ENTRY ORDER

2026 VT 11

SUPREME COURT CASE NO. 26-AP-081

MARCH TERM, 2026

In re Eva Vekos, Esq. (Office of Disciplinary Counsel)	} }	Original Jurisdiction

In the above-entitled cause, the Clerk will enter:

¶ 1. Respondent Eva P. Vekos is an attorney licensed to practice law in the State of Vermont. She is, and at all pertinent times was, the State's Attorney for Addison County. On March 5, 2026, Disciplinary Counsel filed a petition seeking respondent's immediate interim suspension under Administrative Order 9, Rule 21, based on her conviction of a "serious crime." Respondent submitted a written response to the petition. The Court held a hearing on March 19, 2026, which Disciplinary Counsel and respondent's counsel attended. We conclude that Disciplinary Counsel submitted "proof that [respondent] has been convicted of a serious crime," and we therefore immediately suspend respondent's license to practice law on an interim basis in accordance with Administrative Order 9, Rule 21(D). Respondent is directed to comply with the notice requirements of Administrative Order 9, Rule 27.

¶ 2. Under the Vermont Constitution, this Court exercises "disciplinary authority concerning all judicial officers and attorneys at law in the State." Vt. Const. ch. II, § 30. Disciplinary Counsel "administers the disciplinary program" and "investigates and litigates all disciplinary . . . matters." A.O. 9, Rule 9. When Disciplinary Counsel learns that a Vermont attorney has been convicted of a crime, he must determine if the crime is a "serious crime" as defined in Administrative Order 9, Rule 21(C). If he so concludes, he must file with this Court a proposed order for interim suspension, along with a certificate of the attorney's conviction. A.O. 9, Rule 21(B). This Court must then decide, based on the parties' submissions, if there is "proof that the lawyer has been convicted of a serious crime" that triggers the attorney's immediate interim suspension. A.O. 9, Rule 21(D).

¶ 3. Interim suspensions under such circumstances "protect the profession and the administration of justice from the specter created where an individual found guilty of a 'serious crime' continues to serve as an officer of the court in good standing." ABA Model Rules for Lawyer Disciplinary Enforcement, Rule 19, Commentary (providing process similar to Vermont for lawyer convicted of "serious crime") [hereinafter ABA Model Rules]; see also ABA Ctr. for Pro. Resp., Standards for Imposing Lawyer Sanctions, Standard 2.4 Annot., at 70 (2019)

(recognizing that "[p]ublic confidence in the profession is strengthened when expedited procedures are available in such instances of lawyer misconduct"). These are temporary orders to be followed by the filing of formal charges, Administrative Order 9, Rule 21(B), and they "do[] not purport to determine the charge against the petitioner or to settle his or her fitness to remain a member of the bar." ABA Model Rules, Rule 19, Commentary.

¶ 4. With this process in mind, we turn to the record. In early 2024, respondent was arrested and later charged with operating or attempting to operate a motor vehicle while under the influence of alcohol (DUI) in violation of 23 V.S.A. § 1202(a)(2). "Disciplinary Counsel determined that respondent's alleged actions with respect to her DUI arrest, if true, could constitute attorney misconduct under the Vermont Rules of Professional Conduct, and he opened an investigation." In re Vekos (Vekos I), 2024 VT 18, ¶ 2, __ Vt. __, __ A.3d __ (mem.). Respondent did not cooperate with Disciplinary Counsel's investigation over the course of several months, including a period in which respondent took medical leave from her position. Disciplinary Counsel consequently filed a petition to immediately suspend respondent's license on an interim basis under Administrative Order 9, Rule 22. Rule 22 provides for interim suspension when an attorney violates a professional responsibility rule and "presently poses a substantial threat of serious harm to the public." A.O. 9, Rule 22(A), (B). The Court granted the petition on March 27, 2024, finding that respondent "knowingly fail[ed] to respond to a lawful demand for information from . . . [a] disciplinary authority" in violation of Vermont Rule of Professional Conduct 8.1(b), and that due to her noncooperation, she "presently pose[d] a substantial threat of serious harm to the public." See Vekos I, 2024 VT 18, ¶¶ 11-15 (second alteration in original). Respondent subsequently cooperated with Disciplinary Counsel's investigation and the Court dissolved the interim suspension on April 19, 2024 at respondent's request, without objection from Disciplinary Counsel. See A.O. 9, Rule 22(D); In re Vekos (Vekos II), 2024 VT 22, __ Vt. __, __ A.3d __ (mem.).

¶ 5. In December 2025, respondent pled nolo contendere, over the State's objection, to DUI. She did not admit her guilt. She was sentenced to a deferred and probated custodial term of six months. See generally 13 V.S.A. § 7041. Following respondent's conviction, Disciplinary Counsel followed the process required by Administrative Order 9, Rule 21, and submitted with his filing a certified record of respondent's conviction. See A.O. 9, Rule 21(E) (stating that "certificate of a conviction of an attorney for any crime shall be conclusive evidence of that crime in any disciplinary proceeding instituted against the lawyer based upon the conviction").

¶ 6. Rule 21(C) defines a "serious crime" as:

> any felony or lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt, conspiracy, or solicitation of another to commit a "serious crime."

See also ABA Model Rules, Rule 19 (providing identical definition of "serious crime" warranting attorney's immediate interim suspension).

¶ 7. Vermont Rule of Professional Conduct 8.4(d) relatedly makes it professional misconduct for a lawyer to "engage in a 'serious crime,' " defined as:

> illegal conduct involving a felony or lesser crime that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or involving any crime a necessary element of which involves interference with the administration of justice, false swearing, intentional misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

See also Reporter's Notes—2022 Amendment, V.R.Pr.C. 8.4 (explaining that definition of "serious crime" in Professional Conduct Rule 8.4 was amended to harmonize with definition of same term in Administrative Order 9, Rule 21(C)).

¶ 8. Disciplinary Counsel asserts, and we agree, that the question of "[w]hether a criminal act reflects adversely on a lawyer's fitness depends on the nature of the act and the circumstances of its commission." Restatement (Third) of the Law Governing Laws § 5, cmt. g (2000); see also Iowa Sup. Ct. Att'y Discipline Bd. v. Khowassah, 890 N.W.2d 647, 650 (Iowa 2017) (acknowledging that in deciding if criminal act reflects adversely on lawyer's fitness to practice law, "the nature and circumstances of the act are relevant" and "[t]here must be some rational connection other than the criminality of the act between the conduct and the actor's fitness to practice law" (alteration omitted)); In re White, 815 P.2d 1257, 1265 (Or. 1991) (per curiam) (reaching similar conclusion and recognizing that "[e]ach case must be decided on its own facts"). Respondent does not argue otherwise. This approach is consistent with our recognition that, while "a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice." V.R.Pr.C. 8.4, cmt. 2; see also ABA Annotated Model Rules of Pro. Conduct § 8.4 (2023) (providing that it is professional misconduct for lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects," and observing in annotation that "[c]rimes involving alcohol and drugs are often deemed to fall within Rule 8.4(b)" (citing cases)). We must examine the circumstances here to determine if respondent's DUI reflects adversely on her fitness as a lawyer.

¶ 9. The following facts surrounding respondent's DUI conviction appear to be undisputed; respondent's interactions with the arresting and processing officers were digitally recorded. On the evening of her arrest, respondent drove to the scene of an ongoing suspicious death investigation. Respondent was present in her role as State's Attorney to participate in a walkthrough of the scene with members of the Vermont State Police Crime Scene Search Team. During the walkthrough, a state trooper detected the odor of intoxicants emanating from respondent. About thirty minutes later, respondent prepared to leave the scene in her car. The trooper decided, in consultation with other officers, to ask respondent to undergo standardized field sobriety tests. He approached respondent as she sat in the driver's seat of her vehicle. The trooper asked respondent how much she had to drink, and respondent said she had one drink with dinner approximately an hour earlier. The trooper detected a strong odor of intoxicants from respondent and noticed her slurred speech. Respondent refused the trooper's request to undergo field sobriety tests. Respondent stated to the trooper, "[a]re you serious Ryan, can't you just have a friend come and get me?" The trooper responded that "that was not an option" and asked respondent to undergo field sobriety tests or be arrested. Respondent replied that "[i]t doesn't matter if I do the tests or not, however I perform, you're going to take me under arrest." The trooper told respondent that was not true, and he again asked respondent to undergo field sobriety exercises. Respondent refused, exited the vehicle, and told the trooper to arrest her. Respondent was taken into custody for suspicion of DUI, and she was transported to the police barracks for processing.

¶ 10. When she arrived at the police barracks, respondent told the processing officer that she would not be taking any interview questions or evidentiary tests. The officer detected a moderate odor of intoxicants emanating from respondent, observed her watery eyes, and noted her mumbled speech. Respondent asked the processing officer why he was sent to process her for DUI and who made that decision. She asked the officer "if [he] knew that discretion was allowed." The officer responded that "we as a department do not take discretion with DUI." Respondent denied driving under the influence, and the officer informed her that there were sufficient indicators to request an evidentiary test. Respondent then stated that "this was going to damage the relationship with her office which she ha[d] worked hard to build with law enforcement because [the trooper who arrested her] doesn't know how to apply discretion and he didn't go to his supervisors." The officer told respondent he wasn't going to argue with her about it. Respondent said she would not answer any questions and that the officer did not need to read her the implied consent rights. The officer responded that he did need to read respondent her rights and he did so. Respondent told the officer that she was just doing her job and had come to the scene to participate in a homicide investigation. She refused to take an evidentiary test or be photographed and fingerprinted.

¶ 11. Less than a week after the events recounted above, respondent corresponded by email with the leaders of several law enforcement agencies in Addison County. Respondent stated that she would no longer meet with these law enforcement officers in person in her role as State's Attorney because she "no longer fe[lt] safe around law enforcement." She explained that "[t]his safety issue will conflict with the plan for me to do educational trainings" for their agencies, which was "too bad." She concluded the email with derogatory language about the officers' grammatical skills.

¶ 12. Based on these circumstances, Disciplinary Counsel argues that respondent committed a crime that reflects adversely on her fitness as a lawyer, which warrants her immediate interim suspension. He states that a fundamental measure of a lawyer's fitness to practice law is the lawyer's willingness to abide by the law and refrain from criminal conduct. Citing In re Pope, 2014 VT 94, ¶ 12, 197 Vt. 638, 101 A.3d 1284 (mem.) (" 'Fitness to practice' implicates a variety of capacities, not the least of which is the understanding that an attorney occupies a position of public trust, and 'has a duty to the profession and the administration of justice, especially to uphold the laws of the state in which he [or she] practices.' " (alteration in original) (quoting In re Berk, 157 Vt. 524, 531, 602 A.2d 946, 949 (1991) (per curiam)). Disciplinary Counsel maintains that the crime of DUI in itself reflects adversely on a lawyer's fitness to practice, particularly when committed on multiple occasions or in conjunction with other professional misconduct, citing In re Warren, 164 Vt. 618, 618, 669 A.2d 558, 558-59 (1995) (mem.) (imposing discipline on attorney who, prior to going on inactive status, represented clients in court while under the influence of alcohol, and was arrested multiple times for DUI and convicted of DUI, and citing as an aggravating factor "a pattern of misconduct"). He also cites the Court's observation that even minor crimes committed by attorneys, particularly when committed knowingly or repeatedly, may "adversely affect[] [the attorney's] fitness to practice law" because "even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession." Berk, 157 Vt. at 526, 531, 602 A.2d at 947, 950 (citations omitted); see also In re Doherty, 162 Vt. 631, 631-32, 650 A.2d 522, 522 (1994) (mem.) (adopting dissenting recommendation from Professional Conduct Board and imposing two-month suspension for lawyer convicted of misdemeanor cultivation of marijuana in violation of prior disciplinary rule that prohibited "engaging in conduct adversely reflecting upon fitness to practice law," where dissenting Board member argued that a public reprimand would be inappropriate as "in all other cases, some period of suspension has been imposed, even where the convictions were for misdemeanors" (citing cases)). Disciplinary Counsel also cites In re Neisner as suggesting that attorneys who impede law enforcement to avoid

possible prosecution for DUI engage in conduct adversely reflecting on their fitness to practice law. 2010 VT 102, ¶¶ 1, 13, 15, 189 Vt. 145, 16 A.3d 587 (imposing discipline on attorney "convicted of criminal offenses, including giving false information to a law enforcement authority and impeding a public officer, stemming from leaving the scene of a car accident and then falsely reporting that his wife had caused the accident").

¶ 13. Disciplinary Counsel discusses cases from other jurisdictions in support of his position as well. He argues that certain types of aggravating circumstances indicate indifference to one's legal obligations and strengthen the conclusion that a criminal offense reflects adversely on the attorney's fitness to practice law. This includes a lawyer's work as a prosecutor and an attorney's commission of a crime "during the performance of his or her legal work." In re Hill, 144 N.E.3d 184, 190-91 (Ind. 2020) (observing that "of course, crimes committed by an attorney during the performance of his or her legal work [are] treated as having an immediate and self-evident nexus to the attorney's fitness to practice law" (citing cases)); id. at 191 (recognizing that "[i]n certain circumstances, an attorney's particular field of practice also has informed [a court's] nexus analysis, including an attorney's work as a prosecutor," and holding that part-time prosecutor's conviction of domestic battery "calls into question [attorney's] ability to zealously prosecute or to effectively work with the victims of such crimes" (citation omitted)).

¶ 14. Disciplinary Counsel argues that respondent's DUI conviction here reflects adversely on her fitness because she committed her crime while performing her professional and public duties as State's Attorney, which raises serious questions about her suitability to practice as a criminal prosecutor. See In re Oliver, 493 N.E.2d 1237, 1242-43 (Ind. 1986) (considering whether there was "nexus between [attorney's] act of misconduct and his fitness to practice law" and whether evidence showed that crime might "affect his practice or lead to any reasonable question about his suitability as a practitioner"). Additionally, he argues that, in an attempt to avoid being charged with a crime, respondent committed additional professional misconduct by abusing her public office, attempting to improperly influence police officers, and seeking to prejudice the administration of justice.

¶ 15. Respondent argues that she was not convicted of a "serious crime" because she was not convicted of a felony, the essential elements of DUI do not satisfy the definition of a serious crime in Rule 21(C), and the crime does not reflect on her honesty, trustworthiness, or fitness as a lawyer in other respects. Respondent asserts that the facts here are less egregious than in the Vermont cases cited by Disciplinary Counsel, arguing that she did not engage in a pattern of misconduct, she was not convicted of a felony, and her conduct did not reflect adversely on her honesty and trustworthiness. Respondent suggests that it is common to ask for leniency in these types of situations and she did not abuse her position during DUI processing by doing so. She asserts that she did not threaten law enforcement, attempt to persuade them to shirk their duties, request special treatment, refuse to cooperate, or convey that she intended to use her authority to suppress cooperation and communication between her office and local law enforcement.[1]

[1] Respondent raises several additional arguments that we summarily reject. Respondent contends that she has already been held accountable for DUI in the criminal and civil context. That is irrelevant to whether her license to practice law should be suspended on an immediate interim basis under Administrative Order 9, Rule 21. Respondent also argues that since her arrest, she has successfully carried out the duties of her position. This argument similarly has no bearing on whether she committed a serious crime under Rule 21 that warrants her immediate suspension. Finally, respondent speculates about the ultimate sanction she may receive at the conclusion of formal disciplinary proceedings. Respondent believes she is unlikely to face suspension for a

¶ 16. A "serious crime" includes "any felony or lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." A.O. 9, Rule 21(C). Certainly, commission of a felony, or engaging in a pattern of misconduct, are circumstances that can demonstrate conviction of a "serious crime," but they are not the only ways in which the requirements of the rule are satisfied. Each case must be decided on its own facts. Considering the "nature of the act and the circumstances of its commission" in this particular case, we agree with Disciplinary Counsel that respondent's DUI conviction reflects adversely on her fitness as a lawyer. Restatement (Third) of the Law Governing Laws. § 5, cmt. g. Her behavior "indicate[s] lack of those characteristics relevant to law practice" and an "indifference to legal obligation," V.R.Pr.C. 8.4, cmt. 2, "affect[ing] [her] practice" and drawing into question her "suitability as a practitioner," Oliver, 493 N.E.2d at 1243.

¶ 17. Respondent agrees that elected prosecutors are held to a higher standard of conduct. See, e.g., Law. Disc. Bd. v. Sims, 574 S.E.2d 795, 799 (W. Va. 2002) ("Ethical violations by a lawyer holding a public office are viewed as more egregious because of the betrayal of the public trust attached to the office." (quotation omitted)); see also People v. Freeman, 885 P.2d 205, 206-07 (Colo. 1994) (en banc) (per curiam) (explaining that "[a]ll lawyers are subject to professional discipline when they violate the law," but "respondent's status as a deputy district attorney at the time she committed the offenses is an aggravating factor because public officials engaged in law enforcement have assumed an even greater responsibility to the public than have other lawyers" (citing cases)); V.R.Pr.C. 8.4, cmt. 7 (stating that "[l]awyers holding public office assume legal responsibilities going beyond those of other citizens," and "[a] lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers"). As one court explained:

> The duty of 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. 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. The harm done is to the public esteem for those charged with enforcing the law.

In re Seat, 588 N.E.2d 1262, 1264 (Ind. 1992); see also Hill, 144 N.E.3d at 193 (explaining that court has "consistently held that criminal conduct committed by prosecutors or their deputies is conduct inherently prejudicial to the administration of justice due to their status as 'officers charged with administration of the law' "). Given her position as State's Attorney, respondent's DUI is more egregious than a similar crime committed by an attorney who is not an elected prosecutor. Her conduct demonstrates indifference to her legal obligations where she has been publicly charged with enforcing the laws. It draws into question her professional fitness and "ability to zealously prosecute" DUI cases. Hill, 144 N.E.3d at 191. It undermines public trust.

¶ 18. Respondent also committed her crime while performing her official duties as State's Attorney, creating "an immediate and self-evident nexus to [her] fitness to practice law." Id. at 190. Her conduct raises concerns about her professional judgment. She chose to drive while

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single violation of Rule 8.4(b) based on illegal conduct, and she maintains that it therefore would be unduly harsh to suspend her for her DUI conviction under Administrative Order 9, Rule 21. As set forth above, Rule 21(D) requires the Court to immediately suspend an attorney who has been convicted of a serious crime and we consider this argument unpersuasive here.

intoxicated to the scene of an ongoing suspicious death investigation and carry out her duties as State's Attorney at the scene while under the influence of alcohol. Cf. Warren, 164 Vt. at 618, 669 A.2d at 559 ("We will not countenance the representation of clients . . . in any context while the attorney is under the influence of intoxicating liquor or drugs.").

¶ 19. Notwithstanding her assertion to the contrary, the record shows that respondent also sought to avoid the consequences of her criminal act, asking the trooper to exercise his "discretion" and allow her to leave the scene without first engaging in the field sobriety exercises he requested based on his observations of respondent. Respondent's request is reasonably understood as seeking favorable treatment from someone she works with in her role as State's Attorney. She made similar comments to the processing officer and plainly indicated that her arrest would have negative consequences for her relationship, as State's Attorney, with law enforcement. This became evident less than a week later, when she informed the law enforcement officials that she worked with that she was scared to be in their physical presence and consequently would not conduct an in-person training as scheduled. Her DUI was thereby "directly linked to other misconduct." People v. Miller, 409 P.3d 667, 673 (Colo. O.P.D.J. 2017).

¶ 20. We conclude that the facts surrounding respondent's DUI conviction here, taken together, support the conclusion that respondent was convicted of a "serious crime" warranting her immediate interim suspension under Rule 21. In closing, we note that Rule 21(C) provides that, after Disciplinary Counsel files a petition for interim suspension, he "shall then file formal charges against the respondent predicated upon the conviction." The Court anticipates such a petition will be filed forthwith.

Respondent's license to practice law is immediately suspended on an interim basis. Respondent is directed to comply with the notice requirements of Administrative Order 9, Rule 27.

¶ 21. **NOLAN, J., dissenting**. In my view, Disciplinary Counsel has failed to make the requisite demonstration that respondent Eva P. Vekos's first-time misdemeanor driving under the influence (DUI) conviction is a "serious crime" as that term is uniquely defined by our Professional Responsibility Program Rules. A.O. 9, Rule 21(C), (D). The definition has several prongs, and Disciplinary Counsel concedes that only one applies to respondent. He agrees that her crime was not felonious, that it did not reflect adversely on her honesty and trustworthiness, and that it did not contain an element of interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, or theft. The sole question here is whether the crime should be considered "serious" because it reflects adversely on her "fitness as a lawyer in other respects." A.O. 9, Rule 21(C). Neither Disciplinary Counsel nor the majority has identified a case where an isolated misdemeanor offense like this formed the basis to abruptly suspend a lawyer's license and put their livelihood at stake. The majority's action sets an unforgiving precedent that leaves lawyers who commit misdemeanor level offenses with little or no pathway to continue working even if they demonstrate perfect acceptance of responsibility. I respectfully dissent.

¶ 22. There are several salient facts not in dispute for purposes of this petition. Respondent has no other criminal record, has accepted responsibility for her crime, voluntarily surrendered her driver's license when required to do so, and has complied with all court-imposed conditions of release since her criminal case more than two years ago. With one exception that does not appear relevant here, respondent has been working as the Addison County State's

Attorney since her arrest in January 2024.[2] For her conviction, respondent received a six-month deferred sentence with conditions of probation, including one regulating her alcohol consumption. If she successfully completes her term of probation in just two months, her conviction will be eligible for expungement, which she has indicated she will seek. See 13 V.S.A. § 7041(e) (providing grounds for expungement of fulfilled deferred sentence).

¶ 23. On March 4, 2026, nearly twenty-six months after respondent's arrest and about halfway through her thus-far successful completion of her six-month probationary term, Disciplinary Counsel petitioned to revoke her license on grounds that her conviction reflects adversely on her fitness to practice law. The basis for the current exigency is not evident from the facts presented. To date, respondent has not been charged with a violation of the Rules of Professional Conduct. As early as 2024, Disciplinary Counsel could have charged respondent with violating Rule 8.4, which makes it an independent disciplinary violation to "engage in," but not necessarily be charged with or convicted of, a "serious crime," a term it defines nearly identically to the Administrative Order 9, Rule 21(C)'s definition. Moreover, as he acknowledges, Disciplinary Counsel could have charged her in early 2024, or at any time since then, with what he views as disciplinary violations stemming from statements she made during her arrest and shortly afterwards. See In re Hill, 144 N.E.3d 184, 189 (Ind. 2020) (upholding merits panel finding by clear and convincing evidence that Attorney General violated Indiana equivalent of Rule 8.4 by committing criminal act even where no companion criminal charges were filed).[3] With no charges being filed, it goes without saying that respondent has had no opportunity to fully adjudicate the matter before a merits panel.

¶ 24. Moreover, if respondent's actions were so severe, an interim suspension under Rule 22 could have been sought based on respondent's arrest and behavior in early 2024. As relevant here, Rule 22 provides a procedure for seeking interim suspension "[u]pon receipt of sufficient evidence demonstrating that a lawyer . . . has: (1) [] committed a violation of the rules of professional responsibility . . . and (2) presently poses a substantial threat of serious harm to the public."

¶ 25. The need to do so now is not evident. Disciplinary Counsel has not identified any case where a lawyer's single misdemeanor conviction rose to the level of severity warranting interim suspension based on conviction of a serious crime. Granting a suspension now breaks new ground for the country by revoking respondent's license for this type of crime before she has a merits hearing.

¶ 26. It is important to set the table on first principles. Our attorney regulation system is designed to protect the public from harm and to maintain faith in our legal system. In re Watts, 2024 VT 48, ¶ 28, 219 Vt. 598, 325 A.3d 108 (providing that "attorney discipline is focused on protection of the public"); Reporter's Notes—2021 Amendment, A.O. 9, Preamble (noting that the "proactive regulation serves to protect the public and instill confidence in the profession"). As a

[2] The majority includes a recitation of the circumstances surrounding disciplinary counsel's prior petition to suspend respondent's license for failure to cooperate with his investigation, which the Court granted. After a brief interval, respondent came into compliance with the investigation, and we lifted the suspension. Disciplinary counsel has not argued that the earlier proceedings are relevant to this petition, so it is unclear why the majority includes this passage.

[3] Whatever the reasons for waiting, the majority's decision will put the heaviest of thumbs on his side of the scale at any forthcoming merits hearing, if it is not outcome dispositive.

result, "the purpose of sanctions is not to punish attorneys," but to "protect the public from lawyers who have not properly discharged their professional duties and to maintain public confidence in the bar." In re Warren, 167 Vt. 259, 263, 704 A.2d 789, 792 (1997) (per curiam). When there is an allegation of professional misconduct, the rules prescribe a process for investigating, charging, and adjudicating, if necessary, before a Professional Responsibility Board hearing panel. See A.O. 9, Rule 13(D) (providing for process of formal disciplinary proceedings). If the hearing panel finds a violation of the Rules, it examines the mitigating and aggravating factors before imposing discipline. A.O. 9, Rule 15 (listing possible sanctions for misconduct); In re Neisner, 2010 VT 102, ¶ 18, 189 Vt. 145, 16 A.3d 587 (explaining that Court considers aggravating and mitigating factors in assessing proper sanction).

¶ 27. An interim suspension is warranted when the alleged action is so egregious that permitting an attorney to continue practicing while the disciplinary process unfolds may result in injury to the public and to clients. See ABA Ctr. for Pro. Resp., Standards for Imposing Lawyer Sanctions (2019) (explaining that interim suspension is necessary "to protect members of the public and to maintain public confidence in the legal profession pending final determination of the appropriate discipline to be imposed"); In re Ellis, 680 N.E.2d 1154, 1161 (Mass. 1997). An interim suspension for conviction of a serious crime is based on the idea that this conduct "calls into question whether the lawyer has the character to deal honestly with clients and to serve them loyally in their representations." A. Greenbaum, Administrative and Interim Suspensions in the Lawyer Regulatory Process—A Preliminary Inquiry, 47 Akron L. Rev. 65, 96 (2014). The goal of public protection is not absolute, however, and is balanced against the attorney's own interest in continuing to practice law and to serve clients. This analysis should include consideration of the "burden" suspension can have on "the lawyer's clients who must seek representation elsewhere at the risk of delay and greater expense." Ellis, 680 N.E.2d at 1161 (noting that "[t]he fact that violations of ethical standards have been shown likely to have occurred does not end the temporary suspension discussion," and the Court "must balance the harm to the lawyers against the public interest in preventing harm to present and future clients and in preventing any other harm that should be guarded against."). In In re Ellis, the Supreme Judicial Court of Massachusetts summarized the various harms that may befall lawyers from temporary suspension of practice:

> The harm to a lawyer that will come from the suspension of his right to practice law is obviously substantial. Not only will the lawyer lose his clients (at least during the period of suspension), but his reputation will probably be damaged in a way that cannot be repaired even if the lawyer later receives total vindication in the disciplinary process. The lawyer who loses his practice may well be adversely affected in the defense of criminal and disciplinary charges arising from the alleged misconduct, at least in his ability to afford counsel.

Id. 1161-62 (footnote omitted); see also In re Johnson, 2001 UT 110, ¶ 17, 48 P.3d 881 (explaining that stay of suspension after finding of violation and pending appeal should be granted for single instance of misconduct absent "substantial threat of irreparable harm" because "private practice of law cannot easily be stopped and started again"); Greenbaum, supra, at 105 (explaining competing polices at play in deciding whether to grant interim suspension).

¶ 28. Given the drastic consequences for attorneys and their clients, this Court's procedures allow for an interim suspension in only limited circumstances. Here, Disciplinary Counsel requested an interim suspension under the rule pertaining to attorneys convicted of a crime. A.O. 9, Rule 21. Interim suspension is required when there is "proof that the lawyer has

been convicted of a serious crime." A.O. 9, Rule 21(D)(1). Three categories of crime fall within the rule's definition of serious crime, but Disciplinary Counsel seeks revocation of respondent's license only on the narrow theory that her first-time misdemeanor is a "crime that reflects adversely on [her] . . . fitness as a lawyer in other respects." A.O. 9, Rule 21(C).

¶ 29. In my view, respondent's misdemeanor DUI conviction does not rise to the level of diminishing her fitness as a lawyer, unless virtually all crimes do. As an initial matter, the record before us reflects respondent's continuous practice of law without meaningful interruption for more than two years since her arrest. Respondent incurred her conviction in December 2025 and received a six-month deferred sentence that will be subject to expungement this June should she successfully complete the next two months of her probationary period. Disciplinary Counsel chose not to file charges or seek an interim petition previously. It is impossible to square that decision with Disciplinary Counsel's present contention that suddenly now—when she is on the precipice of successfully completing the terms of her sentence and of securing an expungement—respondent's license must be revoked and her practice suspended on grounds of unfitness to practice.

¶ 30. Moreover, it would strain credulity to argue that the petition to take respondent's license now, where the same request was not made four months ago (after respondent's conviction) or two years ago (at the time of her arrest), is somehow linked to the goals of public safety and maintaining confidence in our legal system. The public does not need such urgent protection from respondent tomorrow if it did not need it for the last four months or two years. Granting a suspension now ignores respondent's interest in continuing to earn a living, pay for her defense, and represent the voters who elected her. Interrupting respondent's practice will also have some ramifications for her constituents, who cannot simply seek representation elsewhere like private clients. See Ellis, 680 N.E.2d at 1161-62 (stating that interim suspension analysis should consider burden on private clients from seeking representation elsewhere).

¶ 31. Even if the facts on the ground did not present a square peg to the round hole of disciplinary counsel's unfitness-to-practice theory, I would hold that this first-time DUI misdemeanor conviction is not a "serious crime" warranting an immediate, pre-merits hearing suspension. Neither Disciplinary Counsel nor this Court have located any case approving interim suspension on the basis of a single nonrecidivist misdemeanor conviction. Presumably that is because there must be some leeway for lawyers to earn redemption through acceptance of responsibility, and with it, an opportunity to continue to earn a living without interruption. The majority's conclusion here that respondent's single misdemeanor offense suffices to warrant license suspension at the time of Disciplinary Counsel's choosing, threatens, in my view, to leave little daylight for those considerations if it does not entirely foreclose them. The on-the-ground result in the meantime is that a prosecutor will lose her ability to perform her duties as elected State's Attorney before she has been charged or had an opportunity to defend herself before a hearing panel.

¶ 32. Cases that have permitted interim suspension involved crimes that are more "serious" in the colloquial sense and within the meaning of Rule 21. Those precedents involve recidivism, felony-level conduct, and violence, among other aggravating circumstances not present here. See In re Pope, 2014 VT 94, ¶ 10, 197 Vt. 638, 101 A.3d 1284 (mem.) (concluding attorney's crime of "identity theft, involving an element of intentional misrepresentation as well as an intent to defraud" amounted to serious crime); Neisner, 2010 VT 102, ¶¶ 8-9 (recounting that Court imposed interim suspension after attorney was convicted of felony of impeding public officer and misdemeanor of giving false report to law enforcement officer); In re Warren, 164 Vt. 618, 618, 669 A.2d 558, 559 (1995) (mem.) (concluding attorney violated several professional conduct rules

following fifth arrest for DUI and behavior of appearing in court under influence of alcohol); see also Inquiry Comm'n v. Schmidt, 431 S.W.3d 422, 425 (Ky. 2014) (denying request for interim suspension of attorney based on threat of harm to clients and noting that temporary suspension had not previously been granted "due to a string of misdemeanor charges and convictions"). The cases cited by disciplinary counsel, likewise, do not involve convictions for a single misdemeanor such as this. See In re Haith, 742 N.E.2d 940, 942 (Ind. 2001) (per curiam) (concluding that lawyer's convictions for operating motor vehicle while intoxicated reflected adversely on fitness to practice law and explaining offenses were "not minor, given that two of the three involved personal injury"); see also Hill, 144 N.E.3d at 191 (collecting cases standing for the proposition that "[c]rimes of violence—even those involving a single act committed outside of one's legal practice—have been held to be attorney misconduct on the premise that such an act bears on 'fitness as a lawyer in other respects' ").

¶ 33. To reach its conclusion, the majority relies heavily on two factors: respondent's position as a prosecutor and respondent's statements during her arrest and in emails with law enforcement about a week later. Ante, ¶¶ 14-19. But these facts are not elements of the crime of first-time DUI, nor do these circumstances constitute proof of any element of that crime. In other words, respondent's statements that evening more than two years ago, and her exchange of emails with law enforcement shortly afterwards, are not the basis for the interim suspension Disciplinary Counsel seeks—the criminal conviction is, as only it can be under Rule 21.

¶ 34. In relying on those factors, the majority and Disciplinary Counsel cite cases addressing the merits of whether lawyers committed professional misconduct under the equivalent of Vermont Rule 8.4(b), not interim suspensions pending the disciplinary process. See In re Doherty, 162 Vt. 631, 632, 650 A.2d 522, 522 (1994) (mem.) (concluding that, even though convicted of misdemeanor, attorney's act of engaging in use and cultivation of marijuana was "serious violation" of Vermont law and reflected adversely upon fitness to practice law); Warren, 164 Vt. at 618, 669 A.2d at 558 (concluding attorney's abuse of alcohol while representing clients amounted to misconduct following disciplinary proceedings); People v. Miller, 409 P.3d 667, 673 (Colo. O.P.D.J. 2017) (concluding that attorney's DUI conviction amounted to misconduct where attorney admitted he had driven while intoxicated in past and BAC was "strikingly high"); Iowa Sup. Ct. Att'y Disciplinary Bd. v. Khowassah, 890 N.W.2d 647, 650 (Iowa 2017) (providing that nature and circumstances of act are relevant to determining whether lawyer violated professional conduct rule prohibiting lawyer from committing criminal act that reflects adversely on lawyer's fitness to practice law); In re White, 815 P.2d 1257, 1265 (Or. 1991) (per curiam) (recognizing relevancy of surrounding circumstances to ascertaining whether there was misconduct and providing that there "must be some rational connection other than the criminality of the act between the conduct and the actor's fitness to practice law").

¶ 35. The majority places heavy weight on Hill, 144 N.E.3d at 191, but it is inapposite procedurally and substantively. Hill upheld a merits panel decision, following an evidentiary hearing, finding that the Indiana Attorney General committed battery at a business function through inappropriate nonconsensual touching of four women and this violated Indiana's Rule 8.4 counterpart because it was a criminal act that was committed within the ambit of his professional duties. Id. at 193. The opinion in Hill does not indicate that the attorney general was suspended while proceedings were pending. Indeed, the discipline imposed in Hill was a suspension of thirty days—far shorter than is likely for respondent here. Moreover, this case demonstrates that a merits determination should follow an opportunity for a full hearing, development of a factual record, and assessment of all the facts and relevant considerations with the benefit of advocacy from both parties.

¶ 36. As to the allegations of conduct not related to the DUI, respondent here will be afforded no such opportunity under the majority decision, which rests on evidence proffered by Disciplinary Counsel without a full evidentiary hearing at which respondent could confront and cross examine his evidence.[4] Whether respondent's comments to law enforcement and subsequent emails—as opposed to her crime—amount to professional misconduct is not for us to say in the Rule 21 interim suspension context, because those circumstances are clearly not a "serious crime" reflecting adversely on her fitness to practice, the sole basis to suspend her license in this proceeding.

¶ 37. To be sure, respondent's status as a prosecutor carries with it a heightened standard of ethical responsibility and conduct. See V.R.Pr.C. 8.4, cmt. 7 (explaining that "[l]awyers holding public office assume legal responsibilities going beyond those of other citizens"). It may well be that her status will have some bearing on the outcome of any forthcoming disciplinary charges. But there is nothing in our interim suspension rules that makes the determination of a serious crime under Rule 21(C) dependent on the attorney's position as a public servant. In fact, the definition turns not on the lawyer's identity but on the quality of her crime and whether it reflects adversely on her ability to practice. Neither the majority nor Disciplinary Counsel have cited a single case where the attorney's status as a prosecutor transformed an offense into a "serious crime" for purposes of imposing an interim suspension, or any precedent suggesting that that result should flow categorically from a lawyer's identity as prosecutor. Indeed, in In re Ravnsborg, the state attorney general pleaded no contest to two misdemeanor charges for operating a motor vehicle while using a mobile device and improper lane driving, and although he was ultimately sanctioned for his conduct, he was not suspended during the criminal investigation or after entering his plea. 2024 S.D. 58, ¶ 10, 12 N.W.3d 306.

¶ 38. Rather than defer to a hearing panel on what weight to give respondent's position as a prosecutor and how to interpret respondent's statements, as I believe it should, the majority draws conclusions about the evidence. It asserts that respondent's "conduct demonstrates indifference to her legal obligations where she has been publicly charged with enforcing the laws," and that it "draws into question her professional fitness and 'ability to zealously prosecute' DUI cases." Ante, ¶ 17 (quoting Hill, 144 N.E.3d at 191). Without the benefit of an evidentiary hearing, and in light of respondent's acceptance of responsibility, her voluntary and timely surrender of her driver's license, and her more than two years of practice since her crime, I believe that those conclusions cannot be drawn with such certainty. For example, rather than hardening into indifference, it is at least possible that a hearing panel would conclude that respondent has become more attuned to her legal obligations and the severity of DUI offenses in the wake of her experience. See In re Oliver, 493 N.E.2d 1237, 1241 (Ind. 1986) (finding no violation of Code provision addressing criminal conduct involving moral turpitude, noting that Oliver was not multiple offender or someone with chronic alcohol problem, his criminal act was isolated and did not result in any personal injury or property damage except to himself, and he had readily admitted his guilt and successfully discharged the conditions of his informal probation). These and other questions about the seriousness and importance of respondent's crime-adjacent conduct are, in my view, questions for a hearing panel to assess should Disciplinary Counsel decide to file charges.[5]

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[4] Although the majority asserts that the facts "appear to be undisputed," ante, ¶ 9, I disagree. Counsel for respondent argued vigorously at the hearing and in briefing that he should have the opportunity at a merits hearing to counter Disciplinary Counsel's narrative of events, particularly the meaning, motivation, and interpretation of respondent's statements.

[5] It is not difficult to conjure a counter-interpretation of any one of the circumstances cited as aggravators. For example, rightly or wrongly, respondent is faulted for stating, in sum and

¶ 39. The majority also bases its conclusion on respondent's commission of her crime "while performing her official duties as State's Attorney, creating 'an immediate and self-evident nexus to [her] fitness to practice law.' " Ante, ¶ 18 (quoting Hill, 144 N.E.3d at 190). This is a repackaged version of the majority's argument that respondent's status as prosecutor automatically transforms her crime into a serious one justifying license revocation, and it advances the analysis no further. As Disciplinary Counsel conceded at the hearing, prosecutors are always on duty, so commission of a crime while on duty cannot be the factor that elevates an otherwise nonserious crime to the "serious" category or else the definition is meaningless for prosecutors and probably many other kinds of public servants. See Hill, 144 N.E.3d at 190 (finding in disciplinary matter involving Attorney General that "[o]ur determination that Respondent committed a criminal act, standing alone, is not enough to establish a violation of this Rule").

¶ 40. The majority also asserts that respondent's "conduct raises concerns about her professional judgment" because "[s]he chose to drive while intoxicated to the scene of an ongoing suspicious death investigation and carry out her duties as State's Attorney at the scene while under the influence of alcohol." Ante, ¶ 18. That observation is accurate, but again, it does nothing to distinguish this crime, because poor judgment will be present in every criminal case with a mens rea element and thus in virtually every single DUI or other first-time misdemeanor case.

¶ 41. I do not believe the present first-time misdemeanor conviction amounts to a "serious crime" under the relevant definition warranting an immediate interim suspension twenty-seven months after its commission. If respondent's status as a prosecutor and concurrent behavior amount to behavior impacting her fitness to practice law, Disciplinary Counsel should finally file formal charges and litigate it to conclusion. I respectfully dissent.

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substance, that she would not take field-sobriety tests because she believed she would be arrested either way. This is presented as an accusation of bad faith against the officer, when it is at least possible that a disciplinary panel would conclude respondent was voicing her professional understanding of how DUIs are processed in her county. Similarly, Disciplinary Counsel relies on a quotation fragment from an online interview of respondent to try to show that she has taken the position that any level of impairment could sustain a DUI charge. The apparent purpose in citing the article is to paint respondent as a hypocrite who cannot maintain public confidence. But a review of the entirety of her statements on the topic shows that she made the quoted language in the course of advocating for diversion and more lenient treatment of lower-level DUI offenses. Viewed in totality, it is hard to say which way these statements would cut for a hearing panel, if they mattered to it at all, but it is not so obvious that they should be viewed as negatively as Disciplinary Counsel would have us. These examples are emblematic of the larger point that it is speculative and premature to reach conclusions before a full airing of the facts at a merits hearing.

BY THE COURT:

Dissenting:

Christina E. Nolan, Associate Justice

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Michael P. Drescher, Associate Justice