4112-5-05 Sex discrimination

****

(J) Sexual harassment.

(1) Harassment on the basis of sex is a violation of division (A) of section 4112.02 of the Revised Code. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(2) In determining whether alleged conduct constitutes sexual harassment, the commission will look at the record as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(3) Applying general agency principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(4) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the work place where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

(5) An employer may also be responsible for the acts of nonemployees (e.g., customers) with respect to sexual harassment of employees in the work place, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such nonemployees.

(6) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Chapter 4112. of the Revised Code and developing methods to sensitize all concerned.

(7) Other related practices. Where employment opportunities or benefits are granted because of an individual's submission to the employer's requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

CLEVELAND METROPOLITAN BAR ASSOCIATION *v.* PARIS.

[Cite as *Cleveland Metro. Bar Assn. v. Paris*, 148 Ohio St.3d 55, 2016-Ohio-5581.]

Attorneys—Misconduct—Violations of the Rules of Professional Conduct—Conditionally stayed six-month suspension.

(No. 2015-2009—Submitted February 24, 2016—Decided August 31, 2016.)

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2015-005.

Per Curiam.

{¶ 1} Respondent, Tasso Paris of Cleveland, Ohio, Attorney Registration No. 0038609, was admitted to the practice of law in Ohio in 1987.

{¶ 2} In a January 2015 complaint, relator, Cleveland Metropolitan Bar Association, alleged that Paris violated multiple Rules of Professional Conduct by making unwelcome sexual advances toward a female client and failing to appear at her criminal-sentencing hearing.

{¶ 3} The parties entered into stipulations of fact, misconduct, and aggravating and mitigating factors and jointly recommended that Paris be suspended from the practice of law for six months, all stayed on the condition that he engage in no further misconduct. A panel of the Board of Professional Conduct conducted a hearing at which it admitted stipulations submitted by the parties and heard testimony from Paris and the affected client. The panel largely adopted the stipulations but, noting that Paris's testimony contradicted some of those stipulations, also found that he failed to understand and acknowledge the wrongful nature of his conduct. The panel therefore rejected the sanction suggested by the

parties and recommended that Paris serve a six-month actual suspension from the practice of law in Ohio. The board adopted the panel's report in its entirety.

{¶ 4} Paris objects to the board's finding of an additional aggravating factor to which the parties had not stipulated. He also argues that given the parties' comprehensive stipulations and the limited nature of the testimony before the panel, this court should reject the sanction recommended by the panel and adopt the stipulated sanction of the parties. We adopt the board's findings of fact and misconduct but sustain Paris's objections and suspend him from the practice of law in Ohio for six months, all stayed on conditions.

Misconduct

{¶ 5} Following an automobile accident that occurred on March 17, 2013, a woman hired Paris to defend her in the Cleveland Municipal Court against charges of driving under the influence and driving under suspension, and her fiancé paid him $1,000. Paris stipulated that he referred to her as his "beautiful Irish girl" but testified that he had referred to her as "a red haired Irish girl, coming out of an Irish bar, in Cleveland, Ohio, on March 17th" only in the context of explaining that no one was going to believe her claim that she had had only one drink before her St. Patrick's Day automobile accident. Paris also stipulated that during the course of his representation, he asked his client to go out with him several times and invited her to his house to join him in his hot tub on more than one occasion. Although he never denied the truth of that stipulation, he also testified that the client's fiancé was present at all but one of their meetings.

{¶ 6} Paris stipulated that his client was afraid to do anything about his conduct out of fear that it would affect his representation. The client testified that his conduct made her uncomfortable but that she never told him that she would not go out with him. Instead, she attempted to avoid the issue by saying, "[W]e'll see" or "We will talk about it." The client and her fiancé discussed her concerns on several occasions and agreed that she would just go out with Paris so that he would

do a better job representing her, but she could not bring herself to go through with it. She testified that as the case dragged on, however, she would have done "whatever he want[ed]" to get it resolved.

{¶ 7} On August 6, 2013, the client pleaded guilty to driving while under suspension and failure to maintain reasonable control of her vehicle and was ordered to appear at a later date for sentencing. Paris stipulated that he not only failed to attend the sentencing hearing but that he also failed to notify the client of his absence and to request that another attorney attend the hearing on his behalf. At the panel hearing, Paris acknowledged that stipulation and confirmed its truth. He testified, however, that he had asked his father to attend the client's sentencing hearing and that upon returning to the office after the hearing, his father reported that the case had been "sent to another judge." Paris's father was not called as a witness, but he represented Paris before the panel. During his closing argument, he stated that he attended the sentencing hearing at Paris's request. But the parties had stipulated—and the client's testimony confirmed—that when the judge asked her whether she was represented by counsel, she responded that Paris had failed to appear and that she did not expect him to because "[h]e's be[en] doing nothing but trying to get in my pants."

{¶ 8} Based on the client's statement, the judge vacated the client's plea and recused herself from the case. The case was reassigned, and a public defender was appointed to represent the client. The client ultimately pleaded guilty to operating an unsafe vehicle and was fined $200. She later filed a grievance against Paris.

{¶ 9} The board adopted the parties' stipulations and agreed that Paris's conduct violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client) and 1.8(j) (prohibiting a lawyer from soliciting

or engaging in sexual activity with a client unless a consensual sexual relationship existed prior to the lawyer-client relationship).[1]

Recommended Sanction

{¶ 10} When imposing sanctions for attorney misconduct, we consider several relevant factors, including the ethical duties that the lawyer violated, relevant aggravating and mitigating circumstances, and the sanctions imposed in similar cases. *See* Gov.Bar R. V(13)(A).

{¶ 11} The board adopted the parties' stipulation that Paris has no prior disciplinary record and cooperated with relator's investigation. *See* Gov.Bar R. V(13)(C)(1) and (4). It also noted that Paris did not present evidence of any other mitigating factors.

{¶ 12} In addition to adopting the parties' stipulated aggravating factors—that Paris acted with a selfish motive and engaged in multiple offenses—the board found that Paris's conduct harmed a vulnerable client. *See* Gov.Bar R. V(13)(B)(2), (4), and (8). The board also found that Paris did not understand or accept the wrongful nature of his conduct based on testimony in which he (1) asked why the client referred a female friend to him after terminating his representation if he was "hitting on" her, (2) stated that the client's fiancé was present during all but one of their meetings, (3) claimed that he merely referred to the client as a "red haired Irish girl"—and only when explaining that no one was going to believe her claim that she had had only one drink before her St. Patrick's Day automobile accident, and (4) claimed that his father had attended the client's sentencing hearing. *See* Gov.Bar R. V(13)(B)(7). While noting that relator offered no evidence that Paris engaged in a pattern of misconduct, the board also commented that "there is likewise no evidence to assure the panel that it was an isolated event that is unlikely to reoccur." *See* Gov.Bar R. V(13)(B)(3) (providing that a pattern of misconduct

[1] In accordance with the parties' stipulations, the panel unanimously dismissed two additional alleged violations of the Rules of Professional Conduct.

is an aggravating factor that may be considered in favor of recommending a more severe sanction).

{¶ 13} The parties jointly recommend that Paris be suspended for six months but that the suspension be stayed in its entirety on the condition that he engage in no further misconduct. In support of that sanction, the parties cited *Disciplinary Counsel v. Hubbell*, 144 Ohio St.3d 334, 2015-Ohio-3426, 43 N.E.3d 397 (imposing a conditionally stayed six-month suspension on an attorney who attempted to initiate a romantic relationship with a client whom he represented, pro bono, in a custody dispute), and *Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, 843 N.E.2d 1205 (imposing a conditionally stayed one-year suspension on an attorney who put his hands on a client's breasts for several seconds and told her that they were "very nice").

{¶ 14} Noting the increasing frequency of cases involving repeated and unwelcome solicitation of clients for sexual activity, the board, however, urges us to hold that in the absence of significant mitigating factors, this court will impose an actual suspension on attorneys who have engaged in such conduct—as we do in cases involving attorneys who have engaged in a material misrepresentation to a court or have engaged in a pattern of dishonesty with a client. *See Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 190, 658 N.E.2d 237 (1995) (creating a presumption that an attorney who has engaged in a course of conduct involving dishonesty, fraud, deceit, or misrepresentation will receive an actual suspension). *But see Dayton Bar Assn. v. Kinney*, 89 Ohio St.3d 77, 78, 728 N.E.2d 1052 (2000) (recognizing that mitigating factors may justify a lesser sanction in some cases involving attorney dishonesty).

{¶ 15} In accordance with this suggested presumption and in light of Paris's repeated and unwelcome solicitation of his client, his failure to appear for her sentencing hearing after she rebuffed his advances, his failure to acknowledge the wrongful nature of his conduct, and the absence of additional mitigating evidence,

the board recommends that we suspend Paris from the practice of law for six months with no stay.

Paris's Objections

{¶ 16} In his objections to the board's report and recommendation, Paris urges us to reject the board's finding of the additional aggravating factor that Paris failed to accept the wrongful nature of his conduct. He also challenges the board's recommended sanction and urges us to adopt the parties' stipulated sanction of a fully stayed six-month suspension.

{¶ 17} We agree that Paris did not plainly acknowledge the wrongful nature of his conduct or make a particularly strong showing of remorse at the panel hearing. But we also note that despite the intention of the parties to submit the case entirely upon their stipulations, the panel sought to hear testimony not only from Paris but also from the grievant. This created some confusion regarding the scope of the evidence to be presented at the hearing. It also resulted in the inadvertent admission of testimony that touched upon stipulated issues. Although relator and the panel chairperson expressed that it was their intention to rely on the stipulations rather than the testimony in those instances, there is a possibility that some of Paris's contradictory testimony was offered to rebut portions of the grievant's testimony on those stipulated issues. Therefore, in the interest of fairness, we decline to adopt additional aggravating factors based on that testimony. Moreover, in light of Paris's nearly 30 years of practice with no disciplinary record prior to this incident, we are inclined to agree that there is some evidence that his behavior in this matter is an isolated incident.

{¶ 18} We have consistently disapproved of the conduct of lawyers who have solicited or engaged in sexual activity with their clients even before the adoption of Prof.Cond.R. 1.8(j), and depending on the relative impropriety of the situation, we have imposed a wide range of disciplinary measures for such conduct. *Akron Bar Assn. v. Miller*, 130 Ohio St.3d 1, 2011-Ohio-4412, 955 N.E.2d 359,

¶ 18. We have publicly reprimanded attorneys who have commenced consensual sexual relationships with their clients that have not compromised the clients' interests. *See, e.g., Disciplinary Counsel v. Engler*, 110 Ohio St.3d 138, 2006-Ohio-3824, 851 N.E.2d 502 (publicly reprimanding an attorney who had two consensual sexual encounters with a client while representing her in a divorce). On the other end of the spectrum, we have disbarred an attorney who solicited sex from clients in exchange for a reduced legal fee, made inappropriate sexual comments to clients, touched them in a sexual manner, exposed himself to a client, and lied repeatedly during the disciplinary process. *Disciplinary Counsel v. Sturgeon*, 111 Ohio St.3d 285, 2006-Ohio-5708, 855 N.E.2d 1221.

{¶ 19} In between those two extremes, we typically impose term suspensions with all or part of the suspension stayed, depending on the severity of the misconduct and the applicable aggravating and mitigating factors. *Disciplinary Counsel v. Bunstine*, 136 Ohio St.3d 276, 2013-Ohio-3681, 995 N.E.2d 184, ¶ 32. *See also Toledo Bar Assn. v. Burkholder*, 109 Ohio St.3d 443, 2006-Ohio-2817, 848 N.E.2d 840 (imposing a conditionally stayed six-month suspension on an attorney who relentlessly asked a client out on dates, inappropriately touched her, and made a sexual comment to her); *Disciplinary Counsel v. Freeman*, 106 Ohio St.3d 334, 2005-Ohio-5142, 835 N.E.2d 26 (imposing a six-month actual suspension on an attorney who paid a young client for photographs of herself in various states of undress and requested photographs of her in the nude and sex acts from her in exchange for money after the attorney-client relationship ended); *Akron Bar Assn. v. Miller*, 130 Ohio St.3d 1, 2011-Ohio-4412, 955 N.E.2d 359 (imposing a conditionally stayed six-month suspension and monitored probation on an attorney who asked a client about her breast size, asked her to show him her breasts as a reward for the work he was performing on her behalf, and suggested that she perform oral sex on him—all during a period when he was not taking medication prescribed for his depression and attention-deficit disorder); *Bunstine* (imposing a

conditionally stayed one-year suspension on an attorney who, in his second disciplinary matter, solicited sex from a client in lieu of payment for his fees).

{¶ 20} We by no means condone Paris's conduct in this matter, but on the stipulated facts before us, we find that his actions are most comparable to cases in which we have imposed fully stayed suspensions. Therefore, we sustain Paris's objection to the board's recommended sanction and find that a six-month suspension, stayed on conditions, is the appropriate sanction for his misconduct.

{¶ 21} Accordingly, Tasso Paris is suspended from the practice of law for six months, with the entire suspension stayed on the conditions that he make full restitution of $1,000 to the affected client[2] and engage in no further misconduct. If Paris fails to comply with the conditions of the stay, the stay will be lifted and he will serve the full six-month suspension. Costs are taxed to Paris.

Judgment accordingly.

PFEIFER, O'DONNELL, KENNEDY, and FRENCH, JJ., concur.

KENNEDY, J., concurs, with an opinion.

LANZINGER, J., dissents, with an opinion joined by O'CONNOR, C.J., and O'NEILL, J.

KENNEDY, J., concurring.

{¶ 22} I agree with the majority that a six-month suspension, stayed on conditions, is the appropriate sanction for the misconduct of respondent, Tasso Paris. The majority opinion tacitly rejects the board's request that we adopt a new presumption that in the absence of significant mitigating factors, the court will impose an actual suspension for the repeated and unwelcome solicitation of vulnerable clients for sexual activity. The dissenting opinion argues in favor of adopting this presumption. I write separately to squarely address whether it is this

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[2] Paris stipulated that he was willing to refund the affected client's entire fee of $1,000. At oral argument, however, his counsel stated that the refund had not yet been made.

court's role to create a new presumption in favor of an actual suspension in lieu of our deeply rooted process of determining the appropriate sanction in each individual case.

{¶ 23} Gov.Bar R. V(13) imposes a duty on the Board of Professional Conduct to examine the unique facts and circumstances of each disciplinary case, the aggravating and mitigating factors applicable to the individual attorney, and his or her life circumstances in order to determine the appropriate sanction for that particular attorney. Therefore, the establishment of a presumption of an actual suspension would be antithetical to our rules.

{¶ 24} In 1995, this court established a presumption of an actual suspension in cases with misconduct involving dishonesty, fraud, deceit, or misrepresentation, absent mitigating factors justifying a stay. *See Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 658 N.E.2d 237 (1995). A majority of the court in *Fowerbaugh* reasoned that a presumption was warranted for conduct by an attorney involving deception, falsehood, or fraud because "[s]uch conduct strikes at the very core of a lawyer's relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer." *Id.* at 190.

{¶ 25} In my view, however, deception and fraud are not the only types of misconduct that strike at the core of a lawyer's relationship with the court and with the client. Instead, every act of misconduct does so and diminishes the honor and nobility of our great profession. But to echo the views expressed in Justice Resnick's separate opinion in *Fowerbaugh*:

> It is the responsibility of this court to give guidance as to what conduct constitutes a violation of the Disciplinary Rules. It is not the province of this court to use syllabus law to mandate a particular sanction once a violation has been found. The sanction in each

> individual's case should be determined based upon the unique facts and circumstances of that case.

Id. at 191 (Resnick, J., concurring in judgment only).

{¶ 26} Without question, inappropriate sexual conduct by an attorney toward his or her client undermines the attorney-client relationship and diminishes respect for our profession. However, if we were to adopt a presumption of an actual suspension for this category of misconduct based on the reasoning advanced by the majority in *Fowerbaugh*, why not extend this approach and establish a similar presumption for any and all cases involving violations that undermine the attorney-client relationship and diminish respect for our profession? Adoption of the proposed presumption in this case would move us closer to a reality in which the "exception swallows the rule."

{¶ 27} Gov.Bar R. V(2)(A) provides that "[e]xcept as otherwise expressly provided in rules adopted by the Supreme Court, all grievances involving alleged misconduct by * * * attorneys * * * shall be brought, conducted, and disposed of in accordance with the provisions of this rule." This provision applies to all of Gov.Bar R. V, including Gov.Bar R. V(13). Presuming an actual suspension would fundamentally transform our well-established individualized process of attorney discipline into a formulaic "one size fits all" system. This philosophical shift should be carried out, if ever, only pursuant to this court's longstanding rulemaking process, not through judicial fiat. It is for the members of the legal community—guided by the principle that the primary purpose of the disciplinary process is not to punish the offender but to " 'protect the public against members of the bar who are unworthy of the trust and confidence essential to the relationship of attorney and client,' " *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E.2d 368, ¶ 10, quoting *Ohio State Bar Assn. v. Weaver*, 41 Ohio St.2d

97, 100, 322 N.E.2d 665 (1975)—to debate whether it would be appropriate to establish a presumption of an actual suspension.

{¶ 28} Accordingly, I respectfully concur.

LANZINGER, J., dissenting.

{¶ 29} This court has been asked to consider establishing a presumption that in the absence of significant mitigating factors, we will impose an actual suspension on attorneys who engage in the repeated and unwelcome solicitation of vulnerable clients for sexual activity. We already presume that an actual suspension will be the sanction for behavior involving dishonesty, fraud, deceit, or misrepresentation, unless mitigating factors justify a stay. *See Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 190, 658 N.E.2d 237 (1995). I believe that the same type of sanction should be imposed upon respondents like Tasso Paris, especially because it appears that cases of this type are increasing.

{¶ 30} In my view, this court should do more than merely express disapproval of the attorney's actions by imposing a stayed suspension. The extent of the mitigation is that he has no previous discipline and has cooperated with the investigation. On the other hand, he stipulated that he acted with a selfish motive and engaged in multiple offenses. In addition, the board found that he did not understand or accept the wrongful nature of his actions and so failed to show that his misconduct was unlikely to recur. Most importantly, the client was harmed when Paris did not appear for her sentencing, conduct that she attributed to her rebuffing his sexual advances.

{¶ 31} I respectfully dissent from the court's judgment with respect to the sanction in this case. I would adopt the recommendation of both the panel and the board and would suspend Paris from the practice of law for a period of six months.

O'CONNOR, C.J., and O'NEILL, J., concur in the foregoing opinion.

Thomas L. Anastos; Ulmer & Berne, L.L.P., and Corey N. Thrush; and Heather M. Zirke, Bar Counsel, for relator.

Thomas Paris and John T. Paris, for respondent.

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111 Ohio St.3d 285 (2006)
2006-Ohio-5708

DISCIPLINARY COUNSEL ET AL.,
v.
STURGEON.

No. 2006-1209.

Supreme Court of Ohio.

Submitted August 8, 2006.
Decided November 15, 2006.

Jonathan E. Coughlan, Disciplinary Counsel, and Lori J. Brown, First Assistant Disciplinary Counsel, for relator Disciplinary Counsel.

Ronald E. Slipski and David C. Comstock Jr., for relator Mahoning County Bar Association.

Mary Jane Stephens and John B. Juhasz, for respondent.

Per Curiam.

{¶ 1} Respondent, Edward Francis Sturgeon of Youngstown, Ohio, Attorney Registration No. 0033744, was admitted to the Ohio bar in 1979.

{¶ 2} On October 11, 2005, relators, Disciplinary Counsel and the Mahoning County Bar Association, filed an amended complaint charging respondent with professional misconduct. Respondent filed an answer to the complaint, and a panel of the Board of Commissioners on Grievances and Discipline held a hearing on the complaint in December 2005. The panel then prepared written findings of fact, conclusions of law, and a recommendation, all of which the board adopted.

Misconduct

Count I

{¶ 3} In March 2003, Stephanie Fisher visited respondent's law office to discuss a child-custody matter. Fisher had never met respondent before that appointment. Early in the meeting, respondent asked Fisher to remove her jacket, and she did so. Respondent told her that she had a "nice figure" and said that she was "not as chunky" as he had first thought.

{¶ 4} Respondent told Fisher that he would require a $2,500 retainer to begin working on her case. Fisher said that she could pay $50, and she wrote a check for that amount. Respondent then advised Fisher that $50 would not even cover the court costs that she would be required to pay.

{¶ 5} Respondent asked Fisher if she would be willing to engage in oral sex. Fisher said that she would. Respondent moved Fisher's shirt and bra to expose her breasts, and he fondled her breasts while she performed oral sex on him. Afterwards, Fisher dressed herself and left respondent's office.

286*286 {¶ 6} Later in the evening, Fisher sought treatment at a medical center in Youngstown. The following day, she reported the incident to the Youngstown Police Department, and she stopped payment on the $50 check that she had given to respondent.

{¶ 7} After examining respondent's actions, the board concluded that respondent had violated the following Disciplinary Rules: DR 1-102(A)(6) (barring conduct that adversely reflects on a lawyer's fitness to practice law) and 5-101(A)(1) (prohibiting a lawyer from accepting employment if the exercise of professional judgment on behalf of a client will be or reasonably may be affected by the lawyer's personal interests).

Count II

{¶ 8} In March 2004, Christine Killa visited respondent's law office to discuss a child-custody matter. Killa had never met respondent before that appointment. They discussed Killa's efforts to secure legal custody of her children, and respondent said that he was unsure whether he wanted to represent her. Killa offered to pay $1,000 in cash, but respondent did not accept any payment from her at that time.

{¶ 9} Killa scheduled a second appointment with respondent for the following week. The day before that second appointment, respondent left a voice-mail message for Killa telling her that he had a scheduling conflict and wanted to meet at a location other than his office. When Killa returned his call, respondent suggested that they meet at Killa's home, and she agreed.

{¶ 10} At the appointed time, respondent visited Killa's home, and he stayed for about two hours. The two of them discussed Killa's concerns about the custody of her children, and during their discussion, Killa mentioned that her ex-husband kept pornographic pictures around his house and on his computer. Killa testified at respondent's disciplinary hearing that respondent became excited when he learned that information, and he asked detailed questions about her ex-husband's sexual inclinations and habits.

{¶ 11} Respondent then walked around Killa's home, looking in all of her closets and underneath clothing. Killa testified at respondent's disciplinary hearing that she found this behavior "bizarre," but she assumed that respondent was confirming whether the home was a suitable place for Killa's children to live if she gained custody of them.

{¶ 12} Respondent entered Killa's bedroom, closed the blinds, and lay down on her bed. He then patted the mattress and asked Killa to come over and lie down next to him. Killa refused, and respondent then stood up, touched her buttocks and breasts, and tried to force her to kiss him. Killa testified at the disciplinary 287*287 hearing that she was "shocked and disgusted" by respondent's behavior, and she ran out of the bedroom and down the stairs.

{¶ 13} Respondent found Killa crying in her kitchen. He told her that he did not understand what the big deal was, adding that he did this kind of thing all the time and had helped many women with their legal troubles in exchange for their having sex with him. Killa explained at the disciplinary hearing that she did not want to have sex with respondent but did want legal help on the child-custody issue that they had discussed. Respondent told her that no one else would take her case. Killa then offered respondent $1,000, and he went out to his car to get his receipt book. When he returned, respondent made other lewd comments, such as "[y]ou have great breasts, can I see your tits? If I win your case, can I get a peek at them?"

{¶ 14} After respondent left Killa's home that day, Killa called her parents and told them what had happened. She later told the county bar association and Disciplinary Counsel as well.

{¶ 15} The board concluded that by making inappropriate sexual comments, by touching Killa in an unwanted sexual manner, by using force to attempt to compel her to kiss him, and by soliciting sex in exchange for a reduced legal fee, respondent had violated DR 1-102(A)(6) and 5-101(A)(1).

Count III

{¶ 16} In June 2003, Tosha McGee visited respondent's law office to discuss a wage-garnishment matter. Respondent told McGee that he would represent her if she would pay a legal fee of $300. McGee gave respondent a $100 check and asked if she could pay the balance later. Respondent agreed.

{¶ 17} Respondent asked McGee, an African-American, if she had ever thought about dating a white man. McGee said no, and respondent asked her why not. Respondent asked McGee if she had "ever given head" or "ever sucked a dick." He also asked McGee, "[D]o you want to give me head?" McGee answered no, and respondent asked her why not. He then closed the door to his office where they were meeting.

{¶ 18} Respondent next asked McGee if she wanted "to see it," and he unzipped his pants, removed his penis, and asked whether McGee wanted to touch it. McGee declined, looked away, and tried to move her chair. Respondent then zipped his pants, returned to his chair behind his desk, and continued to discuss McGee's case.

{¶ 19} The board found that respondent had violated DR 1-102(A)(6) and 5-101(A)(1).

288*288 ## Sanction

{¶ 20} In recommending a sanction for this misconduct, the board considered the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."). As aggravating factors, the board found that respondent had acted with a dishonest or selfish motive, engaged in a pattern of misconduct, committed multiple offenses, failed to cooperate fully in the disciplinary process, made false statements during the disciplinary process, failed to apologize or express remorse for his actions, and caused harm to vulnerable victims. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (f), (g), and (h).

{¶ 21} Mitigating factors identified by the board included evidence as to respondent's good character or reputation and his lack of any prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a) and (e). The board noted that respondent has been diagnosed as suffering from a generalized anxiety disorder with schizoid and avoidant personality features, but the board found no evidence that this problem caused the episodes of sexual misconduct described above.

{¶ 22} Relators recommended that respondent be indefinitely suspended from the practice of law. The panel and the board issued similar recommendations.

{¶ 23} We have reviewed the board's report and the record, and we find that respondent violated all of the provisions as described above. We conclude, however, that a more severe sanction than the one recommended by the board is warranted. Respondent must be permanently disbarred for his egregious professional misconduct.

{¶ 24} First, respondent's actions were rude, offensive, and thoroughly unprofessional. He used the attorney-client relationship to gratify his own sexual interests rather than focusing on the legal needs of his clients. His crude behavior would not be acceptable in any social setting, and it was outrageously inappropriate in the

midst of an attorney-client relationship. Respondent preyed on women who were in vulnerable legal and financial circumstances, and he tried to seduce them for his own selfish gratification.

{¶ 25} Second, lawyers must always exercise independent professional judgment and render candid advice to their clients. A lawyer who attempts to engage in a sexual relationship with a client — particularly when the client is clearly not interested in that kind of relationship — puts the lawyer's own personal feelings ahead of the objectivity that must be the hallmark of any successful attorney-client relationship. By repeatedly initiating sexual conduct with clients, respondent called into serious doubt his commitment to a profession in which the clients' interests must always come first.

289*289 {¶ 26} As we have explained, "`The attorney stands in a fiduciary relationship with the client and should exercise professional judgment "solely for the benefit of the client and free of compromising influences and loyalties." [Wisconsin's Rules of Professional Conduct 20.23(1).] By making unsolicited sexual advances to a client, an attorney perverts the very essence of the lawyer-client relationship. Such egregious conduct most certainly warrants discipline.'" *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734, 804 N.E.2d 423, ¶ 15, quoting *In re Disciplinary Proceedings Against Gibson* (1985), 124 Wis.2d 466, 474-475, 369 N.W.2d 695.

{¶ 27} Finally, respondent not only committed multiple outrageous sexual misdeeds with clients, but he also lied repeatedly during the disciplinary process. The panel was in a strong position to evaluate his credibility during two days of hearings on the relators' disciplinary complaint, and that panel described him as "frequently evasive and argumentative." According to the panel, respondent lied under oath, engaged in a pattern of deception that was designed to disrupt the disciplinary process, and was even willing to blame and slander his clients "in the interest of self preservation." Respondent's dishonesty about his misconduct and his willingness to blame his clients rather than accept responsibility for his own actions demonstrates that he is no longer fit to practice a profession grounded on candor, integrity, loyalty, and fairness.

{¶ 28} "We have consistently disapproved of lawyers engaging in sexual conduct with clients where the sexual relationship arises from and occurs during the attorney-client relationship. A lawyer's sexual involvement with a client has warranted a range of disciplinary measures depending on the relative impropriety of the situation, including actual suspension from the practice of law." *Cleveland Bar Assn. v. Kodish*, 110 Ohio St.3d 162, 2006-Ohio-4090, 852 N.E.2d 160, ¶ 66.

{¶ 29} As the panel concluded, the many aggravating factors in this case "outweigh if not overwhelm" the mitigating factors. Because those factors tip so decidedly in favor of a more severe sanction, because respondent committed multiple offenses with multiple victims over the course of many months, and because he expressly tried to leverage his clients' financial and legal vulnerabilities to gratify his own sexual desires and then lied under oath and blamed his victims to hide his wrongdoing, we conclude that respondent's shameful and selfish misconduct warrants our most severe sanction.

{¶ 30} Accordingly, respondent is hereby permanently disbarred from the practice of law in Ohio. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., RESNICK, PFEIFER, O'CONNOR, O'DONNELL and LANZINGER, JJ., concur.

LUNDBERG STRATTON, J., concurs in part and dissents in part.

290*290 LUNDBERG STRATTON, J., concurring in part and dissenting in part.

{¶ 31} While I agree with the finding of misconduct in the majority opinion, I disagree as to the sanction. The relators, the panel, and the board all recommended an indefinite suspension. They had the best opportunity to judge respondent's character and the possibility of his rehabilitation. I would adopt their recommendations of indefinite suspension, coupled with professional therapy and written apologies to the victims. The respondent may never satisfy the second condition for reinstatement of being able to rehabilitate himself, but apparently the relators, the panel, and the board felt he ought to be given that opportunity. Disbarment denies respondent that chance forever. While his conduct is despicable, and it is emotionally easy to justify disbarment, I believe disbarment is not objectively consistent with our cases involving more severe disciplinary conduct, although not of a sexual nature, in which we have given lawyers a second chance. Therefore, I dissent as to the sanction.

DISCIPLINARY COUNSEL *v.* DETWEILER.

[Cite as *Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 2013-Ohio-1747.]

Attorneys—Misconduct—Sexual advances on client—Conflict of interest—One-year suspension.

(No. 2012-1711—Submitted February 5, 2013—Decided May 2, 2013.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 11-065.

Per Curiam.

{¶ 1} Respondent, William Jeffrey Detweiler of Akron, Ohio, Attorney Registration No. 0039269, was admitted to the practice of law in Ohio in 1987.

{¶ 2} In October 2010, we publicly reprimanded Detweiler for engaging in an improper sexual relationship with his client. *Disciplinary Counsel v. Detweiler*, 127 Ohio St.3d 73, 2010-Ohio-5033, 936 N.E.2d 498. On July 26, 2011, relator, disciplinary counsel, charged Detweiler with engaging in conduct that adversely reflects on his fitness to practice law by soliciting a client for sexual favors and continuing to represent the client despite the substantial risk that his own personal interests conflicted with those of the client.

{¶ 3} The parties submitted a consent-to-discipline agreement, in which they stipulated that Detweiler had committed the charged misconduct and that a six-month, fully stayed suspension was the appropriate sanction for that misconduct. A panel of the Board of Commissioners on Grievances and Discipline recommended that the agreement be adopted. The board, however, rejected it and remanded the matter for further proceedings.

{¶ 4} Before the panel hearing, the parties submitted stipulated facts, violations, aggravating and mitigating factors, and exhibits. Once again, they recommended that Detweiler receive a six-month, fully stayed suspension for his misconduct. The panel adopted the parties' stipulations of fact and misconduct but, noting the nonconsensual and unwelcome nature of Detweiler's advances, recommended that he be suspended for one year, all stayed on the conditions that he commit no further misconduct, submit to an evaluation by the Ohio Lawyers Assistance Program ("OLAP"), and comply with any treatment recommendations.

{¶ 5} The board adopted the panel's findings of fact and conclusions of law. Noting that the client had felt trapped because she could not afford to discharge Detweiler and retain new counsel, however, the board recommended that he be suspended for one year with six months stayed on the conditions recommended by the panel.

{¶ 6} Detweiler objects to the increased sanction recommended by the board and urges this court to adopt the one-year fully stayed suspension recommended by the panel. For the reasons that follow, we overrule Detweiler's objection, adopt the board's findings of fact and misconduct, but find that his conduct warrants a one-year actual suspension from the practice of law.

Misconduct

{¶ 7} In June 2007, a former client paid Detweiler a $3,500 retainer to handle her divorce. After filing the divorce complaint, Detweiler began to send the client text messages of a personal nature. His initial texts appeared to be harmless inquiries about the client's well-being and Cleveland Browns football. They later included social invitations, which progressed into comments of a sexual nature. Detweiler texted the client about her clothing and how it made him feel sexually, and indicated that he wanted to have sex with her. He continued "sexting" the client and admits that sometime between November 2007 and January 2008 he sent her a nude picture of his lower body in a state of sexual

arousal. The client did not initially make her discomfort known to Detweiler, but following an early 2008 text message in which he asked her to have oral sex with him, she sent him a text message rejecting his solicitation.

{¶ 8} In her grievance, the client stated that when Detweiler sent her his nude photograph, she had already spent $10,000 in fees and expenses and could not afford to retain new counsel. Therefore, she continued his representation and tried to avoid his sexual advances until September 2008, when she voluntarily dismissed her complaint for divorce after temporarily reconciling with her husband. At no time did the client have sex with Detweiler or even meet with him socially.

{¶ 9} The parties stipulated and the board found that Detweiler's conduct violated Prof.Cond.R. 1.7(a)(2) (prohibiting representation if a lawyer's personal interests will materially limit his ability to carry out appropriate action for the client), 1.8(j) (prohibiting a lawyer from soliciting or engaging in sexual activity with a client unless a consensual sexual relationship existed prior to the client-lawyer relationship), and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

{¶ 10} We adopt these findings of fact and misconduct.

Sanction

{¶ 11} When imposing sanctions for attorney misconduct, we consider relevant factors, including the ethical duties that the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16. In making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in BCGD Proc.Reg. 10. *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶ 21.

{¶ 12} The parties stipulated that the client harmed by Detweiler's misconduct was vulnerable. *See* BCGD Proc.Reg. 10(B)(1)(h). The board found

not only that the conduct caused harm to a vulnerable client, but that Detweiler had acted with a selfish motive and had also engaged in a pattern of misconduct including the conduct at issue in this case and in his previously sanctioned, though subsequent, conduct. *See* BCGD Proc.Reg. 10(B)(1)(b), (c), and (h). The only mitigating factor stipulated by the parties and found by the board is Detweiler's cooperative attitude toward the disciplinary proceedings. *See* BCGD Proc.Reg. 10(B)(2)(d). But the board also noted Detweiler's expressed remorse and his acknowledgment of the severity of his misconduct.

{¶ 13} Although Detweiler testified that he had obtained marital counseling, he has not obtained any individual counseling to address the issues underlying his inappropriate conduct toward his female clients. In addition, the board expressed concern that his efforts to strengthen his wife's trust in him by providing her with the passwords to his personal and business e-mail accounts had the potential to expose client confidences in violation of Prof.Cond.R. 1.6 (prohibiting a lawyer from revealing confidential client information without informed consent).

{¶ 14} Although the board had previously rejected their consent-to-discipline agreement, the parties continued to advocate a six-month fully stayed suspension. The panel, however, found that Detweiler's sexual advances toward his client were offensive, unwelcome, and rejected by the client. In light of these facts and his pattern of misconduct, the panel recommended that Detweiler be suspended from the practice of law for one year, all stayed on the conditions that he engage in no further misconduct, submit to an OLAP evaluation, and comply with any treatment recommendations.

{¶ 15} But citing the client's financial vulnerability at the time Detweiler made his unwelcome sexual advances, the board recommends that he be suspended for one year with just six months stayed on the conditions recommended by the panel. *See* BCGD Proc.Reg. 10(B)(1)(h).

{¶ 16} Detweiler objects to the board's upward deviation from the panel's recommended sanction, challenging the validity of its finding that the affected client was financially vulnerable and felt compelled to continue his representation despite his sexual overtures. In support of this argument, he asserts that the client was not financially tied to him, because the domestic-relations court ordered her husband to pay the full amount of her fees and costs during the pendency of the divorce. Nothing in the record supports this assertion. And regardless of who would ultimately bear the responsibility for paying the client's legal fees, the client "felt completely trapped" and unable to afford to hire a new attorney, having already expended more than $10,000 for Detweiler's representation.

{¶ 17} We have publicly reprimanded attorneys, including Detweiler, for developing sexual relationships with clients when the affairs are legal and consensual and have not compromised the client's interests. *E.g.*, *Disciplinary Counsel v. Detweiler*, 127 Ohio St.3d 73, 2010-Ohio-5033, 936 N.E.2d 498, ¶ 5, citing *Cincinnati Bar Assn. v. Schmalz*, 123 Ohio St.3d 130, 2009-Ohio-4159, 914 N.E.2d 1024, ¶ 9; and *Disciplinary Counsel v. Engler*, 110 Ohio St.3d 138, 2006-Ohio-3824, 851 N.E.2d 502, ¶ 12-13. We have imposed a greater sanction for such conduct when the attorney had a prior disciplinary record at the time of his offense. *E.g.*, *Disciplinary Counsel v. Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946 (imposing a six-month, stayed suspension on an attorney with a prior record of neglecting legal matters who later had a consensual sexual relationship with a client).

{¶ 18} In *Toledo Bar Assn. v. Burkholder*, 109 Ohio St.3d 443, 2006-Ohio-2817, 848 N.E.2d 840, we imposed a six-month, conditionally stayed suspension on an attorney who made inappropriate sexual advances toward a client. In *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734, 804 N.E.2d 423, ¶ 2-7, 20, we imposed a one-year fully stayed suspension and two years of probation on an attorney who had made unsolicited, unwelcome, and

inappropriate sexual comments to one client and had engaged in consensual sexual relations with another client.

{¶ 19} In more extreme cases, we have indefinitely suspended or permanently disbarred attorneys who have made unwelcome sexual advances toward their clients that included unwelcome physical contact. *See, e.g., Cleveland Metro. Bar Assn. v. Lockshin*, 125 Ohio St.3d 529, 2010-Ohio-2207, 929 N.E.2d 1028 (imposing an indefinite suspension on an attorney who made unwelcome and inappropriate sexual comments to multiple clients [including a juvenile], a potential witness, and a sheriff's department employee and touched several of his victims in a sexually provocative manner); and *Disciplinary Counsel v. Sturgeon*, 111 Ohio St.3d 285, 2006-Ohio-5708, 855 N.E.2d 1221 (permanently disbarring an attorney who solicited and received oral sex from one client, touched another client in an unwanted sexual manner and solicited sex in exchange for a reduced legal fee, and exposed himself after soliciting oral sex from a third client).

{¶ 20} Those cases may not present conduct identical to that of Detweiler, but they do provide a framework from which we can evaluate the severity of his conduct. While Detweiler's conduct may not be as egregious as that of Lockshin or Sturgeon, it is more disturbing than that of other attorneys who have engaged in consensual sexual affairs with clients or made inappropriate sexual comments to their clients. Not only did Detweiler make repeated unsolicited and unwelcome sexual advances toward a vulnerable client, but when she ignored those advances, he upped the ante by sending her a nude photograph of himself in a state of sexual arousal. Based on this disturbing escalation of the improper and offensive conduct Detweiler directed toward his client, we are not convinced that a stayed suspension will adequately protect the public from future harm. Therefore, we find that a one-year actual suspension from the practice of law is the appropriate sanction for Detweiler's misconduct.

{¶ 21} Accordingly, William Jeffrey Detweiler is suspended from the practice of law in Ohio for one year, and his reinstatement shall be conditioned on the submission of proof that he has submitted to an OLAP evaluation and complied with any treatment recommendations. Costs are taxed to Detweiler.

Judgment accordingly.

O'CONNOR, C.J., and O'DONNELL, LANZINGER, KENNEDY, and FRENCH, JJ., concur.

PFEIFER and O'NEILL, JJ., dissent and would impose a one-year suspension with six months stayed.

Jonathan E. Coughlan, Disciplinary Counsel, and Philip A. King, Assistant Disciplinary Counsel, for relator.

William Jeffrey Detweiler, pro se.

Rule of Professional Conduct 1.8(j)

A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

Comments:

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this rule prohibits the lawyer from engaging in sexual activity with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client, unless the sexual relationship predates the client-lawyer relationship. A lawyer also is prohibited from soliciting a sexual relationship with a client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the 58 lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, division (j) of this rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs, or regularly consults with that lawyer concerning the organization's legal matters.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to do any of the following:

***

(g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;

(h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.