjudicative role." *In re Morrow*, 496 Mich. 291, 300 (2014) (emphasis in original).

There is no question that a judge's violation of the law offends the Code of Judicial Conduct. For example, in *In re Golniewicz*, 02 CC 1 (Nov. 15, 2004), the respondent knowingly violated Illinois' constitutional residency requirements when he ran for judicial office, and he purposefully registered and voted in an improper election precinct. The Commission observed that these violations of the law, on their own, demeaned the integrity of the judiciary and therefore violated Rule 61, Canon 1 and Rule 62, Canon 2(A). Similarly, judges that have been convicted of criminal conduct have been found to violate the Code. *See, e.g.*, *In re Sklodowski*, 2 Ill. Cts. Com. 125, 127 (April 15, 1988) (respondent's criminal conviction related to false information in a mortgage application violated Rule 61, Canon 1 and Rule 62, Canon 2(A)); *In re Nordquist*, 4 Ill. Cts. Com. 62 (August 9, 2007) (respondent violated Rule 61, Canon 1 and Rule 62, Canon 2(A) when he was convicted of driving under the influence of alcohol); *In re McGinnis*, 4 Ill. Cts. Com 61 (November 18, 2009) (respondent's conviction of driving under the influence of alcohol violated Rule 61, Canon 1 and Rule 62, Canon 2(A)); *In re Hettel*, 14 CC 1 (June 20, 2014) (respondent violated Rule 61, Canon 1 and Rule 62, Canon 2(A) when he pled guilty to driving under the influence of alcohol); and *In re Ghouse*, 22 CC 03 (Oct. 14, 2022) (respondent's conviction of driving under the influence of alcohol violated Rule 61, Canon 1 and Rule 62, Canon 2(A)).

In addition to respondent's refusal to follow the law, his misuse of his judicial power is equally offensive and egregious. He attempted to manipulate the *Clinton* post-trial proceedings in an *ex parte* manner, placing the attorneys involved in a precarious ethical position.

We find respondent's testimony was untruthful, and that his position before this Commission – that he reversed his guilty finding based on his belief that the State had failed to prove its case – was a purely deceptive scheme designed to justify, or conceal, his misconduct. Untruthful testimony under oath "is an assault to our legal system, as our system of justice rests on the truth and upon the sanctity of the oath." *In re O'Shea*, 18 CC 3 (Sept. 27, 2019); *In re Duebbert*, 18 CC 1 (Jan. 10, 2020). Simply put, respondent has demonstrated a disrespect for this disciplinary process and a pattern of deceptive behavior that is unacceptable in the judiciary. This only aggravates respondent's misconduct, and it alone would be enough to find violations of the Code. *See*, *In re Duebbert*, 18 CC 1 (Jan. 10, 2020) (the respondent's falsehoods, deception, and misleading testimony violated Rule 61, Canon 1 and Rule 62, Canon 2(A) and 2(B)); *In re O'Shea*, 18 CC 3 (Sept. 27, 2019) (the respondent's failure to be truthful and forthcoming violated Rule 61, Canon 1 and Rule 62, Canon 2(A)); *In re Santiago*, 15 CC 1 (Aug. 18, 2016) (the respondent's misrepresentations to her mortgage lender violated Rule 61, Canon 1 and Rule 62, Canon 2(A)); and *In re Golniewicz*, 02 CC 1 (Nov. 15, 2004) (the respondent's deceptive scheme regarding his residency violated Rule 61, Canon 1 and Rule 62, Canon 2(A)).

And so, we find the Board has proven by clear and convincing evidence that respondent's misconduct in reversing his guilty finding in *People v. Clinton* and ordering the not guilty finding failed to preserve or promote public confidence in the integrity, independence, and impartiality of the judiciary. As evidenced by his efforts to subvert the law and, subsequently, through his misleading and deceptive explanations regarding his true reasons for reversing himself, respondent has demonstrated an utter disregard for the integrity of the judiciary. His misconduct was willful, prejudicial to the administration of justice, and brought the judicial office into disrepute. Accordingly, we find that respondent's conduct violated his duty to preserve the integrity and independence of the judiciary (Ill. S. Ct. R. 61, Canon 1), to respect and comply with the law and to promote public confidence in the integrity and impartiality of the judiciary (Ill. S. Ct. R. 62, Canon 2(A)), and to be faithful to the law and maintain professional competence in it (Ill. S. Ct. R. 63, Canon 3(A)(1)).

However, as to Rule 63, Canon 3(A)(9), which requires judges to perform their judicial duties without bias or prejudice, we find the amended complaint, as alleged, and the evidence presented did not establish that respondent's circumvention of the sentencing law was a manifestation of bias or prejudice.

Count II

Count II charged respondent with retaliating against Jones, in violation of the following Rules of the Code of Judicial Conduct:

> "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, Canon 1.

"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).

"A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism." Ill. S. Ct. R. 63, Canon 3(A)(1).

"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., Canon 3(A)(9).

For the reasons that follow, we find the Board has proven by clear and convincing evidence that respondent violated each of the above Rules.

On January 12, 2022, respondent entered the courtroom and immediately ordered Jones to "get out." Respondent said he "could not be fair" with Jones because of a social media post Jones had "liked." When Jones did not respond, respondent ordered Jones out of the courtroom a second time. After Jones left, respondent began and completed the 8:30 a.m. court call. Respondent, however, had another judge take over the rest of his calls for that day.

In his testimony, respondent admitted that he told Jones to "get out" of the courtroom, stating he was angry about the social media post Jones had "liked." Respondent described his voice as "loud" and "mean-sounding." This fact was corroborated by both Jones and Eyler. The impact respondent's conduct had on Jones and Eyler was apparent from their testimony before this Commission. Initially, neither Jones nor Eyler knew who respondent was talking to. They both were confused by the situation. Eyler testified that he was dumbfounded. Jones left the courtroom without saying a word, which was out of character for him. Jones testified he was angry and frustrated. Jones also explained that a bailiff approached him while he was still seated in the courtroom and asked him to leave.

Both Eyler and Jones described that the courtroom was unusually busy that morning with members of the public and the press present for an unrelated case. Indeed, the press published stories on respondent's conduct toward Jones, although this Commission did not receive specific testimony or evidence regarding the substance of those stories.

We find Jones was a credible witness. As noted above, Jones accepted respondent's apology and has since appeared in front of respondent on other cases. Jones did not appear to hold any animosity toward the respondent related to this incident.

Respondent admitted that his conduct on January 12, 2022 was improper. We agree. Respondent's conduct was unbecoming of a judicial officer, and it diminished the integrity of the judiciary. Judges are held to a heightened burden of ethical behavior, and justifiably so, given the important and powerful role they occupy in our society. *See*, *In re O'Shea*, 18 CC 3 (Sept. 27, 2019). Respondent's conduct threatened the public's confidence in the judiciary, not only for those who witnessed it in person, but for those who may have read about it in the news.

While we recognize that respondent was being criticized in the media in the days following his reversal in *Clinton*, this does not excuse his conduct involving Jones. In fact, Rule 63, Canon 3(A)(1) required respondent to remain unswayed by such clamor and criticism. Ill. S. Ct. R. 63, Canon 3(A)(1).

Lastly, we reject respondent's claim that his conduct did not impede the administration of justice because court continued as normal that day, and no cases were delayed. While this may be true, it overlooks the fact that an attorney, Jones, was present representing the State of Illinois, and was not allowed to participate in certain proceedings that day.

This Commission has found Code violations for similar intemperate and retaliatory conduct by judges. For example, in *In re Goshgarian*, 98 CC 2 (Nov. 18, 1999), the respondent retaliated against a court reporter after the court reporter expressed concerns that the respondent had disregarded the ordinary selection process in selecting his permanent court reporter. The respondent retaliated by refusing to sign the court reporter's voucher for payment and then making a threatening comment when he eventually did sign it. In addition, in an unrelated incident, the respondent raised his voice and used offensive language toward a prosecutor in open court. For this conduct, the Commission found the respondent violated Rules 61, 62, and 63. *See also*, *In re Schwartz*, 01 CC 3 (Nov. 30, 2001) (respondent violated Rules 61 and 62 when he retaliated against law students from Southern Illinois University School of Law (SIU) after his stepson was denied admission to the school); and *In re Keith*, 3 Ill. Cts. Com. 38, 71 (Jan. 21, 1994) (respondent violated Rule 61, Canon 1, Rule 62, Canon 2(A), and Rule 63, Canon 3(A)(1) when he repeatedly treated litigants before him in a rude and mean-spirited manner and showed a "complete lack of judicial temperament and demeanor").

By his intemperate and unwarranted remarks toward Jones, respondent failed to meet the high standards of conduct required of judges, failed to conduct himself in a manner that promotes confidence in the integrity of the judiciary, failed to remain unswayed by public clamor and criticism, and failed to perform his judicial duties without bias or prejudice. Accordingly, we find the Board has proven by clear and convincing evidence that respondent violated Rule 61, Canon 1; Rule 62, Canon 2(A); Rule 63, Canon 3(A)(1); and Rule 63, Canon 3(A)(9) of the Code of Judicial Conduct. This misconduct was willful, prejudicial to the administration of justice, and brought the judicial office into disrepute.

Count III

Count III of the amended complaint charged respondent with giving false testimony before the Board, in violation of the Rules of the Code of Judicial Conduct listed below:

> "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, Canon 1.

> "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).

For the following reasons, we find the Board has proven by clear and convincing evidence that respondent violated both above Rules.

The Board alleges respondent gave false and misleading testimony before the Board regarding his reasons for the reversal of Clinton's conviction for criminal sexual assault. The Board disputes respondent's purported claim that he reversed his guilty finding based on the evidence in the case and his conclusion that the State had failed to prove the victim was unable to consent. The Board further alleges respondent knew this testimony was false because his true purpose in reversing his guilty finding was to thwart the law that required respondent to impose a mandatory prison sentence upon Clinton.

We incorporate by reference our analysis related to count I, above. And for all the reasons discussed therein, we find the Board has proven by clear and convincing evidence that respondent's testimony before the Board relating to his reversal was false and that he knew it was false. As we explained in detail with respect to count I, we reject respondent's purported claim that he reversed the guilty finding based on the evidence and that the State had failed to prove its case. To the contrary, the Board's evidence shows that respondent willfully refused to follow the law requiring that Clinton be sentenced to a mandatory prison term, not because respondent actually thought Clinton was not guilty, but because respondent did not agree with the law. We are convinced respondent reversed his guilty finding to achieve that objective. We conclude respondent's testimony was designed to manipulate and deceive first the Board, and now this Commission. Further, we find respondent's falsehoods began with his March 2022 written submission to the Board, continued through his sworn testimony before the Board in April 2022, and carried into November 2023, when he testified before this Commission.

We reiterate that "false testimony under oath is an affront to our system of justice where truth and the sanctity of the oath are paramount." *In re Duebbert*, 18 CC 1 (Jan. 10, 2020). Such misconduct is unacceptable and displays an utter disregard for the judiciary as well as this disciplinary process. As this Commission has previously found in other cases, lying before the Board violates the high standards of conduct required of judges and greatly diminishes the integrity of the judiciary. *See, e.g.*, *In re Duebbert*, 18 CC 1 (Jan. 10, 2020) (the respondent's false and

misleading testimony before the Board violated Rule 61, Canon 1 and Rule 62, Canon 2(A)); and *In re O'Shea*, 18 CC 3 (Sept. 27, 2019) (the respondent's false and misleading testimony before the Board violated Rule 61, Canon 1 and Rule 62, Canon 2(A)).

Therefore, we find the Board has proven by clear and convincing evidence that respondent gave untruthful testimony before the Board, in violation of Rule 61, Canon 1 and Rule 62, Canon 2(A). These violations constitute willful misconduct, conduct that is prejudicial to the administration of justice, and conduct that brings the judicial office into disrepute.

SANCTION

The cornerstone of the judicial disciplinary system in Illinois is to maintain public confidence in the judiciary, ensure the integrity of the judicial system, and protect the administration of justice from reproach. *See*, *In re O'Shea*, 18 CC 03 (Sept. 27, 2019); Illinois Code of Judicial Conduct, *Preamble*. In *In re Spurlock*, 4 Ill. Cts. Com. 74 (2001), the Commission cited several criteria that can be used in determining an appropriate sanction for judicial misconduct: (1) whether the misconduct is an isolated instance or a pattern of conduct; (2) the nature, extent and frequency of occurrence of the acts or misconduct; (3) whether the misconduct occurred in or out of the courtroom; (4) whether the misconduct occurred in the judge's official capacity or in his private life; (5) whether the judge has acknowledged or recognized that the acts occurred; (6) whether the judge has evidenced an effort to change or modify his conduct; (7) the length of service on the bench; (8) whether there have been prior complaints about the judge; (9) the effect the misconduct has upon the integrity of and respect for the judiciary; and (10) the extent to which the judge exploited his position to satisfy his personal desires. Most of these factors weigh heavily against respondent.

To begin, respondent's misconduct was not an isolated incident, but rather included several acts that each violated the Code. His misconduct spanned nearly two years, beginning on January 3, 2022, when he reversed his guilty finding, not because the State failed in its burden of proof, but to circumvent the mandatory sentencing law he was required to follow. Shortly thereafter, respondent retaliated against Jones by having him removed from the courtroom, and in April 2022, respondent testified falsely before the Board. In November 2023, at the hearing before this Commission, respondent gave false testimony under oath a second time. The nature and extent of this misconduct is egregious. Respondent intentionally circumvented the law to satisfy his personal belief as to what constituted a just sentence, resulting in his reversal of a criminal defendant's conviction. Respondent subsequently acted out in anger when he learned Jones had liked a social media post that he believed was critical of him. Respondent improperly retaliated against Jones by ordering him out of the courtroom. Then, to mask his subversion of the law, Respondent crafted a false justification for the reversal of his guilty finding, which he submitted to the Board in writing and later testified to under oath before two tribunals. Such intentional, dishonest, and extensive misconduct demonstrates respondent's utter disregard for the truth, the judiciary, and our justice system.

Further aggravating is the fact that some of respondent's misconduct occurred on the bench, while he was acting in his official capacity as judge. First, respondent refused to follow the mandatory sentencing law in the *Clinton* case and did so from the bench. Second, respondent

violated the Code when he retaliated against Jones in open court. While his deceptive testimony before the Board and this Commission did not occur on the bench, it was false, and it was an extension of his prior misconduct as it was a cover-up of his refusal to follow the law. But regardless, all witnesses under oath are expected to testify with honesty and candor; judges are no exception. Respondent represents the judiciary at all times, not simply while performing his official duties in court. *See*, *In re Duebbert*, 18 CC 1 (Jan. 10, 2020), p. 13.

Moreover, although respondent acknowledged his improper conduct with respect to Jones, he has not acknowledged that he circumvented the law when he entered the finding of not guilty in the *Clinton* case. Nor has he shown that he understands the effect his reversal of his prior guilty finding has had on the integrity of the judicial system. Respondent only briefly, and rather vaguely, stated that he understood how his statements on January 3, 2022 "caused concern." Rather than express remorse, he has attempted to minimize his conduct and redirect the focus to his alleged "rookie mistake." While respondent has a right to defend himself in these proceedings, he has demonstrated a clear failure to appreciate how his conduct has affected the public's perception of the judiciary. We also note that respondent stated he should have taken time to reflect on the *Clinton* case before he ruled, and he indicated that in the future he would do a better job of taking notes regarding how he expects to rule. However, he acknowledged this shortcoming not out of remorse, but rather because he believed his ruling in *Clinton* was misunderstood. Given his attempt to mask his violation of the law by falsely testifying about his reasons for reversal, respondent has not shown that he is willing to change or modify his behavior.

We recognize that several attorneys testified before this Commission that, among other things, respondent was knowledgeable in the law and that he has a reputation for being fair and serving with integrity. We also acknowledge there have not been any other complaints or judicial discipline against respondent during his 13 years as a judge.

Respondent's misconduct has seriously damaged the integrity of the judiciary. He intentionally subverted the law and then lied about it under oath to serve his own interests. He also retaliated against another officer of the court because he was facing the backlash of his own misconduct. "[T]he judiciary's values of truth and honesty are pillars of our legal system," and "lying under oath is an attack on our legal system, which depends on truth and credibility." *In re Duebbert*, 18 CC 1 (Jan. 10, 2020), p. 14. It is simply intolerable that a sworn member of the bench would knowingly circumvent the law and then provide false and misleading testimony on multiple occasions to cover up his actual motive.

Although respondent did not tangibly benefit from his misconduct, he misused his position as a judge in a criminal case to satisfy his own sense of justice by refusing to faithfully apply the law.

We also feel compelled to comment on respondent's statement on January 3, 2022 that "these things happen" when teenagers engage in underage drinking and "coeds and female people" swim in their underwear. These types of comments, coupled with the fact that respondent reversed himself, could give the impression to the public that respondent did not believe Clinton deserved to go to prison for sexual assault because the female victim was voluntarily intoxicated and swam in her underwear.

This Commission has already discussed other, uncharged misconduct respondent engaged in. Respondent had *ex parte* communications with Eyler, Farha, and Schnack, in blatant violation of Rule 63, Canon 3(A)(5) of the Code. The witness testimony revealed that respondent initiated these *ex parte* communications because he wanted the charges against Clinton to be reduced, by agreement of the parties, to something that would not require a prison sentence. Respondent admitted that he saw no problem with speaking to Schnack *ex parte* about a pending case. Also concerning is respondent's denial that he engaged in plea negotiations, stating he only asked if plea negotiations had occurred and that he did not suggest a particular plea or sentence. However, Farha's testimony was clear that respondent was seeking a particular outcome – a reduction of the charges against Clinton to something that would not result in a mandatory prison term. Judges are prohibited from initiating, permitting, or considering *ex parte* communications, and they are also prohibited from *initiating plea discussions*. *See* Ill. S. Ct. R. 63, Canon 3(A)(5); Ill. S. Ct. R. 402(d)(1) ("the trial judge shall not initiate plea discussions") (emphasis added). Every judge, and certainly one with 13 years of experience, like respondent, is expected to know and adhere to these fundamental rules of ethics and procedure.

Indeed, respondent has had much experience over the course of his 40-year legal career. Prior to his time on the bench, he was an assistant state's attorney, an assistant public defender, and he handled criminal cases in private practice. He has also had significant experience with felony cases, both as a practicing attorney and as a judge. It is inconceivable that with all his experience, respondent did not know whether a judge in a bench trial could *sua sponte* enter a finding to a lesser included offense, or that he could *sua sponte* reverse a guilty finding. We similarly find respondent's characterization of his guilty finding as a "rookie mistake" disingenuous. Rather than take responsibility for his conduct, respondent has attempted to minimize it by using this self-serving label. To be clear, we do not consider respondent to be a rookie.

Based on all the evidence presented, we have already concluded that respondent reversed his guilty finding to circumvent the law. Nor do we accept respondent's contention that he made a mistake in finding Clinton guilty. Respondent claimed that he began to consider whether he had mistakenly found Clinton guilty immediately after the trial, but then he did nothing for months while Clinton remained in jail. We do not believe or accept that a judge, who honestly thought a defendant was wrongly convicted of the offenses charged, would not swiftly take action to correct this injustice. No judge who honors and follows the law would ever permit an innocent person to languish in jail.

Finally, we find troubling, as well as revealing, respondent's admission that he considered sentencing Clinton, who he claimed was not guilty, to probation rather than admit he had mistakenly found Clinton guilty. Even though we do not believe respondent truly thought Clinton was not guilty, respondent's statement is no less repugnant. According to respondent, he considered imposing criminal penalties upon an innocent defendant, conduct which we find egregious.

With all of the above in mind, we conclude the only appropriate discipline is removal. The Commission has previously removed judges who have violated the law, engaged in deceitful conduct, and given false testimony under oath. Those cases include *In re O'Shea*, 18 CC 3 (Sept. 27, 2019), *In re Duebbert*, 18 CC 1 (Jan. 10, 2020), and *In re Golniewicz*, 02 CC 1 (Nov. 15, 2004).

In *In re O'Shea*, 18 CC 3 (Sept. 27, 2019), the respondent gave misleading and untruthful statements to detectives who were investigating an incident where the respondent discharged a firearm through the wall of his apartment and into a neighboring unit. The respondent initially told the detectives that the two holes in his wall were from a nail gun and a screwdriver. After it became apparent that the detectives knew one of the holes was from a bullet, the respondent then stated his son must have fired one of his guns through the wall. Eventually, the respondent admitted that he had fired the gun himself. Subsequently, when the respondent testified in front of the Board, he falsely stated that he immediately told the detectives the hole was the result of him firing a bullet through the wall, and he denied telling them that the holes were from a screwdriver and a nail gun. The respondent made similar false statements and gave unbelievable testimony during the hearing before the Commission. The Commission found the respondent's failure to be truthful and forthcoming with the detectives, as well as his false and misleading testimony before the Board, violated the high standards of conduct required by judges, and the respondent was removed from office.

Similarly, the respondent in *In re Duebbert*, 18 CC 1 (Jan. 10, 2020) was removed from office after he withheld relevant information and gave misleading statements to police officers who were investigating the respondent's friend in a murder case. When he testified before the Board, the respondent claimed he was truthful and forthcoming with the police officers, and he gave testimony that contradicted his statements to the police. In addition, the respondent was untruthful before the Commission; he manufactured additional falsehoods in an attempt to conceal or explain his misleading statements to the police officers. The respondent completely failed to acknowledge or recognize his own wrongdoing. The Commission described the respondent's repeated falsehoods and unwillingness to fully cooperate with law enforcement as "repugnant to our truth-seeking system of justice," and found that it demonstrated an utter disregard for the integrity and respect of the judiciary. The Commission removed the respondent from office.

And in *In re Golniewicz*, 02 CC 1 (Nov. 15, 2004), the respondent engaged in multiple instances of misconduct arising out of his inappropriate demeanor on the bench and his misuse of his parents' address when running for judge and voting. Regarding the residency issues, the respondent purposefully used his parents' address in a judicial election instead of his permanent abode because he had a greater chance of getting elected in his parents' district. He sent out deceptive advertisements to voters in his parents' district that indicated he was their "neighbor" and a lifelong resident of their district. After he was elected, he continued to live outside the subcircuit from which he was elected. For years, he also voted in and maintained his voter registration in the wrong election precinct. In addition to being deceptive, the respondent was also knowingly violating the law. The respondent then gave dishonest and evasive testimony before the Commission. Instead of taking responsibility for his conduct, the respondent said he would not have done anything differently, and he claimed the Board was wrong in prosecuting him. For this misconduct, the respondent was removed from office.

Respondent's conduct in this case is similar to the conduct that warranted removal in *In re O'Shea*, *In re Duebbert*, and *In re Golniewicz*. In each of those cases, the respondent was deceptive, misleading, and gave false testimony under oath. They disregarded the law and showed an inability or unwillingness to acknowledge their wrongdoings. In short, their conduct brought the judiciary

into disrepute. This is the same type of conduct and pattern of behavior displayed by respondent in this case.

In re Keith, 3 Ill. Cts. Com. 38 (Jan. 21, 1994) is also instructive. In *In re Keith*, the respondent was removed from office for his flagrant pattern of intemperate behavior toward litigants and for repeatedly undermining the integrity of the judicial process. For example, he put the husband of a litigant in a holding cell for over an hour after the husband whispered to his wife in the courtroom, and he held a woman in contempt and imposed a 96-hour jail sentence for asking questions out of turn. He doubled a traffic offender's fine when she asked a question and threatened to double it again if she kept talking. The Commission aptly noted that in matters that go beyond mere judicial error, where a judge has demonstrated a consistent, brazen, and outrageous pattern of violating the Code, judicial sanctions must be imposed. Based on the totality of the circumstances in *Keith*, the Commission removed the respondent from office.

The above Commission precedent establishes that a flagrant pattern of misconduct, falsehoods, and a refusal to acknowledge any wrongdoing justifies removal from the bench. We apply these same principles here.

The Code and the Commission's precedent provide ample grounds for removal in this case. Respondent has engaged in multiple instances of misconduct, he abused his position of power to indulge his own sense of justice while circumventing the law, he lied under oath on multiple occasions, and he has failed to acknowledge his misconduct. Much more was required of respondent. "A judge has a position of power and prestige in a democratic society espousing justice for all persons under law. The role of the judge in the administration of justice requires adherence to the highest standard of personal and official conduct. Of those to whom much is committed, much is demanded. A judge, therefore, has the responsibility of conforming to a higher standard of conduct than is expected of lawyers or other persons in society." *In re O'Shea*, 18 CC 3 (Sept. 17, 2019) (quoting *In re Winton*, 350 N.W.2d 337, 340 (Minn. 1984)). Based on our findings in this case and Commission precedent, we conclude the only appropriate sanction is to remove respondent from the office of circuit court judge, effective immediately. It is so ordered.

Respondent removed from office.