In the Supreme Court of Iowa

Supreme Court No. 20-1004
Grievance Commission No. 899

Iowa Supreme Court
Attorney Disciplinary Board,

Appellee,

vs.

Stephen Warren Newport,

Appellant

Appeal from the Report of the Iowa Supreme Court Grievance Commission

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Appellee's Final Brief

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Routing Statement

The Supreme Court should retain this case pursuant to Iowa Rule of Appellate Procedure 6.1101(2) because this is a case involving lawyer discipline.

Statement of the Case

Nature of the Case

The Attorney Disciplinary Board (Board) brought this lawyer disciplinary action against Stephen Warren Newport (Newport) alleging violations of Iowa Rules of Professional Conduct 32:8.4(b) and 32:8.4(g).

Course of Proceedings and Disposition

On October 16, 2019, the Board filed its Complaint against Newport. Appendix (App.) pages (pp.) 4-9. On November 21, 2019, Newport filed his Answer. Confidential Appendix (Con. App.) pp. 6-8. On December 12, 2019, the Board filed a Notice providing the identities of Jane Doe #1 and Jane Doe #2. On January 14, 2020, the Board filed a Motion to Compel Discovery which was granted by the Commission President on January 21, 2020. On February 6, 2020, the Board filed a Motion in Limine which was granted by the Commission President at the time of hearing.

On February 20-21, 2020, a hearing was held in this matter before the 619th Division of the Grievance Commission (Commission). On February 21, 2020, Newport filed an Amended Answer to the Complaint. Con. App. pp. 9-11. On July 31, 2020, the Commission filed its Findings of Fact, Conclusions of Law, and Recommendation. App. pp. 10-24.

Commission's Conclusion and Recommendations

A majority of the Commission members concluded that Newport violated rules 32:8.4(b) and 32:8.4(g) and recommended that the Court suspend Newport's law license for a period of two years. App. pp. 19-21.

A dissent issued by one Commission member concluded that Newport violated rule 32:8.4(g) and recommended that the Court suspend Newport's law license for a period of six months. App. pp. 21-24.

A partial dissent issued by one Commission member concluded that Newport violated rule 32:8.4(g) and recommended that the Court suspend Newport's law license for a period of at least one year. App. p. 24.

Newport's Appeal

On August 7, 2020, Newport filed his notice of appeal with the Commission clerk. Con. App. pp. 459-60.

Statement of Facts

Newport was admitted to practice law in Iowa on January 13, 1978. Hearing Transcript, February 20-21, 2020. Con. App. p. 196 lines (ll.) 14-16. Up until the time of hearing, Newport maintained a private law practice in Bettendorf. Con. App. p. 196 ll. 17-20 & p. 244 ll. 11-22.

Jane Doe #1

Newport represented Jane Doe #1 in several different cases. Con. App. p. 38 ll. 16-21. Most recently, Newport represented Jane Doe #1 in a personal injury case from approximately 2015 to 2018. Con. App. p. 39 ll. 4-24. In early January 2018, Newport and Jane Doe #1 were having many discussions with regards to going to trial or reaching a potential settlement as the trial date in that matter was quickly approaching. Con. App. p. 39 l. 25 – p. 40 l. 17.

On January 18, 2018, Newport called Jane Doe #1 and spoke with her at 3:34 p.m., 3:54 p.m., and 4:24 p.m. Con. App. pp. 403-04 & p. 40 l. 18 – p. 43 l. 23. During their last phone conversation on that date, which lasted from 4:24 p.m. until 6:00 p.m., Newport and Jane Doe #1 scheduled a meeting for Jane Doe #1 to come in to meet with Newport at his office the next day to continue their discussion regarding settlement. Con. App. p. 403 & p. 43 l. 24 – p. 44 l. 1.

On January 19, 2018, Jane Doe #1 went to Newport's law office in the morning to discuss her case with him. Con. App. p. 44 ll. 4-8. Newport was not yet in the office when she arrived. Con. App. p. 44 ll. 11-18. Jane Doe #1 waited approximately ten or fifteen minutes for Newport to arrive. Con. App. p. 44 l. 23 – p. 45 l. 1. Once Newport arrived, he and Jane Doe #1 went into his office. Con. App. pp. 256-60 & p. 45 ll. 4-8. During their meeting, Jane Doe #1 spoke to her mother on speaker phone in Newport's presence regarding settlement of her case. Con. App. p. 400, p. 46 l. 7 – p. 49 l. 11, p. 197 ll. 2-22, & p. 198 ll. 20-23.

At some point, Newport left his office and when he returned, he shut the door. Con. App. p. 51 ll. 10-16. No one was in his office at that time except for Newport and Jane Doe #1. Con. App. p. 51 ll. 17-19. While waiting for opposing counsel to get back to them regarding settlement, Newport and Jane Doe #1 engaged in small talk, and Newport showed Jane Doe #1 photographs of his grandchildren on his cell phone. Con. App. p. 50 ll. 17-22 & p. 52 ll. 9-23.

During their meeting, Newport told Jane Doe #1 that he had cancer. Con. App. p. 52 l. 25 – p. 53 l. 2. Additionally, Newport told Jane Doe #1 that he had a device surgically implanted in his body and asked her if she wanted to see it. Con. App. p. 53 ll. 6-15, p. 220 ll. 4-19, & p. 221 ll. 5-12.

Newport first pulled his shirt up and indicated to Jane Doe #1 where the device was located underneath his skin in his abdomen area. Con. App. p. 53 l. 21 – p. 54 l. 1 & p. 221 ll. 10-12. Next, Newport pulled down his pants and exposed his genitals to Jane Doe #1. Con. App. p. 54 ll. 10-22. Newport told Jane Doe #1 that he has a difficult time getting an erection as he massaged his penis. Con. App. p. 54 ll. 17-22 & p. 220 l. 25 – p. 221 l. 4. Newport told Jane Doe #1 that she needed to feel the tubing located underneath his skin in his scrotum, and Jane Doe #1 said no. Con. App. p. 54 l. 24 – p. 55 l. 3 & p. 220 ll. 18-19. Then, Newport grabbed Jane Doe #1's hand without her consent, placed her hand on his scrotum, and guided her hand so that she could feel the tubing and pump located underneath his skin in his scrotum. Con. App. p. 55 ll. 4-10, p. 57 ll. 7-13, & p. 220 ll. 4-19. Jane Doe #1 pulled her hand back from Newport. Con. App. p. 55 ll. 12-15. Jane Doe #1 was in shock and felt scared and invaded. Con. App. p. 55 ll. 16-19. Jane Doe #1 did not want to touch Newport's scrotum. Con. App. p. 57 ll. 7-9.

Newport continued to massage his penis in Jane Doe #1's presence. Con. App. p. 55 ll. 17-22. Jane Doe #1 told Newport to pull up his pants or someone might "catch him" with his genitals exposed. Con. App. p. 55 ll. 21-23. Newport laughed and said that no one was in the office and the

door was locked. Con. App. p. 55 l. 23 – p. 56 l. 12. Newport commented that his pubic hair was red and that his granddaughter had inherited her red hair from him. Con. App. p. 56 ll. 14-17. Jane Doe #1 also saw that Newport had a scar on his stomach. Con. App. p. 57 ll. 20-22. Newport pulled up his pants and tucked in his shirt. Con. App. p. 56 ll. 18-20. Newport stated that since it was lunchtime, they probably would not hear back from opposing counsel with a response for quite some time, and Jane Doe #1 gathered her things and went to his office door. Con. App. p. 56 l. 21 – p. 57 l. 3. Newport went to the door with her and opened it for her. Con. App. p. 57 l. 3. Jane Doe #1 left Newport's office at lunchtime. Con. App. p. 56 l. 21 – p. 57 l. 6, p. 75 ll. 12-25, & p. 110 ll. 9-16.

Jane Doe #1 went to her friend Kelsey Slay's (Slay) residence that afternoon. Con. App. p. 58 ll. 16-20. Prior to entering Slay's residence, Jane Doe #1 called Slay to let her know she had arrived.[1] Con. App. p. 193 l. 22

[1] On January 11, 2019, Detective Payton conducted a "drive test" in which he made a call from a Sprint cell phone from two different locations in the parking lot of Slay's apartment complex. Con. App. p. 132 l. 13 – p. 133 l. 20. The first call pinged off of cell tower 3434. Con. App. p. 133 ll. 6-8. The second call pinged off of cell tower 3437. Con. App. p. 133 ll. 8-10. The phone records indicate Jane Doe #1 called Slay at 2:36 p.m. and this call pinged off of cell tower 3437. Con. App. p. 407, p. 450, & p. 139 ll. 2-13.

– p. 194 l. 3. Jane Doe #1 then called Newport four times at 2:38 p.m., 2:38 p.m., 2:39 p.m., and 2:40 p.m.[2] Con. App. p. 403.

While she was at her friend's house, Newport called Jane Doe #1 to discuss settlement of her case at 2:49 p.m., 2:54 p.m., and 3:07 p.m.[3] Con. App. p. 408 & p. 59 l. 10 – p. 60 l. 16. During the first phone call, Newport and Jane Doe #1 briefly discussed settlement. Con. App. p. 60 l. 18 – p. 61 l. 1. During the second phone call, Newport and Jane Doe #1 argued about whether or not to settle her case. Con. App. p. 61 ll. 2-17. At the end of that conversation, Jane Doe #1 agreed to settle her case for $7500 in her pocket. Con. App. p. 61 ll. 18-20. During the third phone call, Newport told Jane Doe #1 that the case was settled and she could take her clothes off now and give him a blow job. Con. App. p. 61 l. 25 – p. 62 l. 13 & p. 119 l. 17 – p. 120 l. 2. Jane Doe #1 hung up. Con. App. p. 62 l. 13.

Jane Doe #2

From approximately 2012 to 2014, Newport represented Jane Doe #2 in a child custody case. Con. App. pp. 282-88 & p. 19 l. 21 – p. 20 l. 23. In 2013, Newport and Jane Doe #2 met at the Scott County Courthouse

[2] Jane Doe #1's cell phone pinged off of cell towers 3437 and 3434 while she made these calls. Con. App. p. 450; p. 139 l. 23 – p. 140 l. 11.
[3] Jane Doe #1's cell phone pinged off of cell tower 3434 for all three of these calls. Con. App. p. 450, p. 139 l. 23 – p. 140 l. 11.

for a court appearance in her case. Con. App. p. 21 l. 19 – p. 22 l. 8 & p. 23 l. 14 – p. 24 l. 1. At that time, Jane Doe #2 knew she owed Newport approximately $300 in legal fees. Con. App. p. 22 ll. 9-12. During a discussion in a private room at the courthouse, Jane Doe #2 asked Newport, "Is it okay if I just give you the check now or pay you now?" Con. App. p. 22 ll. 1-14. Newport responded, "Would you like me to shut the door?" Con. App. p. 22 ll. 15-16. Newport then chuckled. Con. App. p. 22 ll. 21-23. Jane Doe #2 interpreted Newport's comment that he was asking for payment in the form of a sexual favor. Con. App. p. 23 ll. 5-13. Jane Doe #2 was surprised and felt uncomfortable by Newport's comment. Con. App. p. 22 l. 24 – p. 23 l. 4 & p. 35 ll. 23-24.

At some point after the exchange in the private room, Jane Doe #2 and Newport had a discussion as they walked out of the Scott County Courthouse together after a court appearance in her case. Con. App. p. 24 ll. 2-9 & p. 25 ll. 11-19. Newport again made a sexual statement to Jane Doe #2, telling her he had a hernia in his groin and asking her if she wanted to see it as he laughed. Con. App. p. 24 ll. 10-22. Jane Doe #2 felt uncomfortable and degraded by Newport's comment. Con. App. p. 24 l. 23 – p. 25 l. 4.

Towards the end of the representation in 2014, Jane Doe #2 and Newport had a meeting at Newport's law office for the purpose of having a conference call with the opposing party, her ex-husband, who was now pro se. Con. App. p. 25 l. 22 – p. 26 l. 17 & p. 28 l. 8 – p. 29 l. 4. When the phone began to ring, Newport walked out from behind his desk and sat on top of it. Con. App. p. 26 ll. 18-22. Before picking up the phone, Newport asked Jane Doe #2, "Would you like me to ask him if you can pay your bill with sex?" Con. App. p. 26 ll. 22-25 & p. 27 ll. 14-20. Jane Doe #2 felt embarrassed, uncomfortable, and lost. Con. App. p. 27 l. 1 – p. 28 l. 4 & p. 35 l. 23 – p. 36 l. 5. This meeting was the last time she met with Newport in person. Con. App. p. 28 ll. 5-7 & p. 29 ll. 11-14.

After the court entered the final decree in her case, Newport called Jane Doe #2 on a Saturday and asked her if she wanted to come see his new office and pick up her documents that day. Con. App. p. 29 l. 15 – p. 30 l. 13. Jane Doe #2 refused. Con. App. p. 30 ll. 7-8. This phone call was the last contact Jane Doe #2 had with Newport. Con. App. p. 36 ll. 9-12.

Argument

Error Preservation

The Board agrees that Newport preserved the issues presented for appellate review.

Scope and Standard of Appellate Review

The Board agrees with Newport that the scope and standard of appellate review is de novo. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Watkins*, 944 N.W.2d 881, 884 (Iowa 2020).

I. The Board has proven by a convincing preponderance of the evidence that Stephen Warren Newport committed a criminal act in violation of Iowa Rule of Professional Conduct 32:8.4(b).

A. Rule 32:8.4(b)

The Board must prove attorney misconduct by a convincing preponderance of the evidence. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Moothart*, 860 N.W.2d 598, 603 (Iowa 2015). This burden is higher than proof by preponderance of the evidence, but lower than proof beyond a reasonable doubt. *Id*. "It is also less stringent than the clear and convincing evidence which is the highest standard of civil proof." *Id*.

Iowa Rule of Professional Conduct 32:8.4(b) states, "It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

> [R]ule 32:8.4(b) does not require a criminal conviction, but only that an attorney committed a 'criminal act.' . . . Accordingly, the absence of criminal charges, or even acquittal of criminal charges, is not a defense to this rule. The Board simply must prove the attorney committed the act by

> a convincing preponderance of the evidence. . . . Further, there must be a 'rational connection' between the criminal act and the lawyer's fitness to practice law.

Iowa Supreme Ct. Att'y Disciplinary Bd. v. Stowers, 823 N.W.2d 1, 13 (Iowa 2012).

"An attorney's fitness to practice law includes his or her moral character, suitability to act as an officer of the court, ability to maintain a professional relationship, competency in legal matters, and whether he or she can be trusted to vigorously represent clients, without overreaching." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Keele*, 795 N.W.2d 507, 512 (Iowa 2011). In determining whether there is a rational connection between the attorney's conduct and fitness to practice law, the Court considers: "the lawyer's mental state; the extent to which the act demonstrates disrespect for the law or law enforcement; the presence or absence of a victim; the extent of actual or potential injury to a victim; and the presence or absence of a pattern of criminal conduct." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Templeton*, 784 N.W.2d 761, 767 (Iowa 2010). Additionally, "[c]onduct that diminishes 'public confidence in the legal profession' reflects adversely on a lawyer's fitness to practice law." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Khowassah*, 890 N.W.2d

647, 651 (Iowa 2017) (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Wheeler*, 824 N.W.2d 505, 510 (Iowa 2012) (citation omitted)).

A person commits sexual abuse in the third degree by performing a sex act by force or against the will of the other person. Iowa Code § 709.4(1)(a) (2018). A sex act is defined as contact between the hand of one person and the genitalia or anus of another person. Iowa Code § 702.17(3). A sex act is against the will of the person when the act is performed without his or her consent. *See State v. Kelso-Christy*, 911 N.W.2d 663, 667 (Iowa 2018). Newport committed sexual abuse in the third degree when he grabbed Jane Doe #1's hand and placed it on his genitalia against her will. Con. App. p. 54 l. 24 – p. 55 l. 15 & p. 57 ll. 7-13.

A person commits prostitution by offering to purchase another person's services as a partner in a sex act. Iowa Code § 725.1(2) (2018). A sex act is defined as contact between the mouth and genitalia. Iowa Code § 702.17(2) (2018). An offer to purchase is defined as:

> Any verbal statement, act or conduct which invites a person to be a partner in a sex act for money or other thing of value, regardless of whether a sex act occurred or a person made actual payment of any kind to either person. The request, solicitation, or acceptance does not have to be in any particular form or words.

4 Robert R. Rigg, *Iowa Practice Series: Criminal Law* § 28.3 (2019) (quoting the Iowa Criminal Jury Instructions).

In *Iowa Supreme Ct. Att'y Disciplinary Board v. McGrath*, the Court found when McGrath told his client, "'since he was doing something nice for her, she could do something nice for him,' followed by a question of whether she wanted 'to fool around on the couch' could reasonably be interpreted to be an offer of legal services in exchange for sex." 713 N.W.2d 682, 697 (Iowa 2006). McGrath "suggested a sex-for-fees arrangement without ever expressly saying so, carefully choosing his words in an effort not to get caught." *Id*. at 703. Just because Newport did not specifically state, "You can give me a blow job in lieu of fees," does not mean his words did not imply a sex-for-fees arrangement. Newport committed prostitution when he told Jane Doe #1, "Deal's done, drop your clothes off, and you can give me a blow job." Con. App. p. 119 l. 17 – p. 120 l. 2.

A person commits indecent exposure by exposing his genitals or pubes to another, who was not the person's spouse, to arouse or satisfy the sexual desires of either party, and the person knows or reasonably should know the act is offensive to the viewer. Iowa Code § 709.9 (2018). Newport committed indecent exposure when he exposed his genitals to

Jane Doe #1 with the intent to arouse or satisfy one of their sexual desires. Con. App. p. 54 ll. 10-22. Jane Doe #1 was offended by Newport's actions, and Newport either knew or should have known that his actions were offensive to Jane Doe #1. Con. App. p. 55 ll. 16-19.

Newport's actions demonstrate his inability to maintain a professional relationship, his unsuitability to be an officer of the court, and his poor moral character. When Newport assaulted and exposed himself to Jane Doe #1, he caused her injury and showed a disrespect for the law. There is a rational connection between Newport's fitness to practice law and his criminal acts.

The Board proved by a convincing preponderance of the evidence that Newport violated rule 32:8.4(b) when he committed the criminal acts of sexual abuse assault, prostitution, and indecent exposure.

B. Credibility Determination by Commission

In recognizing that the commission is in the best position to determine witness credibility, the Court gives deference to the commission's credibility determinations. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Arzberger*, 887 N.W.2d 353, 367 (Iowa 2016); *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Clarity*, 838 N.W.2d 648, 659 (Iowa 2013).

In *McGrath*, the Court found the client's testimony that she and her attorney had sexual relations credible. 713 N.W.2d at 701. The Court found the lack of documentation regarding his client's fee payments, the consistency of the client's testimony with that of the other client accusing the attorney of sexual misconduct, and that the attorney "offered no explanation for how Doe would know that he was uncircumcised" to be facts in support of the client's credibility. *Id*. at 702.

In *Iowa Supreme Ct. Att'y Disciplinary Board v. Marzen*, the Court found the client's testimony that she and her attorney had sexual relations credible. 779 N.W.2d 757, 763 (Iowa 2010). The client testified that the attorney had panniculi on his buttocks, and the attorney "had the ability to disprove the existence of the condition and discredit [the client] but failed to do so." *Id*.

> The claim itself was unusual enough that a person accusing another of sexual impropriety would not likely conceive of and fabricate the condition and an identifying mark to falsely frame an accused, especially when the condition would appear to be easily disproven by the accused if it did not exist.

Id. The Court also found the client's "testimony regarding the location of a mole on Marzen's back, which was surgically removed after the alleged incidents, was significant." *Id*.

The Commission in this matter found:

> [A]fter balancing the aggravating and mitigating factors, and having heard the live testimony of the witnesses, and observing their demeanors, the Commission finds Jane Doe #1 and Jane Doe #2 to be credible. The Commission finds Newport's testimony that he did not commit the alleged misconduct not credible. The Commission makes this determination in light of Jane Doe #1 and Jane Doe #2's testimony, as well as the exhibits submitted by the parties, and Newport's own contradictory and unconvincing statements.

App. p. 19. For instance, Newport testified that on the morning of January 19, "Actually, I remember driving to the office and getting a phone call on my phone that [Jane Doe #1 was there] to sign something. I talked to Rosalie." Con. App. p. 243 ll. 13-16. However, according to Newport's cell phone records, he never received a phone call from his office on the morning of January 19, 2018. Con. App. p. 455.

Additionally, Newport initially told Detective Payton that he had never been to Jane Doe #1's house before, which turned out to be untrue. Exhibit (Ex.) 6C; Con. App. p. 129 ll. 9-11 & p. 199 ll. 19-23. Newport also told police and the Board that, "Over the forty years of my practice I had made it standard to never close my door when meeting with clients." Ex. 6A; Con. App. p. 255. Yet, Newport did close the conference room door during he and Jane Doe #1's meeting on February 15, 2018. Con. App. p. 130 ll. 14-20.

Further, in his response to the Board, Newport stated, "I do not now have, nor have I ever had, any type of medical devise (sic) implanted anywhere in my body that is sexual or in any way could be misconstrued as being sexual in any way." Con. App. p. 253. Additionally Newport stated, "There has been no device pump surgically placed, or otherwise placed in me. I have no stomach tubing and pump that is in the scrotum for erections or any sexual nature." Con. App. p. 254. Newport also stated, "Once again, I have no sexual device whatsoever implanted, no sexual tubing, nothing in my stomach and nothing in my right side." Con. App. p. 255. Newport never informed the Board that he did in fact have a device implanted in his scrotum and abdomen but for a nonsexual purpose. Con. App. p. 222 l. 13 – p. 224 l. 8.

Newport asks, "Does denial require correction?" Appellant's Brief ("Br.") 38-39. In some circumstances it does. The Court has found that "the omission of information by a lawyer can give rise to a false statement." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Daniels*, 838 N.W.2d 672, 677 (Iowa 2013). Newport does have a medical device implanted in his scrotum. Newport does have a pump and tubing placed in him. Newport does have a device in his stomach. Newport's addition of the adjective "sexual" when making these statements to the Board was

deceptive and required correction. Further, if Newport having a medical device implanted in his scrotum for urinary incontinence was so irrelevant, then why did Newport make that disclosure to law enforcement?

C. Response to Newport's Brief

a. Device and Knowledge of Other Particulars

During their January 19 meeting, Jane Doe #1 learned numerous facts about Newport through their conversations, her observations, and the assault. Jane Doe #1 learned Newport had cancer, erection issues, a device located in his abdomen, a device and tubing located in his scrotum, red pubic hair, and a scar on his stomach. Con. App. p. 53 l. 1 – p. 55 l. 15, p. 56 ll. 14-17, & p. 57 l. 23 – p. 58 l. 15.

Despite Newport testifying that he had no idea how Jane Doe #1 knew he had prostate cancer and does not recall telling Jane Doe #1 that he as a device located in his scrotum, Newport now states in his brief that he may have told her he had cancer and described his implant to her Con. App. p. 226 ll. 19-21 & p. 218 l. 24 – p. 219 l. 2. Newport has to change his version of events and concede that he may have told Jane Doe #1 about his cancer and the device, because it is impossible for him to explain how she would have this knowledge.

Newport then goes on to speculate that Jane Doe #1's former "patients likely included cancer patients and survivors and perhaps even individuals with sexual devices," and that "JD1 is a CNA likely to know that a prostate cancer survivor may have an implanted device." Br. 35 & 38. However, Jane Doe #1 testified that she does not recall treating any prostate cancer survivors or any patients with a medical device in their scrotum. Con. App. p. 112 l. 20 – p. 113 l. 10. Contrary to Newport's statement that a "CNA would not be shocked to see a rectangular device she claims she saw above Mr. Newport's beltline," a client would be shocked by her attorney lifting up his shirt during a closed door meeting at his law office. Br. 35. Additionally, Newport fails to explain why Jane Doe #1 testified the device was for erections and not a device for urinary incontinence to make her account more believable if she is such an expert in this area.

Newport repeatedly discusses Jane Doe #1's statement she made during the February 7 call, that there was tubing coming out of Newport's stomach, which is inaccurate. Jane Doe #1 testified that she made that statement during the recorded telephone conversation because she was nervous. Con. App. p. 65 l. 24 – p. 66 l. 19. In her statements to law enforcement and during her testimony at the hearing, Jane Doe #1

repeatedly stated that all the components of Newport's device were located underneath his skin. Con. App. p. 57 ll. 14-19 & p. 66 ll. 5-8.

Newport repeatedly states in his brief that Jane Doe #1 reported to law enforcement and testified at the hearing that she "may" or "might" have seen a scar. Br. 38 & 40. Newport incorrectly states:

> JD1 did not describe the scar or its location to Detective Payton. When Detective Payton first asked her if she saw a scar, she answered she 'may' have seen a scar. Only after many months and two trials with photos being published is JD1 able to describe a scar.

Br. 40. Newport's entire basis for using the word "may" or "might" is based upon his own attorney's question at the hearing:

> Mr. Moeller: Did you describe to the police officers that you *thought* you saw a scar on his abdomen?
> Jane Doe #1: Yes.

Con. App. p. 120 ll. 9-12 (emphasis added). It was not Jane Doe #1's statement to police or her testimony at the hearing that she "may" have seen a scar. Rather, Jane Doe #1 testified she did see a scar on Newport's stomach. Con. App. p. 57 ll. 20-22. Detective Payton testified that Jane Doe #1 told him that she saw a scar on Newport's abdomen prior to his execution of the search warrant. Con. App. p. 125 ll. 14-21, p. 126 ll. 4-7, & p. 127 ll. 15-18. In an attempt to minimize the importance of Jane Doe #1's knowledge of the scar, Newport states, "If one has prostate surgery,

there is likely a scar." Br. 40. Yet, Newport testified that he had no idea how Jane Doe #1 knew about his prostate cancer, which begs the question of how Jane Doe #1 would have known he had surgery. Con. App. p. 202 ll. 19-21.

Newport testified at the hearing that he did not tell Jane Doe #1 that he had red pubic hair. Con. App. p. 219 ll. 19-21. Newport attempts to explain in his brief how Jane Doe #1 knew that Newport's pubic hair was red. Newport states, "Steve's office has many photographs of his grandchildren with red hair." Br. 41. However, only one out of five of Newport's grandchildren have red hair. Con. App. p. 221 l. 23 – p. 222 l. 12. Newport also discusses how Jane Doe #1 could have inferred he had red pubic hair based upon his head hair. Br. 40-41. However, there is nothing in the record providing when his head hair was also red or that any of the family photos showed Newport having red head hair.

In his brief, Newport discusses his interpretation of what boxers mean to him. Newport goes on to state, "Mrs. Newport testified Mr. Newport has not worn boxer underwear in the sense of loose-fitting shorts." Br. 41. However, this is not in the record. At no point does Mrs. Newport testify with regards to her husband's undergarments. In considering the actual testimony provided on the subject, Newport

testified that he told the Board that he has never owned a pair of boxer underwear. Con. App. p. 254 & p. 221 ll. 13-16. Newport further testified that he has never owned a pair of boxer briefs. Con. App. p. 221 ll. 17-19. Jane Doe #1 testified Newport was wearing boxers on the date of the incident. Con. App. p. 76 ll. 21-22. The investigating detective testified Newport was wearing boxer brief underwear on the date the search warrant was executed. Con. App. p. 127 l. 24 – p. 128 l. 1. Due to the lack of testimony from Newport and Jane Doe #1 about their interpretations of different male undergarments, the brief testimony on the subject neither supports nor discredits either party.

Newport repeatedly states in his brief that there is no rectangular or square device located in his abdomen. However, Newport did admit at the hearing that there is a device located in his abdomen. Con. App. p. 221 ll. 5-7. There is no way to know the actual shape or the components of the device because Newport did not provide any testimony or other evidence as to the device's shape.

Newport attacks Jane Doe #1's credibility because she testified to seeing a device underneath Newport's skin in his abdomen and Detective Payton did not. Newport inaccurately states that police officers touched Newport's abdomen as that is not contained anywhere in the record.

Perhaps on January 19, Newport was experiencing some swelling or infection with regards to the device in his abdomen that he was not experiencing two months later on March 14. Again, since Newport did not present evidence with regards to the device located in his abdomen, there is no way to know if swelling or other problems can occur associated with an artificial urinary sphincter or if the device is palpable under the skin.

Newport testified that at the time of incident, he was unable to get an erection. Con. App. p. 220 l. 25 – p. 221 l. 4. Nowhere in his brief does Newport discuss how Jane Doe #1 knew he had erection issues. Con. App. p. 54 ll. 17-22 & p. 220 l. 25 – p. 221 l. 4. Newport has chosen not to address it because he is unable to explain it. The only way Jane Doe #1 would possess this information is if Newport told her.

b. Meeting Date

Newport testified at the hearing he did not have in person contact with Jane Doe #1 on January 19, 2018, and specifically that she was not at his office at 10:45 a.m. Con. App. p. 246 ll. 3-13 & p. 249 ll. 13-16. Newport argues that the phone records support his claims. However, the phone records in fact contradict Newport's testimony. On the morning of January 19, 2018, when she called her mother at 9:25 a.m., 9:26 a.m., 9:27 a.m., and 9:28 a.m., Jane Doe #1's cell phone pinged off of cell tower 3461

indicating she was at Newport's office.[4] Con. App. pp. 447-48, p. 131 l. 21 – p. 132 l. 12, p. 136 l. 23 – p. 137 l. 20, & p. 187 ll. 6-11. When Jane Doe #1 and her mother had phone contact at 9:31 a.m., 9:34 a.m., 9:38 a.m., and 10:01 a.m. that same morning, Jane Doe #1's cell phone pinged off of cell towers 3453 and 3455, which is consistent with Jane Doe #1's testimony that she was at Newport's office at that time. Con. App. p. 448, p. 138 ll. 6-17, & p. 187 l. 17 – p. 188 l. 7. Additionally, when she received a call at 10:45 a.m., Jane Doe #1's cell phone pinged again off of cell tower 3461 indicating that she was still at Newport's office at that time.[5] Con. App. p. 448 & p. 137 l. 21 – p. 138 l. 5.

Newport told the police and the Board that he obtained settlement authority from Jane Doe #1 at an in person meeting on January 18, 2018. Ex 6A; Con. App. p. 252. Newport stated:

> During that conference in my office that day, she was having difficulty coming up with a figure and asked if she could call her Mother in Arizona. She then telephoned her Mother and spoke with her. I participated and spoke

[4] On January 10, 2019, Detective Payton conducted a "drive test" in which he made a call from a Sprint cell phone from the parking lot of Newport's law office. Con. App. p. 131 l. 15 – p. 132 l. 2. The call pinged off of cell tower 3461. Con. App. p. 132 ll. 3-12.

[5] Newport incorrectly states in his facts section that "between 9:31 and 11:48 her calls ping off towers 13453 and 13455 in Moline, Illinois," as Jane Doe #1's cell phone pinged off of tower 13461 at 10:45. Con. App. pp. 11-12/448-49.

> directly to her Mother as well on that date. It was a lengthy discussion. At the end of the telephone conference [Jane Doe #1] and her Mother agreed she would settle the case if she could net $7,500.00 in her pocket.

Con. App. p. 252. Jane Doe #1's phone never pinged off of cell tower 3461 on January 18, 2018. Con. App. pp. 446-47, p. 134 l. 17 – p. 135 l. 13, & p. 186 ll. 1-17. Additionally, Newport and Jane Doe #1 both stated that at some point during their meeting, Jane Doe #1's mother spoke with them via telephone about settlement.[6] Ex. 6A; Con. App. p. 46 l. 7 – p. 47 l. 6, p. 197 ll. 2-22, & p. 198 ll. 20-23. In reviewing Jane Doe #1's phone records, Jane Doe #1 and her mother only had one phone conversation with each other on January 18, 2018, which was at 6:36 p.m. Con. App. pp. 377-78. Also, it does not make sense that if he obtained settlement authority and everything had been resolved earlier in the day during their in person meeting, why Newport and Jane Doe #1 would have had three different phone conversations late that afternoon and into the evening hours, one of which being extremely long.[7] Con. App. pp. 403-04.

[6] Jane Doe #1's mother's phone number is (520) 403-0712. Con. App. p. 47 l. 24 – p. 48 l. 2.

[7] Newport called and spoke with Jane Doe #1 from 4:24 p.m. to 6:00 p.m. Con. App. p. 403.

Despite Newport telling the police during his interview and the Board in his response that he met with Jane Doe #1 in person on January 18, 2018, and was present for a phone call with her mother during that meeting, he now states in his brief, "Perhaps the 'meeting' on the calendar was to be or became a phone call rather than in-person meeting." Br. 18; Ex 6A; Con. App. p. 252. Perhaps Newport's attorney is trying to concoct an explanation as to why Jane Doe #1's phone never pinged off of cell phone tower 3461 on January 18. Con. App. pp. 446-47, p. 134 l. 17 – p. 135 l. 13, & p. 186 ll. 1-17. However, this latest version fails to explain why there were no phone calls between Jane Doe #1 and her mother that day.[8] Con. App. pp. 377-78.

Newport insinuates that because he did not witness the release, exhibit Q, that that is proof he did not meet with Jane Doe #1 on January 19, 2018. Newport goes on to state:

> Exb. Q clearly shows Rosalie Bergert witnessed her signature on January 19, 2018. . . . Mrs. Newport testified Rosalie Bergert would not be given this form if Mr. Newport was going to be meeting with his client or if he was present. Mrs. Newport testified Rosalie Bergert would not have witnessed the Release or have the Release if Mr. Newport planned to meet with JD1.

[8] Jane Doe #1 and her mother only had one phone conversation with each other on January 18, 2018, which was at 6:36 p.m., after Jane Doe #1 got off the phone with Newport. Con. App. pp. 377-78.

Br. 25-26. Rosalie Bergert never testified at the hearing. Newport made no attempts of calling Ms. Bergert to testify telephonically, taking her deposition, or obtaining an affidavit from her. Newport relies on his wife's testimony about his office protocol. She has not worked in that office for thirteen years. Con. App. p. 225 ll. 7-8. Jane Doe #1 could have signed the release prior to Newport's arrival at the office, as she testified that she had to wait for Newport to arrive. Con. App. p. 44 l. 11 – p. 45 l. 1. Jane Doe #1 could have also signed the release in his office, and Newport had Ms. Bergert witness it on his way to the fax machine. Regardless of who witnessed it, the dated release proves that Jane Doe #1 was at Newport's office on January 19.

Newport testified that he was also at his office the morning of January 19. Con. App. p. 249 ll. 1-12. Newport specifically testified that he was the one who faxed the release at 10:16 a.m., and was "there earlier than that." Con. App. p. 249 ll. 1-12.

Additionally, Mrs. Newport's testimony regarding her morning schedule is not evidence that Newport and Jane Doe #1 did not meet at his office on January 19. Newport incorrectly states, "[Mrs. Newport] testified she left the house that morning sometime *after* 9:30 a.m. and

closer to 9:40 a.m." Br. 30 (emphasis added). Mrs. Newport's actual testimony was, "so leaving the house would have been approximately 9:30 a.m. for me. Con. App. p. 233 ll. 18-19. Mrs. Newport also testified that it was possible that she left the house earlier that morning for her prehearing. Con. App. p. 239 ll. 13-15. It has been two years since the date of the event. Just like she could not specifically recall what Newport brought her home for lunch that day and made an educated guess that it was one of their "two bring-home places," Mrs. Newport made an educated guess about what time she left the house based upon the start time of the hearing. Con. App. p. 237 ll. 5-7. Mrs. Newport did not even recall that she had a hearing in Scott County and lunch with her husband initially. "I wondered where I was on the 19th. I don't know. So I looked at my calendar." Con. App. p. 232 ll. 13-15. Newport could have left right after Mrs. Newport left for his meeting with Jane Doe #1 and went home after the assault and had lunch with his wife.

Contrary to Newport's statements, exhibits T-1 and T-2 do not prove that Newport met with Jane Doe #1 on January 18, 2018. Those exhibits are illegible or could have been altered after the fact. On the evening of January 18, Newport and Jane Doe #1 spoke on the telephone until 6:00 p.m. Con. App. p. 403. According to Jane Doe #1, it was during

this phone call that they set up their meeting for the next morning. Con. App. p. 43 l. 14 – p. 44 l. 1. It is possible Newport did not feel the need to write the meeting on his calendar because it was the next day, or it was late and he was trying to get home and forgot to put it on his calendar. Newport testified that it was possible that he had a meeting with Jane Doe #1 and did not put it on his calendar, just as he failed to put his meeting on February 15, 2018, with Jane Doe #1 on his calendar. Con. App. p. 246 l. 17 – p. 248 l. 11.

c. February 7, 2018 Call

On February 7, 2018, Jane Doe #1 and Newport stated:

> Jane Doe #1: Well what about, what about payment options? I mean like you previously mentioned?
> Newport: Payment option, what do you mean payment options?
> Jane Doe #1: You know….
> Newport: What does that mean?
> Jane Doe #1: Your, you previously mentioned about payment for you or whatever.
> Newport: Yeah?
> Jane Doe #1: What about
> Newport: Don't worry about that. (clears throat) Excuse me.
> Jane Doe #1: You don't….
> Newport: Let's just first have to…let's just first have to get this thing started. Basically sign this paper and send it back to them. Or we won't get the money. So yeah, just sign it and send it back to them. It's no big deal.
> Jane Doe #1: Well, what about the sexual favors and stuff?

Newport: Sexual favors, what do you mean? You mean…

Jane Doe #1: Well, what you were talking about.

Newport: You'd give me a blow job you mean?

Jane Doe #1: Yeah, that's what you mentioned.

Newport: Yeah? Don't worry about it, we'll figure it out.

Jane Doe #1: Ok? Like when are we going to figure it out?

Newport: I don't know. I'm not worried about it. You're not going anywhere.

Ex. 7; Con. App. p. 296. During the call, Newport never asked Jane Doe #1 what she was talking about or disputed her statements about their previous discussions about sexual favors. Con. App. p. 124 ll. 6-13 & p. 213 l. 14 – p. 215 l. 6. Newport asserts that the fact he uses the term "blow job" in the call first has no significance. Yet, that terminology is consistent with Jane Doe #1's initial report to the police. Con. App. p. 124 ll. 14-18. Additionally, Newport discusses how Jane Doe #1 stated during the recording that she believed Newport to be joking when discussing the sexual favors, but Newport then left out the part of her testimony that she only said that because she was nervous while making the recording. Con. App. p. 66 ll. 9-22. Lastly, Newport is unable to explain why he never brought up this phone call, a call in which "sexual favors" and a "blow job" are discussed, during his interview with Detective Payton. Con. App. p. 215 l. 12 – p. 217 l. 15.

Newport states, "The 'transcript' provided by the prosecutor is not by a court reporter. It is a transcript from an unknown person who listened to the transcript apparently in preparation of the criminal trial." Br. 43. The Board itself does not know who transcribed the recording and wonders how Newport knows for certain that it was not done by a court reporter. Regardless, Newport never objected to the accuracy of the transcript prior to his trial brief, and in fact, at the time of hearing, it was his attorney who brought up the transcript "so the people can follow along with the transcript while listening to the tape." Con. App. p. 64 l. 20 – p. 65 l. 3. Newport states that "the transcript the prosecutor provided from the unknown source adds the words 'you mean' behind this sentence. Those words are not there." Br. 43. The Board disagrees with that assertion. Further, the Court can listen to the recording of the phone call and make their own determination about what is said on the call.

d. Attacks on Jane Doe #1's Credibility

Newport discusses how Jane Doe #1 testified she made four phone calls to Newport after she left from the parking lot of his office and drove straight to Slay's apartment. The Board agrees that Jane Doe #1 was mistaken in her testimony about those two issues. Memories can be affected by a traumatic event, like your attorney exposing his genitals to

you. Con. App. p. 240 ll. 1-5. Memories are imperfect, but phone records are not affected by trauma. Rather than going straight to Slay's residence, perhaps Jane Doe #1 went home. Newport states in his brief that Jane Doe #1's phone pinged off of the tower near her home at 12:03 and 12:44 p.m. Br. 21-22; Con. App. p. 449. Later that afternoon, Jane Doe #1 did go to Slay's apartment. Con. App. pp. 449-50, p. 58 ll. 16-20, & p. 139 l. 2 – p. 140 l. 19. After arriving at Slay's apartment, Jane Doe #1 made those four calls to Newport from Slay's parking lot or residence.[9] Just because Jane Doe #1 was not one hundred percent correct on her timeline with regards those two issues does not mean that Newport did not assault her and expose himself to her on January 19, 2018.

Newport also states, "Meeting your close friend minutes, according to JD1, after being assaulted, JD1 does not say one word about it to her friend?" Br. 32. However, since Jane Doe #1 was mistaken about her timeline, she did not meet her friend within minutes after being assaulted but hours later. Newport correctly states in his brief, "The gap between this message [4:23] and the last contact with Kelsie at 2:36 suggest this

[9] Jane Doe #1's cell phone pinged off of cell towers 3437 and 3434 when she called Newport's office at 2:38:28, 2:38:40, 2:39:22, and 2:20:47 p.m. Con. App. p. 450 & p. 139 l. 23 – p. 140 l. 11.

is the time that JD1 was at Kelsie Slay's residence on the 19th in the afternoon." Br. 24. When she did meet with Slay hours later, Jane Doe #1 chose not to discuss her assault with Slay. Instead, Jane Doe #1 spoke of her unhappiness with the settlement, as the settlement discussions were happening contemporaneous to when she was at Slay's residence. There is no right way for a victim to act or a certain protocol for a victim to follow. To assume because she chose not to share her assault with Slay, makes her story less credible, especially in light of all the specific and intimate details that Jane Doe #1 knew, would be a dangerous assumption to make. Moreover, Jane Doe #1 did disclose the assault to someone, her mother. Jane Doe #1 testified that she wanted wait to report the assault until her mother was able to go with her to the police. Con. App. p. 63 ll. 1-6. Her mother was residing in Tucson, Arizona at the time, and Jane Doe #1 went to the police station to report the assault the day after her mother flew into town. Con. App. p. 62 l. 22 – p. 63 l. 15.

Newport insinuates Jane Doe #1 was trying to hide something by testifying she did not recall signing the release on January 19. It had been a long time since the date of the incident, and Jane Doe #1 was not denying she signed the document, she simply testified that she just does not recall doing so. Con. App. p. 111 ll. 9-24. Newport states Jane Doe #1

never testified that he left the meeting to send a fax, but Jane Doe #1 did testify Newport left his office on two occasions during their meeting, when he could have sent a fax. Con. App. p. 51 ll. 10-13 & p. 106 l. 19 – p. 107 l. 10.

Newport incorrectly states, "JD1 FIRST TOLD POLICE HER MEETING WAS FROM 11 TO NOON." Br. 28. Jane Doe #1's initial report to Officer Kelling was that the *incident* occurred between eleven and noon on the 19th. Con. App. p. 150 ll. 14-20 (emphasis added). Newport goes on to state that according to her, she spoke to her mother "*just* prior to the alleged assault" and her "cell phone records do not show a call to her mother from 11 to Noon." Br. 28-29 (emphasis added). Newport's attorney uses the word "just," and Jane Doe #1's phone records clearly show she spoke to her mother at 9:38 a.m. and 10:01 a.m., or prior to the assault. Con. App. p. 400.

Newport attempts to make a significant issue out of Jane Doe #1's testimony on what hand Newport placed on his scrotum. Jane Doe #1 testified that "I had my phone in my right hand, so it *could have been my left hand* the way that I was facing towards him." Con. App. p. 93 ll. 16-20 (emphasis added). Jane Doe #1 did testify that during her deposition she said that Newport grabbed her right hand. Con. App. p. 97 ll. 20-22.

Detective Payton was never asked at the hearing what hand Jane Doe #1 reported to law enforcement that was grabbed by Newport. Jane Doe #1's inability to recall what hand Newport grabbed is not indicative that the assault did not occur. Whichever hand Newport grabbed, Jane Doe #1 felt a device and tubing in Newport's scrotum that is not visible to the naked eye. Con. App. p. 220 ll. 7-12. Jane Doe #1 knows of such a device and tubing because she felt the device and tubing.

Newport accuses Jane Doe #1 of giving conflicting testimony about whether or not she knew if people were in the office at the time of incident. Jane Doe #1 knew the receptionist was in the office earlier, and possibly attorney Arthur Buzzell was there too, but she had no way of knowing if people were still in the office at the time of the incident that occurred behind Newport's closed office door. Con. App. p. 55 l. 21 – p. 56 l. 7.

Newport argues since Jane Doe #1 states that Newport rushed to his office door that she is not credible because of Newport's balance issues. Even though Newport had some balance issues, he was walking without problems at that time which is evidenced in his video recorded interview with Detective Payton. Ex. 6.

Newport alleges that he only called Jane Doe #1 one time during the afternoon of January 19, 2018, despite her phone records showing three distinct calls, Slay's testimony that Jane Doe #1's "phone was ringing all the time," the "CW" being next to opposing counsel's telephone number on Newport's phone records, and Newport testifying himself that he could have put opposing counsel on call waiting while he called Jane Doe #1 three separate times. Con. App. p. 381, p. 408, p. 192 ll. 17-18, & p. 245 ll. 9-23.

Jane Doe #1 testified that Newport said to her during the last phone call between them on January 19, "you can give me a blow job." Con. App. p. 119 l. 17 – p. 120 l. 2. Newport inaccurately states that Jane Doe #1 gave inconsistent testimony as to that fact. Jane Doe #1 testified that she did not recall if she specifically *told* the police of Newport's statement of her giving him a blow job, not that Newport never made that statement to her. Con. App. p. 104 ll. 14-17. Apparently Jane Doe #1 did bring up Newport's statement of her giving him a blow job because Detective Payton testified that that terminology is consistent with Jane Doe #1's initial report to the police. Con. App. p. 124 ll. 14-18.

Newport criticizes Jane Doe #1 for calling Newport after the incident despite the police instructing her not to. Newport cites to

Detective Payton's testimony and then speculates the reason for her calls. However, Newport leaves out the next sentence of Detective Payton's testimony to put those calls into context, "I also know that she had other documents that she was trying to get ahold of, so I don't know if that's what she was attempting to do at that time." Con. App. p. 182 ll. 10-13.

Newport states that Jane Doe #1 deleted text messages and calling information "likely after being told by Officer Payton, that he wanted to examine her phone." Br. 35-36. While Jane Doe #1 did testify that she has deleted text messages before in order to make space, there is no evidence as to when she deleted messages or that the messages she deleted were pertinent to the incident or even from the relevant time period. Detective Payton testified that Cellebrite can recover deleted data. Con. App. p. 177 ll. 9-23. Detective Payton, who forensically examined Jane Doe #1's phone using Cellebrite, testified that he found no deleted information in her call log. Con. App. p. 179 ll. 14-15.

Newport later states, "JD1 had deleted information in January and mid-February as shown at Tx. 258[.] . . . The information before and after that deletion was still intact showing it was a purposeful removal of that specific time period." Br. 59-60. This statement is not supported by any evidence or testimony in the record. Detective Payton testified that the

earliest entry date found in Jane Doe #1's extraction was February 20, 2018, because earlier data "had fallen off." Con. App. p. 173 ll. 2-7 & p. 180 ll. 8-19. Detective Payton also testified that he found no deleted information in her call log but determined she deleted nineteen of eighty calendar entries. Con. App. p. 179 ll. 8-15. Detective Payton did not testify as to what time period the nineteen calendar entries were associated with and did not testify as to what information was available before and after the deletions.

Additionally, there is a logical explanation for the deletions: people sometimes delete calendar entries when their plans change. Jane Doe #1 did not delete one entry but nineteen entries. The fact that Jane Doe #1 deleted some calendar entries hardly suggests an attempt to hide evidence.

Newport states, "[Jane Doe #1's] children were removed from her care." Br. 10. This information is nowhere in the record and is completely irrelevant to these proceedings. While the fact that Newport was court-appointed to represent Jane Doe #1 many years ago in a juvenile case is in the record, Newport never asked Jane Doe #1 about her juvenile case at the hearing, which would have given her an opportunity to explain the circumstances of the case.

Newport inaccurately states that Jane Doe #1 never alleged Newport made inappropriate sexual comments. Br. 36. In response to Newport's counsel's question, Jane Doe #1 answered that yes, Newport did make sexually inappropriate comments to her during the juvenile case. Con. App. p. 82 ll. 3-10.

At hearing and in his brief, Newport emphasizes Jane Doe #1's answer and amended answer to interrogatory 14 in her civil suit, which asked Jane Doe #1 if she had been in a prior motor vehicle accident. Br. 13; Con. App. p. 86 ll. 4-15 & p. 114 l. 8 – p. 115 l. 1. Newport states, "Her case failed on the eve of trial due to her being dishonest under oath on 8-29-16 and second time on 1-17-17." Br. 13. Contrary to Newport's statements, Jane Doe #1 was not trying to hide the fact that she was in a prior car accident which is evidenced by her disclosure of the accident during her deposition by opposing counsel on October 10, 2016, which was prior to the submission of the amended interrogatory responses on January 17, 2017. Con. App. p. 209 l. 15 – p. 212 l. 9. It was Newport who failed to properly amend her interrogatory response knowing full well she had been in a prior car accident because he too had attended Jane Doe #1's deposition. Con. App. p. 211 ll. 15-18.

Additionally, Jane Doe #1 told Newport who her prior treatment providers were for the past twenty years when the suit was initiated, which is evidenced by exhibit 16. Con. App. pp. 409-10 & p. 200 l. 8 – p. 201 l. 6. It was Newport as her attorney who failed to examine those medical records to assess the relevance as to her current claims.

At the hearing, Newport initially testified that he did not know prior to Chad VonKampen's deposition of Dr. Dolphin that Jane Doe #1 was in a car accident in 2011. Con. App. p. 203 ll. 15-18. Yet when confronted with the transcript of Jane Doe #1's deposition, which took place prior to VonKampen's deposition of Dr. Dolphin, Newport had to change his testimony. Con. App. p. 205 l. 24 – p. 206 l. 6 & p. 209 l. 22 – p. 211 l. 18. Further, a note from Newport's file dated December 17, 2017, suggests that Newport's office knew that their expert witness was unaware of Jane Doe #1's 2011 car accident prior to his deposition. Con. App. p. 411 & p. 204 l. 6 – p. 208 l. 4.

e. Attacks on Detective Payton

Newport spends approximately twelve pages of his brief attacking Detective Payton and his investigation. Br. 49-60. Detective Payton has been a law enforcement officer for twenty-one years and a detective for fifteen years. Con. App. p. 122 ll. 13-23. Detective Payton testified that he

has previously encountered a complaining witness in a sexual assault investigation to have given him false information, therefore indicating his unbiased approach to this type of allegation. Con. App. p. 184 ll. 1-5.

Newport attacks Detective Payton for failing to interview certain witnesses, even though none of these other witnesses were present during the assault and indecent exposure according to Jane Doe #1. Newport then states Detective Payton interviewed Art Buzzell with regards to a burglary that occurred at their law office and could have asked him questions about this incident at that time. However, this alleged interview and burglary is nowhere in the record.

Newport incorrectly states, "Detective Payton did not record any of the many interviews with JD1." Br. 53. In response to Newport's counsel's own question at the hearing, Detective Payton testified that there were recorded interviews or conversations with Jane Doe #1. Con. App. p. 141 ll. 3-7. Detective Payton testified that he recorded two separate interviews with Jane Doe #1, one that occurred on February 7, 2018, and one interview via telephone in which they discussed her phone records. Con. App. p. 185 ll. 12-19.

Newport incorrectly states that Detective Payton did not do a background check on Jane Doe #1 and was not aware of her involvement

in making prior sexual allegations in the past. Br. 15 & 63. Detective Payton actually testified, "Obviously, I looked into her history that we had in our computer system at the time to see if there had been, you know, any past reports of such things, which I don't recall seeing." Con. App. p. 144 ll. 6-10. Further, the Board does not see the relevance of whether or not Jane Doe #1 or her family were victims of abuse or sexual assault in the past.

Newport attacks Detective Payton for not requesting from Newport his computer, telephone, or calendar, even though Newport could have provided Detective Payton with any information he wanted him to review.

f. Miscellaneous Arguments

Newport discusses that he was found not guilty in two criminal trials regarding the allegations involving Jane Doe #1. This is completely irrelevant to the proceedings in this matter. *See Stowers*, 823 N.W.2d at 13 (holding "even acquittal of criminal charges, is not a defense to [rule 32:8.4(b)]").

Newport discusses that there is no physical, forensic, or eyewitness evidence to support Jane Doe #1's allegations. However, Newport fails to state what sort of evidence would exist under these circumstances.

Newport exposed himself to Jane Doe #1. Jane Doe #1 does not allege that Newport grabbed her hand forcefully, Newport ejaculated during the encounter, or that any other witnesses were present during their closed door meeting. Many crimes occur without leaving behind physical, forensic, or corroborating eyewitness evidence. Newport brings up that there was "[n]o testimony from her mother who was in frequent phone communication with her on the day of the alleged assault." Br. 8. However, Jane Doe #1's mother was not present during the assault and her statements would constitute hearsay.

Newport claims he had no idea he was being recorded during their meeting on February 15, 2018, during which he did not act or say anything inappropriate. However, Jane Doe #1 believed Newport was suspicious about their meeting. Con. App. p. 67 ll. 15-23. Prior to their meeting, Jane Doe #1 did not promptly return Newport's phone calls like she usually did. Con. App. p. 68 ll. 6-17 &. p. 120 ll. 16-18. During their meeting, "[Newport] was more anxious and messing around with his phone a lot more, and he changed the meeting from his office to the conference room, which is not normal." Con. App. p. 68 ll. 2-5 & p. 120 l. 11 – p. 121 l. 16. Additionally, Jane Doe #1 set a recording device, a camera, and her cell phone out on the desk and table during their

meeting, which could have caused Newport to suspect he was being recorded. Con. App. p. 68 l. 18 – p. 69 l. 4. Jane Doe #1 testified that she "would have no idea" if Newport knew or did not know he was being recorded at that meeting. Con. App. p. 116 l. 25 – p. 117 l. 9.

Newport states that his "physical and speech limitations could be observed at the hearing and on the video of the police questioning on 3-14-18." Br. 9. The Board finds this to be completely irrelevant.[10] At the time of the incident, Newport's physical and speech limitations were "not severe," which is evidenced in his recorded interview with Detective Payton showing Newport walking into the interview just fine and speaking without any problems. Ex. 6; Con. App. p. 108 ll. 14-18. At the time of hearing, Newport was able to convey his answers to the questions asked. Newport also states, "Mrs. Newport testified Mr. Newport's short term and long-term memory is impaired," and that Newport would not be able to remember details of Jane Doe #1's case. Br. 9-10. However, Newport testified that he remembered many details about his representation of Jane Doe #1 and the time around the incident. Further,

[10] Newport has not argued he is incompetent to face disciplinary proceedings.

if there was a detail Newport could not remember, Newport testified to that effect.

II. The Board has proven by a convincing preponderance of the evidence that Stephen Warren Newport engaged in sexual harassment in violation of Iowa Rule of Professional Conduct 32:8.4(g).

A. Rule 32:8.4(g)

Iowa Rule of Professional Conduct Rule 32:8.4(g) states, "It is professional misconduct for a lawyer to engage in sexual harassment." Sexual harassment is defined as "any physical or verbal act of a sexual nature that has no legitimate place in a legal setting." *Moothart*, 860 N.W.2d at 604 (citation omitted). Sexual harassment includes "sexual advances, requests for sexual favors, and other verbal [or] physical conduct of a sexual nature." *Id*. (quoting *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Steffes*, 588 N.W.2d 121, 124 (Iowa 1999) (quoting Black's Law Dictionary 1375 (6th ed. 1990)).

"[S]exual harassment also encompasses what could be considered 'put downs,' in the form of gender harassment that is aimed at degrading or demeaning women, often to maintain gender hierarchy. *Watkins*, 944 N.W.2d at 887-88 (citations omitted). The Court does "not require the

sexually harassing conduct to be unwelcome or 'more than an occasional stray comment.'" *Id*. quoting *Moothart*, 860 N.W.2d at 604.

B. Jane Doe #1

Newport told Jane Doe #1 that he had a device implanted in his scrotum and had difficulties getting an erection. Con. App. p. 53 l. 12 – p. 55 l. 3. Newport next exposed his genitals and grabbed Jane Doe #1's hand and placed it on his scrotum, so that she could feel the device and tubing. Con. App. p. 54 l. 11 – p. 55 l. 10. Newport then massaged his penis in front of Jane Doe #1. Con. App. p. 54 l. 17 – p. 55 l. 15. Newport commented that his pubic hair was red and that his granddaughter had inherited her red hair from him. Con. App. p. 56 ll. 14-17. Later that day, Newport told Jane Doe #1 that she could take off her clothes and give him a "blow job." Con. App. p. 62 ll. 10-13 & p. 119 l. 17 – p. 120 l. 2.

C. Jane Doe #2

On one occasion, Newport made a sexually inappropriate comment insinuating that Jane Doe #2 could pay for his legal fees in the form of a sexual favor. Con. App. p. 22 l. 13 – p. 23 l. 13. On another occasion, Newport told Jane Doe #2 that he had a hernia of the groin and asked her if she wanted to see it. Con. App. p. 24 ll. 10-19. On a third occasion, Newport asked Jane Doe #2 if she wanted him to ask her ex-husband if

she could pay her bill for his legal services with sex. Con. App. p. 26 l. 23 – p. 27 l. 20. On a fourth occasion, Newport invited Jane Doe #2 to come to his office on a Saturday to pick up her paperwork. Con. App. p. 29 l. 17 – p. 30 l. 11.

As stated previously, the Commission found Jane Doe #1 and Jane Doe #2 to be credible and found that Newport's testimony was not credible. App. p. 19. The Board proved by a convincing preponderance of the evidence that Newport violated rule 32:8.4(g) when he made verbal comments of a sexual nature to both Jane Doe #1 and Jane Doe #2 and when he assaulted and exposed himself to Jane Doe #1.

D. Response to Newport's Brief

Newport attempts to explain his comment about asking Jane Doe #2 if she wanted him to close the door as "an innocent question to a client to determine if that client wanted privacy at an otherwise crowded busy and public place." Br. 62. Newport's explanation does not address why Jane Doe #2 would have needed privacy to write a check and why Newport laughed when he asked her the question. Con. App. p. 22 ll. 13-23. Additionally, there is nothing in the record to suggest that their meeting location was crowded or busy.

Newport next claims the third incident occurred "presumably during regular business hours when staff and clients and (sic) likely present, (with no claim that the door is shut)." Br. 63. Again, nowhere in the record does it suggest that anyone else was present in the office or that the door was open.

Newport argues Jane Doe #2 is not credible because she did not fire Newport after he made the inappropriate comments. Jane Doe #2 testified, "I had no money. It was really important to finish up my child custody case. You know, I could hardly afford rent, let alone hire another attorney with a huge deposit. The idea of that was just impossible." Con. App. p. 30 l. 25 – p. 31 l. 4. Newport's attempt to attack Jane Doe #2 fails and instead highlights her vulnerability as a client having to endure the sexual harassment because she had no other options.

Newport states, "the complaints by JD2 should not be considered because she did not waive attorney." Br. 61. Based upon arguments in his trial brief, the Board assumes that Newport is arguing that the misconduct committed against Jane Doe #2 should not be considered because she did not waive attorney-client privilege. Newport's attempt to hide behind privilege is a ploy. Clearly rules 32:1.6 and 32:1.9 allow an attorney to reveal information in order to put up a defense. "Where a legal

claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense." Iowa R. Prof'l Conduct 32:1.6 cmt. 10.

III. The sanction proposed by the Grievance Commission is appropriate.

There is no standard sanction with respect to misconduct in attorney disciplinary cases. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Blessum*, 861 N.W.2d 575, 591 (Iowa 2015). The Court takes into account the "totality of facts and circumstances" of each case. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Deremiah*, 875 N.W.2d 728, 737 (Iowa 2016). The Court's considerations include "the nature of the violations, the need for deterrence, protection of the public, maintenance of the reputation of the bar as a whole, and the attorney's fitness to continue practicing law, as well as any aggravating or mitigating circumstances." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Bartley*, 860 N.W.2d 331, 337 (Iowa 2015) (citation omitted).

A. Aggravating Factors

The Commission found Newport's pattern of misconduct to be an aggravating factor. App. p. 15. Newport sexually harassed not one but two of his female clients. *See Moothart*, 860 N.W.2d at 617. The Commission also found Newport's inconsistent testimony to be an aggravating factor. App. p. 16; *see Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Tofflemire*, 689 N.W.2d 83, 92 (Iowa 2004) (holding untruthful testimony is an aggravating factor).

There are additional aggravating factors present in this case which support the Commission's recommended sanction. The crimes themselves in this matter are aggravating factors. Newport committed the crimes of sexual abuse, prostitution, and indecent exposure. Newport also sexually harassed two of his clients which is "reprehensible conduct." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Stansberry*, 922 N.W.2d 591, 600 (Iowa 2019). Newport "committed multiple crimes [and instances of sexual harassment] that victimized women for his own sexual gratification." *Id*. at 599.

The vulnerability of Newport's clients is an aggravating factor. *Moothart*, 860 N.W.2d at 617. In Jane Doe #2's case, she sought legal assistance in her child custody case, "a matter[] of paramount personal

importance," and she had limited financial means. *McGrath*, 713 N.W.2d at 703.

Client harm is another aggravating factor. *Id*. "Sexual harassment in any form can have devastating effects for the women who experience it. *Watkins*, 944 N.W.2d at 889. Newport's conduct harmed both Jane Doe #1 and Jane Doe #2.

B. Mitigating Factors

The Commission found Newport's cooperation, health issues, and his desire to retire to be mitigating factors. App. pp. 16-17. Cooperation is a mitigating factor. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Jacobsma*, 920 N.W.2d 813, 821 (Iowa 2018). The Court also "consider[s] health issues to be a mitigating factor in determining the appropriate sanction." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Goedken*, 939 N.W.2d 97, 109 (Iowa 2020) (citation omitted).

While "[v]oluntary cessation of practice or a self-imposed practice limitation . . . can be a mitigating factor," *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Barnhill*, 885 N.W.2d 408, 425 (Iowa 2016), "a lawyer may not avoid the disciplinary process involving a potential revocation of the lawyer's license through a strategy of voluntary retirement." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Parrish*, 925 N.W.2d 163, 170 (Iowa

2019) (citations omitted). Newport submitted his application for retirement just two days before the Grievance hearing. Con. App. p. 250 ll. 8-16. The close proximity in time to the hearing certainly suggests an attempt to evade disciplinary action.

C. Relevant Case Law

Sanctions for attorneys who commit sexual misconduct have ranged from a public reprimand to a three-year suspension. *Moothart*, 860 N.W.2d at 615. In *Watkins*, the Court found Watkins to have violated rule 32:8.4(g) when he made sexually inappropriate comments to his legal assistant, showed his legal assistant and an assistant county attorney nude photographs of his wife, and appeared in front of his legal assistant in only his boxer briefs on at least two occasions. 944 N.W.2d at 888. The Court suspended Watkins for six months. *Id*. at 894. The Court held that "sexual harassment is 'an issue of power,' in which those in power use their status in the powerful group at the expense of those outside of that group." *Id*. Like in *Watkins*, there was a power imbalance between Newport and his victims. *Id*. at 892. However, *Watkins* is distinguishable in one significant aspect—Watkins's conduct did "*not* involve an attorney propositioning a client, touching a client, or taking

some other inappropriate action for the attorney's own sexual gratification." *Id*. at 889.

In *Stansberry*, the Court found Stansberry to have violated rule 32:8.4(g) when he snuck into his coworkers' offices and photographed their undergarments and when he entered a coworker's home under false pretenses, so he could steal her undergarments. 922 N.W.2d at 597. The Court suspended Stansberry's license for one year. *Id*. at 601. Similarly to this case, Stansberry "targeted women . . . for his own sexual gratification" at his place of work. *Id*. at 597. The Court determined that Stansberry "used his position and his job to find his victims" and "the victims here trusted Stansberry because of their relationship with him . . . [and] Stansberry took advantage of their trust." *Id*. While "Stansberry committed multiple crimes that victimized women," Stansberry did not assault, expose himself to, or proposition his victims. *Id*. at 599.

In *Moothart*, the Court found Moothart violated rule 32:8.4(g) for sexually harassing five clients, as well as, rules 32:1.8(j) and 32:1.7(a)(2). 860 N.W.2d at 608-614. Moothart engaged in sexual relations with two clients, grabbed one client's breasts, and requested that the other two clients expose their breasts to him. *Id*. The Court suspended Moothart's license for thirty months. *Id*. at 618. Like Moothart, Newport engaged in

"a pattern of inappropriate behavior over many years that clearly harmed the women with whom he interacted as well as the profession he represented." *Id*. at 615. Newport also preyed upon his clients' vulnerability as Moothart did. *Id*. at 617.

In *McGrath*, the Court found McGrath violated rules DR 5-101(B) for engaging in sexual relations with a client, DR 1-102(A)(6) for engaging in conduct that adversely reflects on the fitness to practice law, and DR 1-102(A)(7) for engaging in sexual harassment, when he solicited sex from two different clients for payment of his legal services and had sex with one of them. 713 N.W.2d at 698, 702-03. The Court found the nature of the violations "very disturbing" and that the attorney's "behavior was a gross breach of the trust bestowed on members of the bar." *Id*. at 703. The Court determined a three year suspension was "necessary to protect members of the public as well as to discourage similar misconduct by other lawyers." *Id*. at 703-04. As in *McGrath*, Newport also solicited sex from two different clients. *Id*. Just as McGrath's clients were involved in child custody matters, so was one of Newport's clients. *Id*. Newport's conduct went even further than that of McGrath's when he assaulted Jane Doe #1.

In *Iowa Supreme Court Board of Professional Ethics & Conduct v. Furlong*, the Court found Furlong violated rule DR 1-102(A)(7) by engaging in sexual harassment of his client while at his office when he put his hands on her shoulders, attempted to rub her back, called her "pretty little thing," and tried to get her to go for a ride with him in his car. 625 N.W.2d 711, 712-13 (Iowa 2001). Furlong also violated rules DR 1-102(A)(6) and DR 5-101(B) for engaging in sexual relations with a different client. *Id*. at 713. The Court suspended Furlong's license for eighteen months. *Id*. at 714. Similarly to Furlong, Newport victimized multiple women clients and exploited "[t]he unequal balance of power in the attorney-client relationship, rooted in the attorney's special skill and knowledge on the one hand and the client's potential vulnerability on the other, [which enabled Newport] to dominate and take unfair advantage." *Id*. at 714 (citation omitted).

In *Steffes*, the Court found Steffes violated rule DR 1-102(A)(7) by engaging in sexual harassment of his client when he photographed his client in the nude under false pretenses. 588 N.W.2d at 124-25. Steffes convinced his client that allowing him to take nude photographs of her would be beneficial in her criminal defense. *Id*. The Court also found Steffes's conduct to have violated rule DR 1-102(A) by engaging in

conduct prejudicial to the administration of justice and DR 1-102(A)(6) by engaging in conduct adversely reflecting on the fitness to practice law. *Id*. at 123-24.

Like Steffes, Newport "attempted to shift the focus to the bad character of his client[.] . . . He apparently holds the belief that [his client] was not worthy of the respect and loyalty an attorney owes a client, and that the event was not sufficiently traumatizing to warrant a severe sanction." *Id*. at 125. Throughout the hearing and throughout his brief, Newport discusses completely irrelevant information in an attempt to paint Jane Doe #1 in unfavorable light. Newport also testified that he did not think Jane Doe #1 would be offended if he had discussed his scrotum with her. Con. App. p. 219 ll. 11-18.

In *Iowa Supreme Court Board of Professional Ethics & Conduct v. Hill*, the Court found Hill violated the ethics rules when he made sexual advances towards his client. 540 N.W.2d 43 (Iowa 1995). When meeting with his client at the jail, Hill talked to her about sex, hugged her, held her hand, and put his arm around her chair. *Id*. at 43-44. Additionally, Hill put his hand on her thigh and grabbed his client's buttocks on one occasion. *Id*. at 44. The Court suspended Hill's license for twelve months. *Id*. at 45. The Court held:

> A person acting in a professional role can have a disproportionate influence on those they serve. They owe to the public a solemn duty to use their considerable influence with utmost discrimination. The metes and bounds of propriety in any professional relationship must be observed scrupulously because of the professional role is held in trust.

Id. (citation omitted). Like Hill, Newport is a "repeated violator of this trust." *Id*. at 44.

In *Committee on Professional Ethics & Conduct v. Vesole*, the Court found Vesole violated rules DR 1-102(A)(3) by engaging in illegal conduct involving moral turpitude and DR 1-102(A)(6) by engaging in conduct adversely reflecting on fitness to practice law when he exposed his genitals to women. 400 N.W.2d 591-92 (Iowa 1987). The Court suspended Vesole's license for three years in light of Vesole exposing himself multiple times, the need for long-term treatment, and the recidivism statistics. *Id*. at 593.

After considering the similarities and differences with regards to the facts and aggravating circumstances between the aforementioned cases and this case, Newport's conduct is more egregious than the misconduct found in *Watkins*, *Stansberry*, *Furlong*, and *Hill*, and a lengthier suspension of his license more in line with the sanctions handed down in *Moothart*, *McGrath*, *Steffes*, and *Vesole* is warranted.

Conclusion

Based on the testimony received, the exhibits admitted in the record, and the aggravating factors identified herein, the Court should conclude that Newport violated rules 32:8.4(b) and 32:8.4(g) and should suspend his law license for at least two years.

IOWA SUPREME COURT
ATTORNEY DISCIPLINARY BOARD

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Request for Nonoral Submission

The Board requests submission of the case without oral argument.

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Certificate of Compliance with Typeface Requirements and Type–Volume Limitation

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Cambria in 14 point and contains 13,491 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

10/30/2020 /s/ Crystal W. Rink

Date Crystal W. Rink