Filed: 2/14/2020 3:37 PM

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF:	)	
	)	Case No. 19S-DI-156
CURTIS T. HILL, JR.,	)	
Attorney No. 13999-20.	)	

HEARING OFFICER'S REPORT

The Honorable Myra C. Selby, who was duly appointed and qualified as the Hearing Officer in this matter, now submits the following Hearing Officer's Report pursuant to Indiana Admission and Discipline Rule 23, Section 14(g).

PROCEDURAL HISTORY

1. This matter commenced on March 19, 2019, with the filing of the Disciplinary Commission's Disciplinary Complaint. The Disciplinary Complaint alleges that Curtis T. Hill, Jr. ("Respondent") violated Rules 8.4(b) and 8.4(d) of the Rules of Professional Conduct and Rule 22 of the Rules of Admission and Discipline.

2. Respondent filed his Answer to the Disciplinary Complaint on May 10, 2019.

3. The case came on for hearing on October 21 through October 24, 2019. The hearing was conducted in the Indiana Supreme Court courtroom and was open to the public.

4. The Disciplinary Commission was represented at the hearing by Staff Attorneys Seth Pruden and Angie Ordway.

5. Respondent was represented at the hearing by James Voyles and Jennifer Lukemeyer of Voyles Vaiana Lukemeyer Baldwin & Webb and Donald Lundberg of Lundberg Legal.

FINDINGS OF FACT

Sine Die Party

1. An event well known to people involved in the Indiana General Assembly and the legislative process is called the Sine Die[1] party. The party typically occurs immediately following the end of the legislative session and legislators, legislative employees and lobbyists attend.

2. Sine Die is not an official legislative function or event; however, it is a work-related event. (Tr. Vol. 1, 71-72; Tr. Vol. 2, 22-23, 43, 64, 79)

3. The 2018 legislative session ended after midnight on March 15, 2018, and the Sine Die party followed.

4. Over the years, the Sine Die party has been held at various locations. In 2018, Sine Die was at AJ's Lounge ("AJ's") in Indianapolis, Indiana.

5. AJ's is a bar on the near south side of Indianapolis. The size of the bar is 1,100 square feet (including the bar back, restrooms and kitchen) with a capacity of 60 persons. (Tr. Vol. 3, 58-60, 64)

6. Several witnesses gave testimony about the number of people at the March 15, 2018, party. Those estimates ranged from just over 60 (Tr. Vol. 3, 64) to over 100 people.

7. The testimony established that the bar was crowded in some areas but that people were able to move about without difficulty or limitation.

Rep. Mara Candelaria Reardon

8. Mara Candelaria Reardon is a Democratic State Representative from Munster, Indiana. (Tr. Vol. 1, 26) Rep. Reardon has been a state representative since 2006. (Tr. Vol. 1,

[1] Adjournment sine die refers to the end of a legislative session "without day." United States Senate, senate.gov/reference/glossary_term/adjournment (last visited Feb. 13, 2020).

26)

9. On March 15, 2018, after the legislative session adjournment sine die, Rep. Reardon returned to her office and a short while later changed her clothes. Rep. Reardon and her legislative assistant Samantha Lozano drove to the Sine Die party at AJ's, arriving around 1:00 AM. (Tr. Vol. 1, 28-29) Rep. Reardon was wearing a backless dress.

10. Rep. Reardon had met Respondent through a legislative committee, but did not know him well. Rep. Reardon had never socialized with Respondent.

11. Rep. Reardon testified about first seeing Respondent at AJ's on March 15, 2018:

> . . . I encountered Mr. Hill in sort of the middle of the room where the open space was and had met him in the past, exchanged some pleasantries, and then he leaned in as if he couldn't hear me and he put his hand on my back and slid it down my back into my dress and grabbed my buttocks.

(Tr. Vol. 1, 33) Rep. Reardon further testified that Respondent "start[ed] on my shoulder all the way down, running it all the way down my back." (Tr. Vol. 1, 35)

12. Rep. Reardon described the exact location of Respondent's hand, how he grabbed her butt, where his thumb was and the fact that he "squeezed" her butt. (Tr. Vol. 1, 36) Rep. Reardon was certain it was not an accident. (Tr. Vol. 1, 37) She did not consent to these acts.

13. There is no evidence that Rep. Reardon was intoxicated or was being touched by someone other than Respondent. Rep. Reardon reacted in a way that indicated she had just been assaulted. She said, "What the fuck" and told Respondent to "back off." (Tr. Vol. 1, 39) Rep. Reardon testified the experience was unpleasant and was a violation of her "physical being." (Tr. Vol. 1, 38) She also felt "shocked," anger and some fear. (Tr. Vol. 1, 38)

14. Later, Respondent approached Rep. Reardon again. On that occasion, he commented on her bare back by saying something to the effect of "that skin, that back" as he began touching her again. (Tr. Vol. 1, 40)

15. Rep. Reardon did not know others that night had also been assaulted by Respondent. She learned that later. (Tr. Vol. 1, 44-45)

Samantha Lozano

16. Samantha Lozano is a legislative assistant for Rep. Reardon. (Tr. Vol. 1, 118) She graduated from college in 2016. (Tr. Vol. 1, 118) Lozano had met Respondent at a previous event but did not really know him (Tr. Vol. 1, 123) and Respondent certainly did not recall Lozano at the time of the Sine Die event.

17. Lozano arrived at AJ's with Rep. Reardon around 1:00 AM. (Tr. Vol. 1, 121) At some point, Lozano was close to the bar and it was not crowded where she was. (Tr. Vol. 1, 124)

18. Lozano saw Rep. Reardon and Respondent together and testified: "I saw the Attorney General's hand go down Representative Reardon's back." (Tr. Vol. 1, 124) She described the movement as "slow." (Tr. Vol.1, 124) Lozano was in a good position to observe this. She was standing behind Rep. Reardon. (Tr. Vol. 1, 124) The movement of Respondent's hand appeared intentional. (Tr. Vol. 1, 124) The hand rubbing down Rep. Reardon's back made Lozano uncomfortable. (Tr. Vol. 1, 125) She observed the hand go "pretty low" before she looked away. (Tr. Vol. 1, 125). Lozano observed Rep. Reardon appeared uncomfortable and was "pretty sure she looked at people to see if they had noticed that . . . ." (Tr. Vol. 1, 125)

19. At some point in the evening, Respondent asked Lozano if she knew who he was. She told him she did and, in fact, told him that she had gone to school with Respondent's daughter.

20. Later in the evening, Lozano was close to the bar to get a drink. While she was waiting for her drink, Respondent approached. Lozano said that "it was really hot in here." (Tr.

Vol. 1, 131) Respondent replied, "Yes, you are really hot." (Tr. Vol. 1, 131) Lozano was uncomfortable with the comment made by Respondent. (Tr. Vol. 1, 131) Subsequently, Respondent "put his hand around my waist and drew me close to him." (Tr. Vol. 1, 131) When asked on direct examination what she meant, Lozano said, "[h]e pulled me close to him." (Tr. Vol. 1, 131) She was pulled so close that their waists or hips touched. Respondent's arm was around her waist. (Tr. Vol. 1, 132) Respondent had reached around Lozano's back, "grabbed [her] waist, and pulled [her] close to him." (Tr. Vol. 1, 132)

21. Lozano did not say anything. She "looked around the room and looked next to me and that's when I saw a friend and asked her – well, gave her a look so she could get me out" (Tr. Vol. 1, 132) and away from the situation.

22. Lozano felt somewhat trapped, being held by Respondent and against a chair that was next to her. (Tr. Vol. 1, 133) Lozano's friend apparently noticed and managed to get between Respondent and Lozano. (Tr. Vol. 1, 133)

23. Lozano's fear at the moment was that she "didn't want people to think that I was doing something to allow that kind of behavior." (Tr. Vol. 1, 133) Lozano was certain the Respondent's actions were not intended to guide her to the bar because she was already at the bar.

24. On direct examination, Lozano was not mistaken and did not misperceive the events.

Q. Is it possible that it didn't happen the way you remember?

A. No.

Q. Is it possible that you misunderstood what he was doing?

A. No.

Q. Did you consent to being grabbed around the waist?

A. No.

Q. Did you consent to being pulled into his body?

A. No.

(Tr. Vol. 1, 133-34)

25. Lozano did not tell anyone what happened to her, although Respondent's behavior at the Sine Die event was the talk of the office the next day. (Tr. Vol. 1, 135) Lozano wanted to keep the humiliating experience to herself and put it behind her. (Tr. Vol. 1, 135). However, during a conversation with Rep. Reardon a month later, along with Representative Harris, the Respondent's conduct came up and she told Reps. Reardon and Harris that she had also been touched and that a rude comment had been made. (Tr. Vol. 1, 136) That conversation led to a decision by Rep. Reardon to talk to Representative Brown, a senior representative in the Democratic caucus. (Tr. Vol. 1, 137) Eventually, the information was given to the legislative leaders. (Tr. Vol. 1, 137)

26. Lozano was later interviewed by chief counsel for the Indiana House of Representatives Jill Carnell and Clerk of the Indiana House of Representatives Caroline Spotts. (Tr. Vol. 1, 138) Lozano wanted the matter to remain confidential. (Tr. Vol. 1, 138) Lozano simply wanted to make sure someone knew what happened and she didn't want it to happen again. (Tr. Vol. 1, 139)

Niki DaSilva

27. Niki DaSilva was the legislative assistant for Republican Senator Ryan Mishler. She went to the Sine Die event with him. (Tr. Vol. 1, 179) DaSilva graduated from college in 2018 and is 27 years old. (Tr. Vol. 1, 177) DaSilva had some level of contact with Respondent in her job because of Sen. Mishler's dealing with the budget. (Tr. Vol. 1, 181)

28. At the Sine Die party, DaSilva first encountered Respondent at the bar. (Tr. Vol. 1, 183) She was standing at the bar with other staff members. Respondent approached and said to the women, "Don't you know how to get a drink?" and "You have to show your knee, you have to show a little skin." (Tr. Vol. 1, 183) Respondent does not deny making some type of comment along the lines described. DaSilva was uncomfortable. (Tr. Vol. 1, 184)

29. DaSilva was the friend that Lozano had made eye contact with when Respondent had grabbled Lozano. (Tr. Vol. 1, 186) DaSilva could tell Lozano was uncomfortable and she did not want to leave Lozano alone with Respondent. (Tr. Vol. 1, 186) That is when she moved in between them. (Tr. Vol. 1, 186)

30. At some point in the evening, Respondent touched DaSilva. "He put his hand on my back." (Tr. Vol. 1, 187) DaSilva "froze." (Tr. Vol. 1, 188) DaSilva testified that Respondent moved his hand down her back. She tried to move it away with her free hand. (Tr. Vol. 1, 188) When she tried "[n]udging" his hand away, he did not move it. (Tr. Vol. 1, 188-89) DaSilva testified, "He grabbed me." (Tr. Vol. 1, 189) She said Respondent grabbed her "on [her] wrist and hand." (Tr. Vol. 1, 189) She testified, "He pulled my hand and my arm down with his and touched my butt." (Tr. Vol. 1, 189) DaSilva testified that "[h]e finally let go and stared at me." (Tr. Vol. 1, 190) DaSilva was in "shock" and saw that Respondent was "smirking." (Tr. Vol. 1, 191) She found the quickest way to move away from the situation. (Tr. Vol. 1, 192) DaSilva was both angry and embarrassed. (Tr. Vol. 1, 191) She did not consent to being touched. (Tr. Vol. 1, 192)

31. On direct examination, DaSilva was not mistaken and did not misperceive the events.

> Q. Okay. Did you consent to the Attorney General grabbing your hand?

A. No.

Q. Did you consent to him moving his hand and your hand to your butt?

A. No.

Q. Did you consent to him touching your butt?

A. No.

Q. Is it possible that when he put his hand on your lower back he was trying to guide you to the bar?

A. No.

Q. How do you know?

A. I was already standing at the bar.

(Tr. Vol. 1, 192)

32. Unlike Lozano, DaSilva told others about what had happened to her. She told Zack Sand, Oliver Barie, Rep. Eberhart, Laura McCaffrey and Natalie Russell. (Tr. Vol. 1, 193) Russell worked for the Office of the Indiana Attorney General. (Tr. Vol. 1, 198) DaSilva sent two text messages to Russell. In the messages, she said: "Are you out?" and "Thanks for not answering! Also, you[r] boss grabbed my butt . . . ." (Ex. 6)

Gabrielle McLemore Brock

33. Gabrielle Brock graduated from college in 2016. She is 25 years old. (Tr. Vol. 1, 237) She received a master's degree in 2019. (Tr. Vol. 1, 237) She is the communications director for the Democratic Senate Caucus. (Tr. Vol. 1, 237) At the time of the Sine Die event, Brock was the press secretary for the Democrats. (Tr. Vol. 1, 237) She went to the Sine Die party with her intern, Allison Lukas. (Tr. Vol. 1, 240)

34. Brock was at AJ's at a bar stool against the bar. (Tr. Vol. 1, 243) She testified that Respondent pulled up a bar stool beside her, blocking her in as the bar was next to her on the other side (Tr. Vol. 1, 243-44), and asked, "Do you know who I am?" (Tr. Vol. 1, 243) Brock

testified that Respondent was less than an inch away from her and his hand was "touching my back." (Tr. Vol. 1, 244)

35. When asked to describe how Respondent touched her, she testified, "It was a sexual back rub." (Tr. Vol. 1, 244) She stated it was "slow." (Tr. Vol. 1, 244) She testified that Respondent moved his hand "[f]rom the top of my back down to the bottom of my back." (Tr. Vol. 1, 245) She said it lasted "a few minutes." (Tr. Vol. 1, 245) Brock stated that it was not possible that she misperceived the touch and that he was not just being friendly. (Tr. Vol. 1, 245)

36. Brock was afraid and worried that others might see him rubbing her and believe she had invited it. (Tr. Vol. 1, 246)

37. Brock needed to escape. She mouthed "help me" to Lukas, who was sitting across from her. (Tr. Vol. 1, 247) Lukas then came over and got her away with the excuse of going to the bathroom. (Tr. Vol. 1, 247)

38. On direct examination, Brock was clear and unmistaken in what happened:

> Q. Is it possible – let me ask you, was it an appropriate way to touch a stranger?
>
> A. No.
>
> Q. Is it possible that you misperceived and he was just being friendly?
>
> A. Absolutely not.
>
> Q. Why do you say that?
>
> A. I have never had someone in a friendly manner touch me that way before.

(Tr. Vol. 1, 245-46)

39. Brock testified that she was afraid others would think she invited Respondent over or she was enjoying the attention, which she wasn't. (Tr. Vol. 1, 246)

40. When Brock got to the bathroom with Lukas, Brock broke down and cried. She was so upset she just wanted to get out of the bar and outside. (Tr. Vol. 1, 247) She tried to

collect herself but was still crying when she got outside. (Tr. Vol. 1, 247) Another colleague, Brent Stinson, saw Brock and Brock told him that "Curtis Hill had just rubbed my back." (Tr. Vol. 1, 248) Then she got her ride and left.

41. The next day, Brock went to work. Co-workers were talking about Respondent's behavior. Those co-workers included Stinson, Lukas, Shannon Greer, and Paul Smith. She told them what she experienced. (Tr. Vol. 1, 249) Brock was encouraged by some co-workers to report the matter to someone. Brock did not make any report at that time because she did not think anything would come of it. (Tr. Vol. 1, 249)

42. Brock felt confused and violated. Eventually, she changed her mind about telling superiors what happened. (Tr. Vol. 1, 249) She reported the matter to Senator David Long, President of the Senate and pro tem, and his staff. She was interviewed by LeNee Carroll, the Chief of Staff of the Indiana Senate Democratic Caucus. (Tr. Vol. 1, 249)

43. The Hearing Officer finds that there was no evidence that the complainants – Reardon, DaSilva, Lozano and Brock – coordinated their stories or their testimony at the hearing.

Respondent

44. Curtis Hill is an attorney, in good standing, admitted to practice law in the State of Indiana on June 10, 1988.

45. Respondent has spent almost the entirety of his legal career as a prosecutor. He was elected Elkhart County prosecutor in 2002, serving in the role from 2003 through 2016. He was elected to the position of Attorney General in the 2016 general election, taking office at the beginning of 2017. (Tr. Vol. 3, 98; Vol. 4, 6)

46. At all relevant times herein, Respondent was the elected Attorney General of the State of Indiana (Indiana Code 4-6-1-2, et seq.), having assumed office on January 9, 2017.

47. Respondent worked into the evening hours on March 14, 2018. At approximately 8:30 PM, Respondent left his office in the State Government Center and walked down Washington Street to get something to eat. He went into The Capital Grille, a restaurant on Washington Street adjacent to the Conrad Hotel. Upon entering The Capital Grille, he saw a group of individuals in the bar area that included an acquaintance, Tony Samuel. (Tr. Vol. 4, 12) Samuel is a lobbyist. He was at The Capital Grille with a group of other people who were lobbyists or their clients. The group included Pete Nemeth and Joni Hart, both of whom lobbied for the cable media industry, and others. Samuel invited Respondent to join the group, which he did. Samuel's group had ordered appetizers and drinks. Respondent was invited to order a drink and partake in the appetizers. Respondent ordered a glass of wine. (Tr. Vol. 4, 16-17)

48. At some point, Hart and others in the group left The Capital Grille to go to the Statehouse. The General Assembly was still in session. Hart paid the bill for the drinks and appetizers. (Tr. Vol. 4, 16) Respondent, Samuel and Nemeth remained behind at The Capital Grille and continued visiting.

49. At a little before 10:00 PM, Respondent, Samuel and Nemeth left The Capital Grille and walked to the 1933 Lounge, which is a bar above St. Elmo Steak House on South Illinois Street in Indianapolis, arriving at about 10:00. (Tr. Vol. 4, 17-18) Samuel invited Respondent to accompany him and Nemeth. Sometime during the course of the evening, Samuel told Respondent that he and Nemeth intended to go to the Sine Die party later in the evening and invited Respondent to accompany them. (Tr. Vol. 4, 18-19)

50. On the walk from The Capital Grille to the 1933 Lounge, the group met three other individuals. Samuel invited those three individuals to join them at the 1933 Lounge. (Tr.

Vol. 4, 17) The group of six ordered drinks at the 1933 Lounge. Respondent ordered a glass of wine. (Tr. Vol. 4, 18, 19)

51. At approximately midnight, the six people in Samuel's group at the 1933 Lounge ordered an Uber to take them to AJ's. (Tr. Vol. 4, 20-21)

52. Respondent had not been to AJ's before. (Tr. Vol. 4, 22) Respondent entered the front door of AJ's with Samuel around 12:15 to 12:30 AM on March 15.

53. Respondent agreed to go to the Sine Die party, in part to thank Senator Greg Taylor for his efforts in opposing a bill that the Attorney General's office also opposed. Respondent also planned to engage with other legislators. (Tr. Vol. 4, 25)

54. There was an open bar at AJ's Sine Die party and many of those in attendance were consuming alcoholic beverages. (Tr. Vol. 1, 14, 75-76, 162, 218, 263; Tr. Vol. 3, 57-58, 137, 157, 175; Tr. Vol. 4, 24) Respondent believes he had two more drinks at AJ's – a vodka martini and a shot of Fireball whiskey.

55. Respondent visited with many people, both men and women, at AJ's during the Sine Die party. (Tr. Vol. 2, 25)

56. Respondent greeted several people at the party by asking "do you know who I am?" Representative Ryan Hatfield testified:

> He [Curtis Hill] would have come up behind them and approached me and was looking at me and said something to the effect of Mr. Cool, how do you get to hang out with these pretty ladies or beautiful ladies, and asked at some point if I knew or we knew who he was and that he was Curtis Hill and we shook hands and I introduced myself and then he did so with the folks.

(Tr. Vol. 3, 87)

57. LeNee Carroll had a very specific recollection about when Respondent approached her:

A. He approached me.

Q. In what manner?

A. It was shortly after I got there. He just walked up to me and asked me did I know who he was. He said, "Do you know who I am?"

Q. And you responded?

A. I said, "I do, Attorney General Hill[.]"

(Tr. Vol. 2, 140)

58. At some time during the Sine Die party, Respondent was in the vicinity of the bar amidst a group of other partygoers, including DaSilva. Sen. Taylor was tending bar at that time. Commenting to the group standing there, including DaSilva, Respondent made the statement, "Gee, if you want to get this guy's attention you may have to show some leg." (Tr. Vol. 4, 32) DaSilva, who recalled the statement as referring to showing "your knee" or "a little skin," (Tr. Vol. 1, 183) took offense at this comment, but she didn't say anything at the time. (Tr. Vol. 1, 184-85).

59. Respondent "worked the room" after he arrived at the Sine Die party. He found Sen. Taylor and thanked him for his work. He also spoke to Sen. Mishler and gained his assurance that they would work together moving forward. He also talked to Sen. Randolph. Additionally, Respondent engaged in what he described as "quick-hits" to say hello and move on, "much like when I work a political event and my purpose is to meet as many people as possible." (Tr. Vol. 4, 31)

60. Respondent acknowledged that, at some point during the evening, he did approach a group of people at the bar and said, "Gee, if you want to get this guy's attention you may have to show some leg." (Tr. Vol. 4, 32) He explained that he was trying to make a joke in reference to the movie "It Happened One Night." (Tr. Vol. 4, 32-33). Respondent did not

acknowledge any possible offense to anyone hearing the comment, including DaSilva or Sen. Taylor.

61. Respondent testified that he consumed alcohol on the evening in question – a couple glasses of wine prior to coming to the party and a vodka martini and a Fireball shot at the Sine Die party. (Tr. Vol 2, 34) Respondent described himself as a rare drinker. He noted that when he was the Elkhart County Prosecutor he had a hard rule that he would not drink and drive because he never wanted to put himself or a police officer in that position. (Tr. Vol. 2, 35)

62. Respondent recalled meeting Rep. Reardon at the Sine Die party. Respondent acknowledged that he had touched Rep. Reardon on her shoulder and back and that his hand moved down her back to her middle/lower back. At some point as his hand moved, he noticed that she had on a backless dress. Respondent denied that he grabbed Rep. Reardon's ass or handful of ass and stated, "No, my hand was on her skin above her buttocks." (Tr. Vol. 2, 42)

63. Respondent did not hear any rebuke from Rep. Reardon when she turned away from him. He did not hear her say "back off" or words to that effect. Respondent did not comment to Rep. Reardon on her dress. Respondent denied having a second encounter that evening with Rep. Reardon.

64. Respondent met Lozano at a charity event in April 2017. Respondent met her along with a group of women and Lozano indicated that she was in college with Respondent's daughter. (Tr. Vol. 4, 51-52) They posed for a photo. (Ex. 5)

65. Respondent recalled seeing Lozano at the Sine Die party. He was at the bar and he would step away to his left in order to guide people in. In point of time, Respondent said that he "was at the bar and it was following the 'show leg' issue[.]" (Tr. Vol 4, 53) He did not recall any conversation with Lozano but he did guide her up front to the bar.

66. Respondent also acknowledged that he testified during deposition that he did not have any recollection of Lozano at the Sine Die party. Following his deposition, more facts from Lozano's deposition came forward to enhance his recollection. (Tr. Vol. 4, 143)

67. Respondent recalled meeting DaSilva at the Sine Die party. He had met her before in Sen. Mishler's office. Respondent initially encountered her in a group including Sen. Mishler. Later, he encountered her again at the bar. Respondent testified that DaSilva was "one of the ladies who I ushered next to me in the bar area when I was helping get them access to the bar area." (Tr. Vol. 4, 55) He did not remember her being in the area when he made the "show some leg" comment. Respondent denies putting a hand on DaSilva's back and grabbing her hand and directing it down her back toward her butt. (Tr. Vol. 4, 55)

68. Respondent had not met Brock before March 15, 2018. (Tr. Vol. 4, 56) He did not have a specific recollection of her at the party, but generally denied touching anyone in a sensual or intimate manner. (Tr. Vol. 4, 58) He did speculate that he could have put his hand on Brock's back while standing near the bar area. (Tr. Vol. 4, 57) On cross examination with respect to Brock, Respondent acknowledged that he might have touched her shoulder with his hand and it might have moved.

69. Respondent acknowledged being questioned by his chief of staff, Joan Blackwell, about the Sine Die party and his conduct while there. Few details were given and he believed that it was the result of the rumor mill. During that conversation he acknowledged the "show some leg" or "show some knee" comment and added that he did not touch anyone inappropriately. (Tr. Vol. 4, 69-72)

70. The next time Respondent heard about the Sine Die party was on June 29, 2018, when he received a phone call from Senator Long and Speaker Bosma. Respondent was

traveling and arranged to take the call during a layover in Dallas. (Tr. Vol. 4, 73) Aaron Negangard, Chief Deputy Attorney General, was also on the call. Speaker Bosma explained that legislative leadership had conducted an investigation based on complaints of Respondent's behavior, including that he was intoxicated, touched people inappropriately and made inappropriate comments. Respondent acknowledged having more to drink than usual that night and asked who was making the allegations. They explained that they had hired a law firm for advice and pursuant to that they instructed him not to come to legislative events and other "don'ts." (Tr. Vol. 4, 75) Respondent again asked for names and also asked if they had talked to Samuel. At some point during the call, Speaker Bosma indicated that The Indianapolis Star was about to report on the Taft Report.[2] (Tr. Vol. 4, 76) They agreed to meet on July 2, 2018. They asked if there was anything he wanted to convey to the complainants and he said that "[t]o the extent that I did anything to offend anybody or to make anybody feel uncomfortable, I want to apologize for that." (Tr. Vol. 4, 77) Respondent also apologized to Speaker Bosma and Sen. Long for the need of them being required to conduct an investigation. (Tr. Vol. 4, 80)

71. During the July 2, 2018, meeting with the four legislative leaders, Respondent learned that the Taft Report had been leaked. Respondent asked to see a copy of the allegations and the Taft Report. Speaker Bosma read the allegations from a file. He did not give Respondent a copy of the Taft Report. At that point, the conversation turned to a discussion of the appropriate body or agency to conduct an investigation of the Attorney General.

72. Later that day, Respondent saw the Taft Report as published in The Indianapolis Star. (Tr. Vol. 4, 51-53) In his view, the report contained many inaccuracies and notes.

[2] The Taft Report is the report prepared by the Taft law firm at the request of the leaders of the Indiana General Assembly. A single point of confluence in this case centers on the Taft Report. Neither the Respondent nor Brock, Reardon, Lozano or DaSilva were satisfied with the accuracy of the Taft Report.

Respondent's reaction was that he did not believe he was going to get a fair opportunity to be heard so he was going to fight. (Tr. Vol. 4, 93-94)

73. Respondent acknowledged to the Legislative Council leaders during the July 2, 2018, meeting that "if you're suggesting that I would have touched someone on their buttocks and they didn't want to be touched on the buttocks, that's called battery and that's a crime. If you're suggesting I would have done that with a sexual motivation, that's sexual battery, again a crime." (Tr. Vol. 4, 133; Ex. 62, p. 20)

74. Respondent, through his staff, requested that the Taft Report be clarified as he contended that Rep. Reardon's allegations were not accurately represented. (Tr. Vol. 4, 166)

75. The Hearing Officer finds that there was no evidence that the complainants—Reardon, DaSilva, Lozano, and Brock—coordinated their stories or their testimony at the hearing.

Corroborating Testimony

Several witnesses testified in corroboration of the events at the Sine Die party.

76. **Adam Jones**. Jones is a legislative director for Senate Democrats. (Tr. Vol. 2, 14). Jones was at the Sine Die event and witnessed Respondent talking with Rep. Reardon and then he saw Respondent's hand "go onto her back, onto the skin of her back" and "down to the top of her butt." (Tr. Vol. 2, 18) Jones was "certain" he saw Respondent's hand below the back portion of her butt. (Tr. Vol. 2, 20) Jones also testified that Rep. Reardon reacted by backing up and moved her arm down and "they had words," although he couldn't hear them. (Tr. Vol. 2, 20) Jones perceived Rep. Reardon as trying to move Respondent's hand away. (Tr. Vol. 2, 20)

77. **Brett Stinson.** Stinson currently works for the Marion County election board. (Tr. Vol. 2, 32) On the night of the Sine Die event, he was press secretary for the Senate Democratic Caucus. (Tr. Vol. 2, 33) Stinson had been the intern director when Brock was an

intern so he knew her. (Tr. Vol. 2, 36-37) When Stinson was preparing to leave the Sine Die event, he was outside waiting on his car to pick him up. (Tr. Vol. 2, 37) He testified as follows:

> Q. Did you notice something unusual later on?
>
> A. I did. So when I was outside waiting on my car to come pick me up to take me home, she [Brock] busted out of the bar, it seemed like there was a commotion at the door noticeable enough that I turned and looked to see what was happening. She [Brock] came right outside and she sat down on the window ledge next to me in tears and described to me . . . She clarified that while she was in the bar the Attorney General had touched her back while she was seated and that it made her extremely uncomfortable and she came outside in tears because she was afraid of what people in that room would have thought was happening at the time.

(Tr. Vol. 2, 37-40)

78. **Donna Smith.** Smith is a legislative assistant for the Republican Senate Caucus and has worked there since 1992. (Tr. Vol. 2, 68) She attended the Sine Die event. While standing with a group at the bar at the Sine Die party, Smith noticed that when women walked by Respondent at the bar "Attorney General Hill, he would use his body to rub up against them as they passed by him. And that's the reason I did not walk by. I stayed on this side of him." (Tr. Vol. 2, 73-74) Smith also observed Respondent rubbing Rep. Reardon's back:

> Q. What did you see about that?
>
> A. He was just slowly rubbing her back. Her back was bare.

(Tr. Vol. 2, 75-76)

79. **Laura McCaffrey.** McCaffrey is a lobbyist for the Indiana Hospital Association. (Tr. Vol. 2, 92) She attended the Sine Die event with her boyfriend, Trevor Vance. She was at the bar with Trevor, Laura Brown, Laura Johnson and Rep. Ryan Hatfield. (Tr. Vol. 2, 95) At some point Respondent approached, put his arms around McCaffrey's shoulder and Johnson's shoulder and made a comment to Rep. Hatfield that he was so lucky to have three beautiful

blond-haired blue-eyed Lauras. (Tr. Vol. 2, 97-98) McCaffrey was uncomfortable and looked to Rep. Hatfield to rescue her. (Tr. Vol. 2, 98)

80. In addition to her own uncomfortable experience, sometime during the evening, DaSilva told McCaffrey about her experience. (Tr. Vol. 2, 100) McCaffrey testified that DaSilva told her that Respondent had "touched her butt" and she seemed violated by that. (Tr. Vol 2, 101)

81. **Allison Lukas.** Lukas was an intern for the Senate Democratic Caucus. (Tr. Vol. 2, 106) She attended the Sine Die event. Lukas testified that she observed Respondent in an encounter with Brock. (Tr. Vol. 2, 110) Her testimony is as follows:

> Q. Okay. And so what did you observe between Attorney General Hill and Gabby?
>
> A. I observed him being very close to her in a manner that I wouldn't expect and rubbing her back.

(Tr. Vol. 2, 110) Lukas testified she could see them clearly. (Tr. Vol. 2, 111) Her vision was not obstructed. Respondent was standing close to Brock in a way that made Lukas feel weird. She saw his arm move, and he was rubbing Brock's back. (Tr. Vol. 2, 112) Brock made eye contact with Lukas and Brock mouthed "help me" or "help." (Tr. Vol. 2, 113) Lukas then came over and took Brock to the bathroom to get her away from Respondent. (Tr. Vol. 2, 113) Brock was visibly upset and crying. (Tr. Vol. 2, 114)

Legislators' Action Steps

82. Approximately one month after the Sine Die party, in April 2018, Rep. Reardon had lunch with Lozano and Rep. Harris. During lunch Rep. Reardon learned about the other women – DaSilva and Brock. Rep. Reardon went to her leadership, Rep. Goodin, and told him about what happened to her and about the legislative staffers. Meanwhile, DaSilva reported the

incidents involving her to Sen. Mishler (Tr. Vol. 1, 199) and also to Rep. Eberhart, as well as co-workers Sand, Barie, Oliver and McCaffrey. (Tr. Vol 1, 224) Brock reported the incident to Sen. Long, Sen. Lanane, Skip Brown and LeNee Carroll and they, in turn, interviewed her. (Tr. Vol. 1, 251)

83. Brian Bosma is the Speaker of the House of Representatives for the State of Indiana and has held the position for twelve years out of the last sixteen. He is also a principal in the law firm of Kroger, Gardis & Regas. (Tr. Vol. 2, 145-46) Respondent is a friend of his. (Tr. Vol. 2, 157) Speaker Bosma met with Rep. Reardon, accompanied by Rep. Goodin and Rep. Harris on May 14, 2018. Speaker Bosma was accompanied by Rep. Lehman and Chief of Staff Tyler Campbell. Rep. Goodin indicated the need to bring some concerns to the Speaker's attention. Rep. Reardon then shared her description of events of the Sine Die party, including her allegations against Respondent. (Tr. Vol. 2, 149-50)

84. After the meeting, Speaker Bosma spoke with Rep. Lehman and Campbell and learned that three legislative staffers (House and Senate) had experienced unacceptable conduct from Respondent. (Tr. Vol. 2, 150) Speaker Bosma sought out Sen. Long. Speaker Bosma and Sen. Long immediately proceeded to convene the personnel committee of the Legislative Council for an investigation of the allegations. The Council consisted of Rep. Goodin, Speaker Bosma, Sen. Long and Sen. Lanane. (Tr. Vol. 2, 151) The lawyers on staff of the House and Senate conducted interviews of the employees impacted. (Tr. Vol. 2, 153) Except for Rep. Reardon, the other complainants desired confidentiality and did not want to be identified – they did not want Respondent to know their names. (Tr. Vol. 2, 153-54)

85. Rep. Reardon initially did not request confidentiality but she changed her mind and asked the leaders not to use her name as well. The women making the allegations against

Respondent told the legislative leaders, in response to being questioned, that although they didn't expect any action, they hoped some action would be taken, but they were afraid nothing would happen. Further, they wanted an apology but did not believe that one would be forthcoming. Finally, they did not want to be contacted by Respondent.

86. The leaders directed George Angelone, Exec. Dir. of Legislative Services, to obtain a legal opinion on any possible employment law issues and a review of the investigation and thereafter planned to meet with Respondent on July 2, 2018. (Tr. Vol. 2, 155)

87. The Taft Report was delivered to Skip Brown, Sen. Long and Sen. Lanane on June 18, 2018. (Tr. Vol. 2, 207-08) Speaker Bosma received the Taft Report on June 21, 2018, as he was leaving the country on vacation. (Tr. Vol. 2, 155) Speaker Bosma and Sen. Long were expecting to hear from the outside lawyers as to their legal opinion when they learned The Indianapolis Star had made an inquiry of the communication director indicating that a reporter was writing a story about the incident involving Respondent. Following the news of this leak to the Star, Speaker Bosma and Sen. Long decided to arrange a call with Respondent on June 29, 2018, at 5:00 PM (Tr. Vol. 2, 157-58, 162, 210) Speaker Bosma had determined that they owed Respondent the duty of explaining where they were in the process. Speaker Bosma and Sen. Long arranged a telephone conference with Respondent during which they informed him of the allegations of conduct they considered inappropriate and unacceptable. (Tr. Vol. 2, 158) They asked that he not attend legislative receptions. Speaker Bosma and Sen. Long asked that he not have any contact with the persons involved. Respondent responded with shock and repeated three or four times that he had had a lot to drink that night and that he didn't intentionally touch anyone inappropriately.

88. Finally, in response to Speaker Bosma's request, Respondent said that this was troubling and to the extent that anyone was offended by him, he apologized. (Tr. Vol. 2, 160)

89. On July 2, 2018, Sen. Long informed Brock and DaSilva of the existence of the Taft Report. On that same day, Speaker Bosma met with the three legislative staffers—DaSilva, Brock, Lozano—and advised them as to the course of action taken by legislative leadership. A short time later, Speaker Bosma similarly informed Rep. Reardon, adding that the legislature did not have jurisdiction to modify or mandate Respondent's behavior. (Tr. Vol. 2, 52, 165, 188)

90. The Hearing Officer concludes that there is no evidence that any of the complainants had anything to do with the decisions of the legislative leaders or the Legislative Council. They were treated at all times as complainants.

CONCLUSIONS OF LAW

1. With regard to these findings and conclusions, any findings of fact that appear more appropriately to be a conclusion of law, and any conclusion of law that appears more appropriately to be a finding of fact, shall be deemed to be so.

2. Lawyer discipline is the sole province of the Indiana Supreme Court. *See In re Freeman*, 835 N.E.2d 494, 496 (Ind. 2005) (noting that "the determination regarding misconduct and sanction rests with" the Indiana Supreme Court).

3. The Sine Die party was a private, work-related event. Although there was no official publication of the event or a business agenda, there was consistent testimony at the hearing that the important business of developing and nurturing goodwill by and between legislators, legislative staff and lobbyists occurs at the party. Respondent had no plan to attend the Sine Die party until he was invited that evening by a lobbyist. Respondent went to the party intending to conduct some business with key legislators about a bill that concerned the Office of

Attorney General. (Tr. Vol. 4, 25, 30) The Hearing Officer concludes that Respondent was at all times relevant herein acting as the Attorney General of the State of Indiana and the Rules of Professional Conduct apply.

4. The Disciplinary Commission charged that Respondent violated Indiana Rule of Professional Conduct 8.4(b), which states as follows:

> It is professional misconduct for a lawyer to:
>
> (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

5. The criminal acts charged by the Commission are sexual battery as to DaSilva and battery as relates to Reardon, Lozano, DaSilva and Brock.

6. Indiana Code 35-42-2-1(a), effective March 2018, in relevant part provides:

> A person who knowingly or intentionally touches another person in a rude, insolent or angry manner, commits battery, a Class B Misdemeanor.
>
> Indiana Code 35-42-4-8(a), effective March 2018, in relevant part provides:
>
> A person who, with intent to arouse or satisfy a person's own sexual desires or the sexual desires of another person, touches another person when that person is:
>
> (1) Compelled to submit to the touching by force or imminent threat of force; . . .

7. Respondent was not charged with or convicted of any crime.

8. There is no requirement in Rule 8.4(b) that a criminal charge or conviction occur before the allegations form the basis of a disciplinary complaint.

9. The Indiana Supreme Court has found Rule 8.4(b) violations in cases where criminal charges were not brought. *See Matter of McClure*, 652 N.E.2d 863 (Ind. 1995); *see also Matter of Moore*, 665 N.E.2d 40 (Ind. 1996).

10. The Hearing Officer finds that the Disciplinary Commission failed to prove by clear and convincing evidence that Respondent committed sexual battery.

11. The Disciplinary Commission charged a violation of Rule 8.4(b) on the basis of battery with respect to all four complainants.

12. Evidence of touching, however slight, is sufficient to establish battery. *Mishler v. State*, 660 N.E.2d 343, 348 (Ind. Ct. App. 1996) (noting that a conviction for battery will be affirmed so long as there is evidence of touching, however slight). *See also Leturgez v. State*, No. 79A02-1112-CR-1105, 2012 WL 2951861 (Ind. Ct. App. July 20, 2012) (affirming defendant's Class B misdemeanor battery conviction after he grabbed a woman from behind and placed his hands on her waist and upper legs, which were covered by her sweater); *Chamem v. State*, No. 49A05-1004-CR-214, 2011 WL 292025 (Ind. Ct. App. Jan. 31, 2011) (affirming defendant's Class B misdemeanor battery conviction after she put her hands on a gas station manager, raised her arm up toward the manager's chest, and put her wrist area toward the manager's chest); *Zagorac v. State*, No. 64A03-1011-CR-589, 2011 WL 4483998 (Ind. Ct. App. Sept. 28, 2011) (affirming defendant's Class B misdemeanor battery conviction after defendant rubbed a child's back and patted the child's head, and the evidence showed that the child did not like the touching and that the touching made him uncomfortable).

13. Battery requires general intent and, as such, the "knowing" is whether or not the actor engaged in the act. What might have been Respondent's general mood at the party – happy, gregarious – is not relevant to the intent element. The statutory element of knowing or intentional conduct for the offense of battery may be presumed from the voluntary commission of the act. *Mishler*, 660 N.E.2d at 348. Respondent's conduct was voluntary. Therefore, the statutory element of knowing or intentional was met.

14. Respondent committed the criminal act of battery, a Class B misdemeanor, as set forth in Indiana Code 35-42-2-1(c) as follows:

a. By his conduct touching Rep. Reardon's bare back, rubbing his hand down her back down to or just above her buttocks without her consent. He did not accidentally or inadvertently rub Rep. Reardon's back down to her mid to low back.

b. By his conduct rubbing Brock's back without her consent. He did not accidentally or inadvertently rub Brock's back.

c. By his conduct in putting his arm around Lozano's waist and pulling her toward him without her consent. He did not inadvertently touch Lozano and pull her to him.

d. By touching DaSilva's back, moving his hand down her back and moving DaSilva's hand toward her buttocks and touching her buttocks without her consent. He did not accidentally or inadvertently touch DaSilva's back and move his hand down her back toward her buttocks.

15. Respondent did not deny touching Rep. Reardon, DaSilva or Lozano. With respect to Brock, on direct examination at first he did not recall meeting Brock at the Sine Die party but, upon further questioning, he did have a recollection:

> Q. Well, let me ask you about the event you just alluded to. She described that you put your hand on her back while standing near her at the bar area of AJ's, could that have happened?
>
> A. That could've happened. . . .

(Tr. Vol. 4, 57)

16. The Disciplinary Commission charged Respondent with a violation of Indiana Rules of Professional Conduct 8.4(d):

> Rule 8.4(d) provides:
>
> > It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

To the extent Rule 8.4(d) requires a nexus between the conduct and the practice of law, the nexus requirement that the conduct have some connection to the practice of law is satisfied in this case because Respondent is the Attorney General of Indiana. As such, he is uniquely and singularly acting in the role of the State's highest lawyer at all times and certainly was at all times relevant. Respondent emphasized this in the manner in which he introduced himself to several attendees at Sine Die.

Lawyers who are charged with enforcement of the law must conduct themselves at all times in a manner that promotes public esteem for these responsibilities. *In re Oliver*, 493 N.E.2d 1237 (Ind. 1986). *Oliver* recognizes that lawyers have a special duty because they are law enforcers to conduct themselves in a way that bolsters public esteem. In *Oliver*, the lawyer was a prosecutor who had committed an act of operating while intoxicated.

The Court said:

> We conclude, however, that the prejudice to the administration of justice occurred before Oliver's motion to withdraw was granted. The duty of judges and prosecutors to conform their behavior to the law does not arise solely out of their status as attorneys. As officers charged with the administration of the law, their own behavior has the capacity to bolster or damage public esteem for the system different from that of attorneys otherwise in practice . . . .

In re Oliver, 493 N.E.2d 1237, 1241-42 (Ind. 1986).

The Supreme Court has affirmed the principle set forth above in numerous cases since *Oliver*. *See Matter of Russell*, 928 N.E.2d 198 (Ind. 2010) (finding that deputy prosecutor

operating with blood alcohol of .15 or more violated Rule 8.4(d)); *Matter of Seat*, 588 N.E.2d 1262 (Ind. 1992) (finding that prosecutor with single count of operating while intoxicated violated Rule 8.4(d)); *Matter of Roche*, 540 N.E.2d 36 (Ind. 1989) (finding that deputy prosecutor in possession of marijuana violated 8.4(b) and 8.4(d)).

In the attorney discipline case of *Junk*, the lawyer was a deputy attorney general in Indiana. *Matter of Junk*, 815 N.E.2d 5050 (Ind. 2004). While so employed the lawyer pleaded guilty to a single incident of operating a vehicle while with a B.A.C. of .08 or more, a Class C misdemeanor. The Court found he violated Rule 8.4(d), "which prohibits lawyers from engaging in conduct which is prejudicial to the administration of justice."

Comment 4 to Rule 8.4 provides the following:

> Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers.

17. The Hearing Officer concludes that Respondent engaged in conduct prejudicial to the administration of justice in violation of Indiana Rules of Professional Conduct 8.4(d).

18. The Disciplinary Commission charged Respondent with violating Admission and Discipline Rule 22. The Oath of Attorneys requires lawyers to promise to abstain from offensive personality. Respondent seems to concede that his behavior at the party might have been boorish or he might have offended some people. However, behavior that might in fact offend someone is not necessarily equivalent to abstaining from offensive personality. The Hearing Officer concludes that the Disciplinary Commission failed to meet its burden of proof and the Hearing Officer finds that Respondent did not violate Admission and Discipline Rule 22.

19. The Hearing Officer disagrees with Respondent's contention that the generational differences between himself and the complainants somehow explains their alleged misunderstanding of what they experienced. He relies on the generational divide to explain why

DaSilva did not "get the joke" of the statement "show some leg." Respondent suggests that the events and circumstances of this case reflect the shifting social concerns around what is appropriate and inappropriate conduct at a work-related party. That is not what this case is about. This case is about the specific charges brought by the Disciplinary Commission and the facts related to the Complaint. There was no evidence presented at the hearing on general social behavior and practices and the Hearing Officer declines to make any conclusion of law on this basis.

SANCTIONS

1. In determining sanctions, the Hearing Officer considers mitigating and aggravating factors.

2. Respondent has no disciplinary history, which the Hearing Officer finds to be a mitigating factor.

3. On June 29, 2018, Speaker Bosma and Sen. Long notified Respondent of the allegations. (Tr. Vol. 2, 157-60) Respondent was apologetic and explanatory during this conversation. (Tr. Vol. 2, 169) He testified that he told Speaker Bosma and Sen. Long that "[t]o the extent that I did anything or said anything to offend anybody or to make anybody feel uncomfortable, I want to apologize for that." (Tr. Vol. 4, 77)

4. At the hearing, Respondent confirmed his earlier comments, testifying,

> I feel no different today than I felt then, notwithstanding all that we've heard, all that we've gone through, the bottom-line is I never want to be in a position where someone has felt to be uncomfortable or offended by my words or my actions. Unfortunately, I'm human and that occurs, so when that occurs it's my purpose to do what I can to remedy that through an apology, I still feel that way.

(Tr. Vol. 4, 124)

5. Although Respondent appeared at one point to be apologetic, because of his actions after the Sine Die party, the Hearing Officer gives little weight to this mitigating factor.

6. Nonetheless, Respondent offers no assurance to the Hearing Officer that these behaviors will not happen again. Further, Respondent appears more concerned with his political and professional reputation than with addressing the charges brought before the Court. The Hearing Officer finds these points to be aggravating factors.

7. On July 2, 2018, after learning that The Indianapolis Star had a copy of the Taft Report, Speaker Bosma and Sen. Long met with Respondent again. Respondent was upset by the leaking of the Taft Report and stated that "these are lies, [and] we are going to have to attack this investigation[.]" (Tr. Vol. 2, 170)

8. On July 2, 2018, after the allegations became public, Respondent gave a statement to The Indianapolis Star denying the allegations. (Ex. 64)

9. At some point, Respondent gathered a group of Office of the Attorney General employees, paid consultants, and supporters (collectively, "Respondent's team") to coordinate an extensive media campaign to protect his public image. Throughout this media campaign, Respondent's team exchanged emails in which they discussed and shared drafts of opinion pieces and letters to the editor that defended Respondent and attempted to discredit the four women.

10. On Friday, July 6, 2018, Respondent began exchanging emails with employees of the Office of the Attorney General. These emails contained drafts of a news release regarding the allegations. (Exhs. 9-14)

11. That same day, the news release was posted to the Office of the Indiana Attorney General website, and the official Twitter account of the Office of the Indiana Attorney General tweeted the news release. (Ex. 1) Respondent stated in the news release, "[t]he allegations

against me are vicious and false." (Ex. 1) Respondent called for an independent investigation, stating "[o]nce the investigation is complete and I am exonerated, I would hope that my good name is properly restored with the same vigor with which it has been tarnished." (Ex. 1)

12. On July 9, 2018, the official Twitter account of the Office of the Indiana Attorney General tweeted that Respondent would be holding a press conference regarding the allegations. (Ex. 1)

13. During this press conference, Respondent stated that he was a "condemned man," that he was "already convicted," and that the "false accusations have irretrievably damaged [his] reputation." (Ex. 3) He concluded, "[a] week ago today I had a name. I want my name back." (Ex. 3) Respondent also stated that "[v]ictims of sexual abuse and/or sexual harassment deserve to have their voices heard" but then contradicted one complainant's report. (Ex. 3)

14. On July 12, 2018, the official Twitter account of the Office of the Indiana Attorney General tweeted, "Accuser sought guidance to strengthen attack on Attorney General Curtis Hill." (Ex. 7) The tweet included a link to a press release posted on the website of the Office of the Indiana Attorney General. The press release stated that on July 11, 2018, the Office of the Indiana Attorney General received an email of a draft "'story'" from one complainant who was trying to email a close friend; that the complainant "editorialized her recollection of events" and asked for help from her friend; and that the integrity of the investigation was compromised because the women were coordinating and changing their stories under the direction of others. (Ex. 7) The press release provided a link to that email. (Ex. 7) In point of fact, the woman's email asked for help with proofreading and editing a draft of a public statement – the same steps that Respondent's team had taken with their own public statements.

15. On Friday, July 13, 2018, Respondent's team began exchanging emails regarding drafts of a statement to "expose DaSilva[.]" (Exhs. 15-16) One draft referred to a "coordinated attack on" Respondent that was "false and vicious" and a "malicious onslaught." The draft further stated that "it is time to begin to expose the political motivations behind this spiteful attempt to tear down a political threat to others in positions of power." (Ex. 16)

16. On Wednesday, July 18, 2018, Respondent's team began exchanging emails regarding a draft of a press release regarding the charges. (Exhs. 19-21, 24-27) In one email, one employee of the Office of the Attorney General suggested titling the draft of the press release "Leakers & Liars." (Exhs. 24-25)

17. On Sunday, July 22, 2018, Respondent's team began exchanging emails regarding another press release. (Ex. 28)

18. On Tuesday, July 24, 2018, a member of Respondent's team emailed about a press email. (Ex. 29)

19. On Wednesday, July 25, 2018, Respondent's team began exchanging emails regarding an opinion piece addressing the charges against Respondent. (Exhs. 30, 32-33)

20. On Tuesday, July 31, 2018, a member of Respondent's team sent an email of "talking points" that included suggesting that people were casting doubt on Respondent's character for partisan, political reasons. (Ex. 34)

21. On Wednesday, August 1, 2018, Respondent's team circulated a draft of another opinion piece. This draft also alleged that people were casting doubt on Respondent's character for partisan, political reasons. (Ex. 35)

22. On Monday, August 13, 2018, and Friday, September 14, 2018, a member of Respondent's team circulated drafts of letters to the editor. These drafts ascribe political

motivation to state leadership. (Exhs. 36-37)

23. On Thursday, March 21, 2019, a member of Respondent's team emailed the team, asking "Any objection to pitching story to conservative media that Holcomb cronies and liberals are driving this?" and stating "We should shop portions of research enclosed no fingerprints to national conservative outlet to generate piece that friends would use with grassroots folks." (Ex. 56)

24. On Saturday, May 25, 2019, a member of Respondent's team emailed Respondent with a draft of a statement written in defense of Respondent. This draft stated that "most politicians are friendly people, many even gregarious. They hug and touch other people. It is harmless, innocent, and definitely not sexual groping"; "[i]nappropriate touching accusations . . . may be uncomfortable but not necessarily criminal or illegal. It was not severe or pervasive. . . . It was friendly political touching"; and that "[p]eople can be liable for defamation." (Ex. 59)

25. Respondent testified that how the "allegations . . . were made and the way in which it was handled and leaked to the press was a vicious attack of me from a political standpoint." (Tr. Vol. 2, 176)

26. The evidence establishes that Respondent took part in a long orchestrated campaign to defend himself. This campaign used incendiary language that attempted to cast doubt not only on the four women's allegations but on their motivations for making the allegations. The evidence also establishes that at no point during this campaign did Respondent urge his team to exercise caution or show respect toward the women, nor did he express concern about any potential impact his response may have on them.

27. Although Respondent argues that he attended the Sine Die party as an individual, not in his capacity as the Attorney General, he responded to the allegations in his capacity as the

Attorney General. He involved the Office of the Indiana Attorney General employees, website, and Twitter account in his defense. A significant amount of these efforts took place during workday business hours. In short, Respondent responded to the allegations as the Indiana Attorney General, not as an ordinary lawyer.

28. The Preamble to the Rules of Professional Conduct states that "[a] lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Whether or not engaging in the practice of law, lawyers should conduct themselves honorably." Prof. Cond. R. Preamble.

29. Regarding the duty of ethical conduct of lawyers in prominent legal positions, our Supreme Court has long held that "[t]he duty of judges and prosecutors to conform their behavior to the law does not arise solely out of their status as attorneys. As officers charged with administration of the law, their own behavior has the capacity to bolster or damage public esteem for the system different than that of attorneys otherwise in practice." *Matter of Oliver*, 493 N.E.2d 1237, 1242 (Ind. 1986). "Where those whose job it is to enforce the law break it instead, the public rightfully questions whether the system itself is worthy of respect." *Matter of Oliver,* 493 N.E.2d 1237, 1242 (Ind. 1986).

30. "Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers." Prof. Cond. R. 8.4 cmt. 4.

31. Further, "[i]n a permissive society, it is irrelevant whether a judge's conduct or speech is no different from that of the 'ordinary person,' since improper conduct which may be overlooked when committed by the ordinary person, even an attorney, cannot be overlooked when committed by a member of the . . . judiciary. By seeking and accepting the responsibilities

of the office of judge, regardless of the level of office, a judge undertakes to conduct herself or himself both officially and personally in accordance with the highest standards that the citizens" of the state can expect. *In re Barr*, 13 S.W.3d 525, 535-36 (Tex. Rev. Trib. 1998) (citations omitted). A citizen who serves as a statewide elected official "is among a chosen few who no longer enjoys the role of an 'ordinary' citizen." *In re Barr*, 13 S.W.3d 525, 560 (Tex. Rev. Trib. 1998).

32. Similarly, "[j]udges are held to higher standards of integrity and ethical conduct than attorneys or other persons not invested with the public trust. . . . Even in a judge's personal life, he or she must adhere to standards of probity and propriety far higher than those deemed acceptable for others." *In re Abrams*, 257 P.3d 167, 174 (2011) (quotation marks and citation omitted).

33. The position of Indiana Attorney General is an executive branch equivalent of a judicial officer. The Indiana Attorney General is the highest level of attorney in the State of Indiana. The Indiana Attorney General and the Office of the Indiana Attorney General serve the citizens of the State of Indiana by enforcing the laws of the state.

34. Accordingly, the Indiana Attorney General's duty to conform his or her behavior to the law arises from more than his or her status as an attorney. The Indiana Attorney General is the state's chief law enforcement officer and is charged with administration of the law. The Indiana Attorney General holds a position of public trust and engages in work that has a wide impact across the state. The conduct of the Indiana Attorney General can affect the public's perception of our state's executive branch.

35. By seeking and accepting the responsibilities of the office of Indiana Attorney General, Respondent undertook to conduct himself both officially and personally in accordance

with the highest standards that the citizens of the State of Indiana can expect.

36. In responding to the allegations in his official capacity as the Indiana Attorney General, Respondent used his position to intimidate the four women who alleged misconduct, three of whom were young women in their early twenties at the onset of their careers. Respondent's unwavering public campaign in defense of himself showed little restraint and amplified the impact of his conduct on the four women. He held press conferences, issued press releases, and stood by as team members drafted public opinion pieces casting doubt on the four women's allegations and ascribing them political motivations. In one instance, the Office of the Indiana Attorney General posted an email one complainant sent a friend regarding the Sine Die party to the Office of the Indiana Attorney General's website. This action could serve only to intimidate the woman, and anyone else thinking of stepping forward.

37. Although there was testimony characterizing Respondent as a gregarious person who regularly made physical contact with people when talking with them, there was also credible testimony from the four women that he touched them and made sexual comments and that the touching and the comments were unwelcome.

38. Respondent's conduct, both during and after the Sine Die party, has caused injury to the four women. Respondent's conduct was offensive, invasive, damaging, and embarrassing to the four women. *See In re Barr*, 13 S.W.3d 525, 535 (Tex. Rev. Trib. 1998). Respondent showed no insight regarding the impact of his actions.

39. Further, Respondent's conduct, both during and after the Sine Die party, has had an adverse impact on the public's perception of our State's executive branch and on the profession.

ULTIMATE CONCLUSION

The Hearing Officer finds and concludes by clear and convincing evidence that Respondent violated Rules 8.4(b) and 8.4(d) of the Rules of Professional Conduct. The Hearing Officer finds and concludes that Respondent did not violate Admission and Discipline Rule 22.

Respondent's conduct was offensive, invasive, damaging and embarrassing to Brock, Reardon, Lozano and DaSilva. As Attorney General, he used his state office staff and others to engage in a public campaign to defend himself and intimidate the complainants.

Based on all of the foregoing, the Hearing Officer recommends a sanction of a sixty (60) day suspension without automatic reinstatement.

Date: February 14, 2020

Myra C. Selby
Hearing Officer

DISTRIBUTION TO:

Charles M. Kidd
Seth T. Pruden
Angie L. Ordway
Disciplinary Commission
251 N. Illinois Street, Suite 1650
Indianapolis, IN 46204

Donald R. Lundberg
Lundberg Legal
P.O. Box 19327
Indianapolis, IN 46219

James H. Voyles, Jr.
Jennifer M. Lukemeyer
Voyles Vaiana Lukemeyer Baldwin & Webb
141 East Washington Street, Suite 300
Indianapolis, IN 46204