

BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO

FILED  
APR 27 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

|                                  |   |                                     |
|----------------------------------|---|-------------------------------------|
| <b>In Re:</b>                    | : |                                     |
| <b>Complaint against</b>         | : | <b>Case No. 10-073</b>              |
| <b>E. Earl Miller, J.</b>        | : | <b>Findings of Fact,</b>            |
| <b>Attorney Reg. No. 0077426</b> | : | <b>Conclusions of Law and</b>       |
|                                  | : | <b>Recommendation of the</b>        |
| <b>Respondent</b>                | : | <b>Board of Commissioners on</b>    |
|                                  | : | <b>Grievances and Discipline of</b> |
| <b>Akron Bar Association</b>     | : | <b>the Supreme Court of Ohio</b>    |
|                                  | : |                                     |
| <b>Relator</b>                   | : |                                     |

INTRODUCTION

This matter was heard on February 15, 2011 in Cleveland, Ohio, before a panel consisting of members Sharon Harwood and Judge Arlene Singer, Chair. The third member of the panel, John Polito, was unexpectedly unable to attend. The parties waived his participation and consented to this matter being heard by the two members in attendance. Neither of the panel members resides in the appellate district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Peter Cahoon represented Respondent, and James Campbell represented Relator, the Akron Bar Association.

Respondent was charged in a single-count complaint, filed August 2, 2010, with violating Prof. Cond. R. 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law.)

## FINDINGS OF FACT

Respondent was admitted to the practice of law in Ohio in May 2004. He practices law as E. Earl Miller, Jr. LLC, at 143 Northwest Avenue, Ste. B-102, Tallmadge, Ohio 44278.

On November 23, 2009, Respondent was appointed by the Summit County Domestic Relations Court to represent Keysha L. Gates. A contempt citation had been issued against Gates, citing her failure to pay child support. On December 10, 2009, Gates met with Respondent for the first time at his office. He met again with her on January 15, 2010 and had a phone conversation with her on or about January 21, 2010 during which Gates told Respondent that she had obtained a new job. On January 29, 2010, Respondent filed a motion asking the court for a continuation of a February 9, 2010 court date so Gates would not have to miss work and risk termination. Respondent was also assisting Gates to reinstate her driver's license, by paying her reinstatement fee, by helping her obtain transportation and maintain employment, and representing her in other courts with other cases.

Sometime before February 2, 2010, Gates and Respondent had a telephone conversation during which they agreed that the best time for Respondent to call Gates would be early morning when she would just be returning from work. Respondent called Gates early in the morning on February 2, 2010, and sometime during the call Gates began to tape the conversation. (Stip. 12, 13) Respondent had earlier advised her to tape conversations in which she felt uncomfortable, particularly regarding a potential employment discrimination situation. During this conversation, Respondent, after stating that he was doing a lot of work for her for which he was not going to be

compensated, asked Gates to show him her breasts and for oral sex. (Stip. Ex. 8, p. 2)

The conversation then returned to her case and Gates desired objective.

Respondent testified that he never intended a sexual encounter with Gates. He did intend to make her feel as uncomfortable as he felt she was making him feel. She had previously told him that if necessary, she would get a job dancing and would not tell her boyfriend because he would not like it. Respondent thought that she was uncomfortable with that issue and would “flip the switch on her” to make her feel uncomfortable. He felt that she did not appreciate all the extra legal work he was doing on her behalf and that she was not cooperating; he felt undervalued and he wanted her to feel undervalued also. He accomplished this goal. Gates testified to being demeaned, which was Respondent’s intention. (Tr. 27-28)

Gates filed her grievance against Respondent on March 8, 2010. On March 26, 2010, Respondent filed his motion with the court to withdraw as Gates’s counsel. Her case is ongoing with new counsel.

#### CONCLUSIONS OF LAW

The panel finds that the parties’ stipulated facts support a finding that Respondent violated Prof. Cond. R. 8.4(h) (conduct that adversely reflects on the lawyer’s fitness to practice law.)

#### MITIGATION AND AGGRAVATION

The parties stipulated to and the panel finds the following mitigating factors pursuant to BCGD Proc. Reg. 10(B)(2):

- (a) absence of a prior disciplinary record;
- (d) full and free disclosure and a cooperative attitude; and

(e) evidence of good character and reputation.

The panel also finds pursuant to BCGD Proc. Reg. 10(B)(2)(g) a mental disability (i) with a diagnosis by a qualified health care professional, (ii) that contributed to the cause of the misconduct, (iii) a sustained period of successful treatment, and (iv) a prognosis from the qualified health care professional that the attorney will be able to return to the competent, ethical professional practice under specified conditions.

Respondent professed extreme remorse. He stated that his statements on the tape sickened him and are “an abomination to the Bar,” inexcusable, and inappropriate.

Respondent submitted a letter from Christopher R. Stetler, D.O., Respondent’s physician. Dr. Stetler stated that he has treated Respondent for depression, obsessive compulsive disease and attention deficit disorder. (Resp. Ex. 4) When Respondent did not keep up with his medications, his insight and judgment were affected. Dr. Stetler identified the period of time pertinent to this matter as a time when Respondent was off his medication. Since then, Dr. Stetler reports that Respondent has been compliant with treatment.

Jeffrey Durr, a licensed professional clinical counselor, testified on behalf of Respondent. Respondent began seeing Durr professionally on March 29, 2010 and had seen him over 23 times prior to the hearing. Durr testified that when he first saw Respondent, Respondent was anxious and depressed. He characterized Respondent as “over giving” to compensate for feeling inadequate; for “raising the bar” and over committing to obtain approval from others. (Tr. 78-80) Respondent was resentful if he was not shown what he felt would be appropriate appreciation. Durr’s diagnosis was an adjustment disorder with mixed emotional features, including depression and anxiety.

Further, Durr testified that when Respondent was depressed and angry he said things to be hurtful. (Tr. 82-83)

Durr testified that Respondent has coping mechanisms or tools to keep him “centered” including an ability to grow, motivation, good ego strength, good verbal skills, and good insight. Durr felt that Respondent would continue his therapy on his own without a court order.

Respondent submitted letters from attorneys attesting to his good character, but it is not clear that they were aware of the specifics of this case. Nonetheless they all had high regard for him.

The panel finds as aggravating factors pursuant to BCGD Proc. Reg. 10(B)(1): (b) a selfish motive; and (h) vulnerability of and resulting harm to the victim, noting that Respondent violated the trust Respondent owed to Gates by deliberately trying to hurt and humiliate her, and thus making himself feel better.

#### SANCTION

The parties stipulated that a public reprimand is the appropriate sanction. In support, the parties have cited *Disciplinary Counsel v. Detweiler*, 127 Ohio St.3d 73, 2010-Ohio-5033 and *Allen Cty. Bar Assn. v. Bartels*, 124 Ohio St.3d 527, 2010-Ohio-1046. Public reprimands were issued by the Court in both cases, however, these cases involved consensual sexual relationships with clients and are not on point with the facts of this case.

In cases involving unsolicited sexual comments or actions the Court has imposed an actual suspension. In *Toledo Bar Assn. v. Burkholder*, 109 Ohio St.3d 443, 2006-Ohio-2817, the respondent inappropriately touched his client, made inappropriate

statements and “relentlessly” harassed and pursued her. The Court suspended Burkholder’s license for 6 months.

*In Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, the Court imposed a one-year stayed suspension and probation on an attorney who inappropriately touched a client and made an inappropriate comment to her. In *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734, the Court imposed a one-year stayed suspension and probation on an attorney who made inappropriate sexual comments to one client and engaged in consensual sexual relations with another.

While these cases involved actions on the part of attorneys for their own sexual gratification, here, Respondent asserts anger rather than sexual gratification as the motivation for his inappropriate comments. There is no evidence, other than the words he used, that this is not true. Respondent’s actions involved one occasion and one client, he has expressed extreme remorse and has maintained successful treatment with a mental health professional and his physician. Nevertheless, Respondent’s words violated the trust of his client, demeaned her and demonstrated a purposeful motivation to “hurt” his client, exploiting her vulnerabilities.

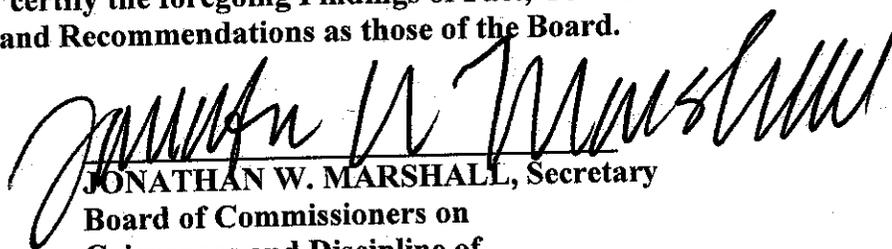
Therefore, the panel recommends a six month stayed suspension of Respondent’s license, with one year of probation conditioned on his continued successful treatment with both Mr. Durr and Dr. Stetler, no further violations and payment of costs.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 8, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of

the Panel and recommends that Respondent, E. Earl Miller, Jr., be suspended from the practice of law for six months with the entire six months stayed upon the conditions contained in the panel report. The Board also recommends that Respondent serve one year probation. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.**



**JONATHAN W. MARSHALL, Secretary  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio**

**BEFORE THE BOARD OF COMMISSIONERS  
ON GRIEVANCES AND DISCIPLINE  
OF THE SUPREME COURT OF OHIO**

|                                       |   |                                   |
|---------------------------------------|---|-----------------------------------|
| <b>IN RE:</b>                         | ) | <b>BOARD NO. 10-073</b>           |
| <b>COMPLAINT AGAINST</b>              | ) |                                   |
| <b>E. EARL MILLER, JR.</b>            | ) |                                   |
| <b>Registration No. 0077426</b>       | ) |                                   |
| <b>E. Earl Miller, Jr. Co., LLC</b>   | ) | <b><u>AGREED STIPULATIONS</u></b> |
| <b>143 Northwest Ave., Ste. B-102</b> | ) |                                   |
| <b>Tallmadge, Ohio 44278</b>          | ) |                                   |
|                                       | ) |                                   |
| <b>Respondent,</b>                    | ) |                                   |
|                                       | ) |                                   |
| <b>vs.</b>                            | ) |                                   |
|                                       | ) |                                   |
| <b>AKRON BAR ASSOCIATION</b>          | ) |                                   |
| <b>57 South Broadway Street</b>       | ) |                                   |
| <b>Akron, Ohio 44308</b>              | ) |                                   |
|                                       | ) |                                   |
| <b>Relator.</b>                       | ) |                                   |
|                                       | ) |                                   |

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Relator, Akron Bar Association, and Respondent, E. Earl Miller, Jr., do hereby stipulate to the admission of the following facts, violations, mitigating factors, and exhibits.

**STIPULATED FACTS**

1. E. EARL MILLER, JR. (hereinafter referred to as "Respondent Miller"), was admitted to the practice of law in the State of Ohio on May 10, 2004.
2. Respondent Miller is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar as promulgated in the State of Ohio.
3. Respondent Miller is the President and Staff Attorney for E. Earl Miller, Jr. Co., LLC, located at 143 Northwest Avenue, Suite B-102, Tallmadge, Ohio 44278.
4. Respondent Miller's fields of practice include divorce, domestic relations and family law.

5. Prior to November 23, 2009, no consensual sexual relationship existed between Respondent Miller and Keysha L. Gates (hereinafter referred to as "Gates").
6. On November 23, 2009, a lawyer-client relationship commenced when Respondent Miller was appointed by the Summit County Domestic Relations Court to represent Gates pursuant to a Show Cause Order that was issued by the Court in Case No. DR-2006-07-2491 and that required her to appear and show cause why she should not be held in contempt of court for her failure to pay child support as Ordered by the Court on September 12, 2006 (see attached Exhibits 1 and 2).
7. Gates and Respondent Miller met for their first meeting at Respondent Miller's office on December 10, 2009. Gates was brought to her meeting by her Aunt. Her Aunt did not participate in the meeting but waited for Gates. Gates' Aunt met Respondent Miller at the conclusion of Gates' meeting.
8. Respondent Miller and Gates had a second meeting at his office on January 15, 2010. Gates' boyfriend's sister sat in with her during this meeting. Respondent Miller made no inappropriate comments to Gates during this office meeting.
9. On or about January 21, 2010, Respondent Miller and Gates had a telephone conversation wherein Gates advised Respondent Miller that she had obtained a new job.

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10. On January 29, 2010, Respondent Miller filed a Motion for a Continuance with the Court. The Motion states that the purpose for the continuance was that Gates had secured a new job and that she feared the termination of her job if she had to miss work to attend court on February 9, 2010.
11. Before February 2, 2010, Respondent Miller and Gates had a telephone conference wherein both of them agreed that the best times to reach Gates by telephone would be early mornings, at which times Gates would just be returning from work.
12. Respondent Miller called Gates on her home telephone on February 2, 2010 at around 6:15 a.m.
13. Gates did not tell Respondent Miller that she was taping the call.
14. Gates did not tape the very beginning of the call but did tape the majority of their February 2, 2010 telephone call.

15. The parties stipulate that the tape made by the Akron Bar Association is authentic and is what it purports to be.
16. The parties agree that the tape speaks for itself.
17. A transcript of the telephone tape referred to in Paragraphs 15 and 16 was made by the Akron Bar Association and accurately sets forth the contents of the taped conversation. The parties agree to submit a copy of the transcript at the hearing.
18. On March 3, 2010, Gates sent her written complaint to the Akron Bar Association.
19. On March 26, 2010, Respondent Miller filed his Motion to Withdraw as Gates' counsel (see attached Exhibit 3).
20. On April 4, 2010, Judge Quinn signed the Judgment Entry permitting Respondent Miller to withdraw as Gates' counsel.
21. The parties agree that Respondent Miller did not engage in any physical sexual activity with his client, Gates.

#### **STIPULATED VIOLATIONS**

Relator and Respondent stipulate and agree that the conduct of the Respondent as recited herein violates Prof. Cond. 8.4(h) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law).

#### **STIPULATED MITIGATION**

The parties agree that the following factors may be considered as mitigation by the Board pursuant to the following provisions of BCGD Pro. Reg. Section 10(B)(2):

- (a) absence of a prior disciplinary record;
- (d) full and free disclosure to the Akron Bar Associations' Certified Grievance Committee and a cooperative attitude toward the proceedings;
- (e) character or reputation.

### STIPULATED RECOMMENDED SANCTION

The Akron Bar Association, through its Certified Grievance Committee, agrees to recommend a public reprimand as the discipline which should be imposed herein and the Respondent agrees that this is an appropriate sanction based upon the stipulations and exhibits presented herein.

### STIPULATED EXHIBITS

1. Attorney registration and record of Respondent.
2. Docket sheet *Harris v. Gates*, Summit County Domestic Relations Court, Case No. DR 2006-07-2491.
3. November 23, 2009 Entry appointing Respondent Miller as legal counsel for Gates.
4. Motion for Continuance filed January 29, 2010.
5. Motion of Respondent Miller to Withdraw as Counsel for Gates filed March 26, 2010.
- ~~6. March 29, 2010 response by Respondent Miller to Akron Bar Association's letter.~~
7. Entry permitting Respondent Miller to withdraw as counsel filed April 2, 2010.
8. Transcript of taped telephone conversation on February 2, 2010.
9. The tape made on February 2, 2010.

Exhibits offered by Respondent for mitigation purposes:

- A. Letters on behalf of Respondent.
- B. Medical/counseling letters relating to Respondent.

**CONCLUSION**

The above are stipulated and entered into by agreement by the undersigned parties  
on this \_\_\_\_ day of \_\_\_\_\_, 2011.

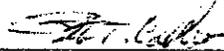
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