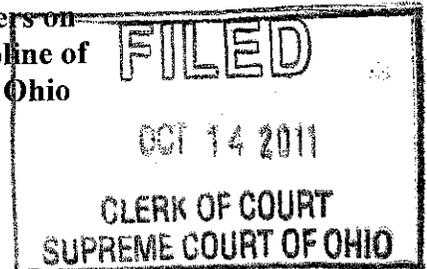


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

11-1759

In Re:	:	
Complaint against	:	Case No. 10-088
Dean Edward Hines Attorney Reg. No. 0062990	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
<u>Respondent,</u>	:	
Disciplinary Counsel	:	
<u>Relator.</u>	:	



{¶1} This matter was heard on August 19, 2011, before a panel consisting of Sharon L. Harwood, Patrick L. Sink, and Retired Judge Thomas F. Bryant, chair. None of the panel members is from the appellate judicial district in which the complaint arose, and none was a member of a probable cause panel that certified the matter to the Board.

{¶2} Assistant Disciplinary Counsel Joseph M. Caligiuri appeared as counsel for the Relator. Respondent Dean Edward Hines was present, appearing *pro se*.

{¶3} Relator's complaint alleges that Respondent's conduct during 2009 involving his intimate social and personal relationship with his then-client Tammy Murphy violated Prof. Cond. R. 1.8(j) [soliciting or engaging in sexual activity with a client] and Prof. Cond. R. 8.4(h) [conduct that reflects adversely on the lawyer's fitness to practice law].

{¶4} From the clear and convincing evidence drawn from the record of the panel hearing including the parties' stipulations of fact, their stipulated exhibits and from Respondent's

testimony and the testimony of the witness Tammy Murphy, the panel makes the following findings of fact.

FINDINGS OF FACT

{¶5} Respondent, Dean Edward Hines, was admitted to the practice of law in the state of Ohio on May 16, 1994, and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶6} In early February 2009, Tammy Murphy retained Respondent through a prepaid legal services plan to represent her in a domestic relations dispute with her ex-husband. Respondent and Murphy had never met before Murphy retained Respondent to represent her as her lawyer.

{¶7} After one pre-trial hearing at the court, several office appointments, and exchange of email messages, Respondent asked Murphy to join him for coffee at a restaurant after office hours.

{¶8} Respondent's correspondence with Disciplinary Counsel (Stip. Ex. 4) and Respondent's testimony at panel hearing (August 19, 2011 Hearing Tr. at 20-21) indicate to varying degrees of certainty that he asked Murphy to meet him socially because he believed she wanted him to do so.

{¶9} Murphy testified that she went to meet Respondent for coffee expecting to discuss her case and that initially they discussed that matter. After coffee, Respondent asked Murphy to stay for dinner.

{¶10} That evening over drinks and dinner, Respondent began to question Murphy about her personal life on subjects having no bearing on her pending child custody matter. That evening, Respondent asked Ms. Murphy to join him socially for dinner the next evening.

{¶11} Murphy asked Respondent if he would have a conflict of interest because of their attorney-client relationship, and because she feared that her ex-husband might use that relationship against her in the custody matter. She also was hesitant because Respondent was still married to his most recent wife.

{¶12} Although Respondent was aware that by dating Murphy and conducting a sexual affair with her, he was violating the Rules of Professional Conduct, he assured Murphy that he would not have such a conflict because her case involved custody issues, not a divorce, and that his own divorce was being delayed only by technicalities presented because he is an attorney.

{¶13} Murphy accepted Respondent's dinner invitation for the next evening, March 17, 2009. That evening, the relationship became a sexually intimate one. Thereafter, Respondent and Murphy continued to meet two or three times per week.

{¶14} In summary, Murphy testified that she was overwhelmed by Respondent's very aggressive sexual advances and that she feared that should she resist him he would abandon her in the midst of her legal difficulty. (August 19, 2011 Hearing Tr. at 44, lines 15-25.)

{¶15} In May 2009, Murphy's custody hearing was held and the matter was submitted for decision.

{¶16} Also in May 2009, Respondent hired Murphy, who was having personal financial difficulty, to prepare tax returns at Respondent's law firm for which she was paid wages and provided with health insurance. Apart from her employment by Respondent, Respondent also provided Murphy with a leased vehicle, credit cards, and paid many of her monthly bills including her mortgages and utilities.

{¶17} During the period of their personal relationship, Respondent took Murphy and her sons on vacations to Vienna, Austria, and to Arizona.

{¶18} In the summer of 2009, Murphy became very ill with a condition that eventually required surgery and a six-week period of recuperation. Respondent invited Murphy and her two sons to live with him in his new home, and in late September 2009 they did so in preparation for Murphy's October surgery and subsequent convalescence.

{¶19} While Respondent and Murphy were vacationing at Hilton Head in September 2009, their personal relationship began to deteriorate.

{¶20} On November 9, 2009, Respondent and Murphy engaged in a domestic argument, apparently arising from her refusal to follow Respondent's directions or yield to his wishes. During the altercation, Murphy perceived that Respondent was about to injure her son who had risen to protect his mother and Murphy drew her gun to protect her son. Murphy is authorized to carry a concealed weapon. While Murphy and her sons were leaving Respondent's home to return to their own home, Respondent called 911 and filed aggravated menacing and domestic violence charges against Murphy.

{¶21} As a result of the criminal charges, Murphy was arrested and a temporary protection order (TPO) was issued against her. The TPO precluded her from having any contact with Respondent.

{¶22} On November 10, 2009, the magistrate issued her decision in the underlying custody/support case finding against Murphy, apparently on all contested issues. On the same day, November 10, 2009, Respondent sent Murphy a letter terminating her employment from Respondent's law firm. (Stip. Ex. 2.)

{¶23} On November 13, 2009, Respondent sent a letter to Murphy (Stip. Ex. 3), enclosing a copy of the magistrate's decision and informing her of the need to file objections by November 24, 2009. In the same letter, Respondent terminated his attorney-client relationship.

with Murphy, leaving her without an attorney to advise her or to file objections to the magistrate's decision. He took no steps to obtain an extension of time from the court, within which time Murphy might seek other counsel.

{¶24} In the same letter, seeming to excuse himself and blame her for losing in court on the custody issues in which he represented her, Respondent questioned Murphy's integrity stating:

* * * Frankly, the Court did not find your testimony to be credible. The fact that you paid with cash simply did not pass the "smell test." In my years of experience in Domestic Relations Court, it is rare that any payments made over \$200.00 are made in cash. In fact, you might recall that I inquired of you concerning the whereabouts of Tamatha Miller. You indicated that you did not know where she resided. We spent considerable amount of time at this office trying to locate her so we could elicit testimony from her concerning receipt of the cash payment. I was somewhat disturbed a couple of weeks after the hearing when I noticed that Ms. Miller's phone number was posted on your refrigerator. This lead me to believe that had Ms. Miller testified, she would not have been able to acknowledge receipt of the cash payment from you. In looking back, it is my opinion that Ms. Miller simply provided you with a receipt and payment was never made. Apparently, the Court agrees. (Stip. Ex. 3.)

{¶25} Despite the TPO, Respondent repeatedly contacted Murphy via email and text messaging, asking her to contact him and ensuring that he would not contact the police if she responded to Respondent's overtures. (Agreed Stipulations, ¶18.)

{¶26} Although Respondent filed a motion for an order of the court removing the prohibition on Murphy's contacting Respondent, the court denied the motion. It is not clear that Murphy knew of Respondent's motion, but it is clear from her testimony that she did not wish to contact him. Regardless, she did not violate the TPO that remained in force until February 2010, when the Montgomery County Prosecutor dismissed the criminal charges against Murphy.

CONCLUSIONS OF LAW

{¶27} The parties have stipulated and the panel finds the evidence taken to be clear and convincing that by soliciting and engaging in sexual activity during his attorney-client relationship with a client with whom he had no other relation of any kind and did not know before the attorney-client relation began, Respondent violated Prof. Cond. R. 1.8(j). Combined with Respondent's further course of conduct encouraging his former client to violate a temporary protection order and by terminating the attorney-client relation in circumstances leaving his vulnerable client without counsel and without legal assistance to preserve her rights to appeal an adverse judgment, the parties have stipulated and the panel finds by clear and convincing evidence that Respondent has violated Prof. Cond. R. 8.4(h).

AGGRAVATION AND MITIGATION

{¶28} BCGD Proc. Reg. 10 establishes guidelines for imposing appropriate sanctions for misconduct.

Mitigation

{¶29} Relator and Respondent stipulate to the following mitigating factors pursuant to BCGD Proc. Reg. 10(B)(2): Respondent has no prior disciplinary record; Respondent provided full and free disclosure to Relator during its investigation and has displayed a cooperative attitude toward these proceedings; and Respondent enjoys a positive reputation in the legal community.

{¶30} The panel accepts and adopts the parties' stipulations of mitigating factors.

Aggravation

{¶31} Although the parties have stipulated that there are no aggravating factors, the panel considers the stipulated facts and the testimony to reveal several of the relevant factors to

be considered in aggravation pursuant to BCGD Proc. Reg. 10(B)(1): Respondent knew from the outset that his conduct violated the Ohio Rules of Professional Conduct but he nevertheless acted with a clearly selfish motive; although Respondent has admitted that his conduct violated the Ohio Rules of Professional Conduct, he has attempted to excuse or minimize that conduct rather than acknowledge that it was wrong; and Respondent's client was a vulnerable one and has been harmed as a result of Respondent's misconduct.

SANCTION

Respondent's Recommendation

{¶32} Respondent has noted that the grievant, Tammy Murphy, in her original grievance questionnaire (Stip. Ex. 1) requested that Respondent be reprimanded. Answering the inquiry, "What action or resolution are you seeking from this office?" Murphy responded, "I would like for Mr. Hines to be reprimanded for his actions and for his behavior to be forced to change so that no one else becomes a victim to his ways." The panel does not consider that statement by Murphy to request the specific sanction of public reprimand to which reference is made in Gov. Bar R. V, Section 6(B)(5).

Relator's Recommendation

{¶33} Relator recommends that the appropriate sanction in this case is that Respondent be suspended from the practice of law for a period of six months with all six months of suspension stayed. Relator cites several cases imposing sanctions ranging from public reprimand to one-year stayed suspension with two years probation.

{¶34} In *Disciplinary Counsel v. Detweiler*, 127 Ohio St.3d 73, 2010-Ohio-5033 ¶5, the Supreme Court explained: "We have publicly reprimanded attorneys for having sexual relationships with clients when the relationships are legal and consensual and have not

compromised the clients' interests. See, e.g., *Cincinnati Bar Assn. v. Schmalz*, 123 Ohio St.3d 130, 2009-Ohio-4159, ¶ 9; *Disciplinary Counsel v. Engler*, 110 Ohio St.3d 138, 2006-Ohio-3824 ¶ 12-13.”

{¶35} *Toledo Bar Assn. v. Burkholder*, 109 Ohio St.3d 443, 2006-Ohio-2817, *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734, and *Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, cited by Relator, all involved the attorney making unwanted sexual advances to a client or clients.

{¶36} In *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734, the attorney made persistent advances to two or more clients. In *Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, the attorney made such advances to only one client but falsely blamed his conduct on alcoholism and did not acknowledge the wrongfulness of the conduct. In both cases, the Supreme Court ordered one-year stayed suspension with two years probation on conditions.

{¶37} In *Toledo Bar Assn. v. Burkholder*, 109 Ohio St.3d 443, 2006-Ohio-2817, only one client was involved and the attorney cooperated fully in the disciplinary process, hence a lesser sanction was imposed than in *Moore* and *Quatman* with the Supreme Court ordering a six-month stayed suspension.

Panel Recommendation

{¶38} In *Cincinnati Bar Assn. v. Schmalz*, 123 Ohio St.3d 130, 2009-Ohio-4159, Schmalz engaged in three instances of telephonic sexual activity with her client while he was incarcerated pending trial on criminal charges for which she was representing him. The Supreme Court noted that *Schmalz* “dwells at the end of the spectrum representing the least egregious cases of sexual misconduct” finding that in spite of the improprieties, Respondent effectively

performed her function as attorney in the criminal representation and that a public reprimand would adequately deter her from further violations. *Schmalz* at ¶ 9, citing *Disciplinary Counsel v. Engler*, 110 Ohio St.3d 138, 2006-Ohio-3824, ¶ 12-13 and *Disciplinary Counsel v. DePietro* (1994), 71 Ohio St.3d 391, 392-393.

{¶39} At the other end of the spectrum noted by the Supreme Court is *Disciplinary Counsel v. Sturgeon*, 111 Ohio St.3d 285, 2006-Ohio-5708, ¶ 18, 29-30, a case in which disbarment was ordered for a male lawyer who “preyed upon the vulnerabilities of his clients in an egregious manner, engaged in sex with them, lied during the investigation, and showed little acceptance of responsibility for the wrongfulness of his acts.”

{¶40} In *Butler Cty. Bar Assn. v. Williamson*, 117 Ohio St.3d 399, 2008-Ohio-1196, the respondent agreed to represent a female client in common pleas court proceedings to terminate her marriage and in a domestic-violence action pending in municipal court. The client paid Respondent’s \$1,000 fee in two \$500 payments. Respondent began dating his client shortly after she hired him and they became intimate a few days later after the client paid the \$500 balance of the fee. Respondent appeared at a preliminary hearing in the domestic violence case against her husband. About two weeks later, the client and her two children moved in with Respondent, residing with him several months until the client and her husband reconciled. Both the client and her husband filed grievances against Respondent. He was not forthright in the disciplinary investigation.

{¶41} Williamson was found to have engaged in misconduct in two counts, the first relating to Respondent’s affair with his client and the second for his failure to appear in response to Relator’s investigative subpoenas.

{¶42} In *Williamson*, the Court observed that:

By engaging in an affair with his client and continuing to represent her, respondent risked his client's legal and personal interests for his own advantage. As we said in *Disciplinary Counsel v. Sturgeon*, 111 Ohio St.3d 285, 2006-Ohio-5708, ¶ 25 "[a] lawyer who attempts to engage in a sexual relationship with a client * * * puts the lawyer's own personal feelings ahead of the objectivity that must be the hallmark of any successful attorney client relationship." See, *Butler Cty. Bar Assn. v. Williamson*, 117 Ohio St.3d 399, 2008-Ohio-1196 ¶6.

{¶43} When considering the appropriate sanction, the Court said, "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." *Butler Cty. Bar Assn. v. Williamson*, 117 Ohio St.3d 399, 2008-Ohio-1196 ¶8, citing *Cleveland Bar Assn. v. Kodish*, 110 Ohio St.3d 162, 2006-Ohio-4090, ¶ 66. Noting aggravating factors and finding nothing in mitigation, the Court indefinitely suspended Williamson's license to practice law.

{¶44} Although Respondent's sexual affair with his client is similar to that of Williamson's in its inception, scope, and duration, there is no evidence before the panel to indicate that Respondent engaged in any deception to hide his legal representation of Murphy or his affair with her. Unlike Williamson, Respondent cooperated in the disciplinary investigation and proceedings.

{¶45} However, of serious concern to the panel is Respondent's actions following Murphy's termination of their sexual affair by which he became not her advocate but her critic or accuser, as well as terminating his legal representation without making some arrangements to enable her to protect her rights upon her loss of the cause in which he was her attorney and advisor.

{¶46} Notwithstanding the recommendations of counsel, considering the authorities cited, matters in aggravation and mitigation, the nature of Respondent's misconduct, the resulting consequences of that conduct, and all the purposes for sanctions, especially protection of the public, the panel recommends that Respondent's license to practice law in Ohio be suspended for twelve months with the final six months stayed on the condition that Respondent engage in no further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 7, 2011. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Dean Edward Hines, be suspended from the practice of law in Ohio for twelve months, with final six months of the suspension stayed on the condition that Respondent engage in no further misconduct. 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.



**RICHARD A. DOVE, 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**

FILED

AUG 11 2011

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE
AGREED STIPULATIONS

Dean Edward Hines, Esq.
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Atty. Reg. No.: 0062990

Respondent,

DISCIPLINARY COUNSEL
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Columbus, Ohio 43215-7411

BOARD NO. 10-088

Relator.

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, Dean Edward Hines, do hereby stipulate to the admission of the following facts, exhibits, and rule violations.

STIPULATED FACTS

1. Respondent, Dean Edward Hines, was admitted to the practice of law in the state of Ohio on May 16, 1994. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
2. In or around February 2009, Tammy Murphy retained respondent through a prepaid legal services plan to represent her in an ongoing domestic relations dispute with her ex-husband.
3. Prior to retaining respondent, Murphy had never met respondent.
4. After one pre-trial and several appointments, respondent invited Murphy out for dinner.
5. That evening, respondent expressed interest in dating Murphy.

6. Murphy asked if it would be a conflict of interest, to which respondent stated that it would not because Murphy's case involved custody issues, not a divorce.
7. The following day, March 17, 2009, respondent invited Murphy out for dinner. That evening, the relationship became intimate.
8. Within months, respondent invited Murphy and her two sons to live with respondent. Respondent also provided Murphy with a leased vehicle, credit cards, and paid many of Murphy's monthly bills including her mortgage and utilities.
9. In or around May 2009, respondent hired Murphy to perform bookkeeping and accounting work at respondent's law firm.
10. In the fall of 2009, the personal relationship began to deteriorate.
11. On or around November 9, 2009, respondent and Murphy were involved in a domestic argument, which resulted in respondent calling 911 and filing Aggravating Menacing and Domestic Violence charges against Murphy.
12. As a result of the criminal charges, a Temporary Protection Order (TPO) was issued against Murphy. The TPO precluded Murphy from having any contact with respondent.
13. On November 10, 2009, respondent sent Murphy a letter terminating her employment from respondent's law firm.
14. On the same day, November 10, 2009, the magistrate issued her decision in the underlying custody/support case.
15. On November 13, 2009, respondent sent a letter to Murphy enclosing a copy of the magistrate's decision, and informing her of the need to file objections by November 24, 2009.

16. In the same letter, respondent terminated the attorney-client relationship, leaving Murphy without an attorney to file objections to the magistrate's decision.

17. In the same letter, respondent questioned Murphy's integrity stating:

Frankly, the Court did not find your testimony to be credible. The fact that you paid with cash simply did not pass the "smell test." In my years of experience in Domestic Relations Court, it is rare that any payments made over \$200 are made in cash. In fact, you might recall that I inquired of you concerning the whereabouts of Tamatha Miller. You indicated that you did not know where she resided. We spent considerable amount of time at this office trying to locate her so we could elicit testimony from her concerning receipt of the cash payment. I was somewhat disturbed a couple of weeks after the hearing when I noticed that Ms. Miller's phone number was posted on your refrigerator. This lead me to believe that had Ms. Miller testified, she would not have been able to acknowledge receipt of the cash payment from you. In looking back, it is my opinion that Ms. Miller simply provided you with a receipt and payment was never made. Apparently, the Court agrees.

18. Despite the TPO, respondent repeatedly contacted Murphy via e-mail and text messaging, and encouraged Murphy to contact respondent by ensuring that he would not contact the police if Murphy responded to respondent's overtures.

19. In or around February 2010, the Montgomery County Prosecutor dismissed the criminal charges against Murphy.

STIPULATED RULE VIOLATIONS

Respondent and relator hereby agree and stipulate that respondent's conduct in Count One violates:

- ~~ORPC 1.8(j) [A lawyer shall not solicit or engage in sexual activity with a client unless the consensual sexual relationship existed between them when the client-lawyer relationship commenced]; and,~~

- ORPC 8.4(h) [A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law].

STIPULATED MITIGATION

- Respondent has no prior disciplinary record.
- Respondent provided full and free disclosure to relator during its investigation and has displayed a cooperative attitude toward these proceedings.
- Respondent enjoys a positive reputation in the legal community.

STIPULATED AGGRAVATION

There are no aggravating factors.

STIPULATED EXHIBITS

- | | |
|-----------|---|
| Exhibit 1 | Grievance filed by Tammy Murphy |
| Exhibit 2 | Letter from respondent to Murphy, November 10, 2009 |
| Exhibit 3 | Letter from respondent to Murphy, November 13, 2009 |
| Exhibit 4 | Respondent's reply to relator's letter of inquiry |
| Exhibit 5 | Character letters |

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this

11 day of August, 2011.



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