

**IN THE SUPREME COURT OF OHIO**

**Disciplinary Counsel,** : **CASE NO. 2011-1759**

Relator, :

vs. :

**Dean Edward Hines.** : **RELATOR'S ANSWER TO**

Respondent. : **RESPONDENT'S OBJECTIONS**

: **TO THE BOARD OF**

: **COMMISSIONERS'**

: **REPORT AND RECOMMENDATIONS**

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF  
COMMISSIONERS' REPORT AND RECOMMENDATIONS**

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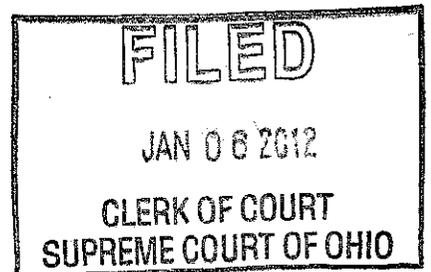
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RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS  
TO THE BOARD OF COMMISSIONERS' REPORT  
AND RECOMMENDATIONS

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Now comes relator, disciplinary Counsel, and hereby submits this answer to respondent's objections.

**PROCEDURAL HISTORY**

On October 15, 2010, the Board of Commissioners on Grievances and Discipline ("board") certified a one count complaint charging respondent with violations of Prof. Cond. R. 1.8(j) and Prof. Cond. R. 8.4(h) based upon an inappropriate sexual relationship with his female client, Tammy Murphy. On January 4, 2011, the parties entered into an Agreement for Consent to Discipline ("Consent Agreement") recommending a public reprimand as the appropriate sanction for respondent's misconduct. The Consent Agreement was accepted by the panel and board; however, the Court rejected it and remanded the matter back to the board. A hearing was held on August 19, 2011 and the board issued its report on October 14, 2011.

## STATEMENT OF FACTS

In February 2009, respondent Dean Edward Hines began representing Tammy Murphy in a domestic relations dispute that was pending in the Montgomery County Domestic Relations Court. [Report, ¶6]. Shortly after the representation began, respondent and Murphy engaged in a consensual sexual relationship that lasted until November 9, 2009. *Id.* at ¶20. During the eight-month relationship, respondent hired Murphy to work in his law office, assisted her with her mortgage and utility payments, and vacationed in the United States and Europe with Murphy and her two sons. *Id.* at ¶16, 17. In September 2009, Murphy and her two sons moved into respondent's residence, while Murphy recuperated from surgery. *Id.* at ¶18.

On November 9, 2009, respondent and Murphy were involved in a heated dispute, which resulted in Murphy drawing a gun on respondent. *Id.* at ¶20. Respondent called 911 and filed Aggravating Menacing charges against Murphy. *Id.* As a result of the criminal charges, a Temporary Protection Order (TPO) was issued against Murphy, which precluded Murphy from having any contact with respondent. *Id.* at ¶21. The criminal charges were ultimately dismissed. *Id.* at ¶26.

On November 10, 2009—the day after the incident—respondent sent Murphy a letter terminating her employment with respondent's law firm. *Id.* at ¶22. Coincidentally, that same day, the magistrate in the domestic relations proceeding issued her decision, which was unfavorable to Murphy. *Id.* On November 13, 2009, respondent sent Murphy a letter enclosing a copy of the magistrate's decision, and informing Murphy of the November 24, 2009 deadline to file objections. *Id.* at ¶23. In the same letter, respondent terminated the attorney-client relationship, leaving Murphy without an attorney to file objections to the magistrate's decision. *Id.* 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. Id. at ¶25.

## **RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS**

### **I. THE EVIDENCE SUPPORTS THE BOARD'S FINDING OF SEVERAL AGGRAVATING FACTORS.**

While it is true that the original Consent Agreement and the Agreed Stipulations contained no aggravating factors, the testimony adduced at the hearing supported the board's finding that respondent acted with a selfish motive and that Murphy was vulnerable and harmed by respondent's misconduct. At the hearing, respondent testified that he was aware that the Rules of Professional Conduct prevented him from having a sexual relationship with his client, yet he chose to engage in the relationship. [Tr. p. 14]. Respondent's testimony, while candid, supports the board's finding that he acted with a selfish motive.

In a similar fashion, Murphy testified that she did not choose to pursue a relationship with respondent and felt she did not have a choice but to go along with respondent's advances. Id. at 44. Given the inherent power imbalance between a lawyer and client, the board's finding that Murphy was vulnerable was justified. Further, upon terminating the attorney-client relationship, respondent advised Murphy of her options and offered to assist her new attorney if she chose to hire one; however, respondent left Murphy without a lawyer to file objections to the magistrate's decision. Accordingly, there was justification for the board's finding that respondent's conduct resulted in harm to Murphy.

The board also found that respondent "attempted to excuse or minimize that conduct rather than acknowledge that it was wrong." Report at ¶31. At the hearing, respondent admitted

that his conduct violated the Rules of Professional Conduct and that he exercised “poor judgment.” Tr. p. 14. Similarly, respondent admitted his misconduct in the Consent Agreement and again in the Agreed Stipulations. However, in his initial response to relator’s inquiry, respondent made light of the situation and failed to accept responsibility for his inappropriate conduct. [Joint Exhibit 4]. Relator surmises that the board’s finding was based upon respondent’s initial response to the allegations, rather than his subsequent admissions and testimony at the hearing.

In addition to the aggravating factors, the board found several mitigating factors, including no previous discipline, respondent’s full and free disclosure during relator’s investigation, his reputation in the legal community, and his cooperation in the disciplinary process. Report at ¶29. Taking into consideration the aggravating and mitigating factors, respondent’s misconduct warrants more than a public reprimand; accordingly, relator recommends the imposition of a stayed suspension.

## **II. RESPONDENT’S MISCONDUCT WARRANTS A STAYED SUSPENSION**

The board rejected respondent and relator’s joint recommendation for a six month, stayed suspension and opted to recommend a 12 month suspension with six months stayed. The increased recommendation was based upon the board’s finding of the several aggravating factors mentioned in the previous section.

[O]f 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.

Id. at ¶45.

In support of its recommendation, the board cited to *Butler Cty. Bar Assn. v. Williamson*, 117 Ohio St.3d 399, 2008-Ohio-1196, 884 N.E.2d 55, in which an attorney was indefinitely suspended for engaging in a sexual relationship with a client and failing to cooperate in the disciplinary investigation. As the board noted:

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.

Report at ¶44.

Despite distinguishing *Williamson* from the case at bar, the board nonetheless recommended an actual suspension from the practice of law. Given that *Williamson* was a default case, other cases involving sex with clients are more analogous to the case at bar.

For instance, in *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734, 804 N.E.2d 423, an attorney made unwanted sexual advances to one female client and engaged in a consensual sexual relationship with a different, 22-year-old female client while representing her in a custody case involving her two small children. *Id.* at ¶¶3, 7. Despite the multiple counts of misconduct and the clients' vulnerability, the court rejected the board's recommendation of a six-month actual suspension and imposed a one-year suspension, all stayed, along with two years' probation. *Id.* at ¶20.

In the case at bar, respondent's misdeeds were confined to a single client of similar age. Although respondent's conduct was highly inappropriate, the relationship was consensual.

In *Disciplinary Counsel v. Siewert*, Slip Opinion No. 2011-Ohio-5935, an attorney engaged in a consensual sexual relationship with a chemically-dependent divorce client. The client moved into the lawyer's home until she suffered a relapse a few months after the

representation ended. *Id.* at ¶4. Despite the fact that Attorney Siewert had been previously disciplined, the Court imposed a six month stayed suspension upon the offending lawyer. *Id.* at ¶9.

In *Cincinnati Bar Assn. v. Schmalz*, 123 Ohio St.3d 130, 2009-Ohio-4159, the Supreme Court of Ohio imposed a public reprimand upon the respondent lawyer after finding she engaged in an improper sexual relationship with her criminal client, despite the fact that the lawyer initially minimized her relationship with the client—an aggravating factor under BCGD Proc.Reg. §10(B)(1)(f). *Id.* at ¶7.

In *Disciplinary Counsel v. Detweiler*, 127 Ohio St.3d 73, 2010-Ohio-5033, 936 N.E.2d 498, Attorney William Detweiler began representing a female client in a divorce action and, within a month, engaged in a consensual sexual relationship. After the five-month sexual relationship ended, respondent continued representing the client until he was fired approximately 10 months later. *Id.* at ¶2. The Supreme Court of Ohio imposed a public reprimand holding, “We have publically reprimanded attorneys for having sexual relationships with clients when the relationships are legal and consensual and have not compromised the clients’ interests.” *Id.* at ¶5.

Given the board’s finding that respondent’s actions harmed his client, a sanction greater than a public reprimand is warranted. Accordingly, relator joins respondent in recommending a stayed suspension.

**CONCLUSION**

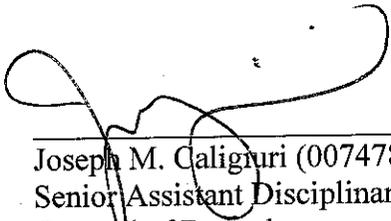
By engaging in an improper sexual relationship with his client, respondent violated Prof. Cond. Rule 1.8(j). Further, respondent's actions after terminating the attorney-client relationship adversely reflected on his fitness to practice law in violation of Prof. Cond. R. 8.4(h). Consequently, respondent's misconduct warrants more than a public reprimand. Relator believes a stayed suspension will adequately address the misconduct and protect the public.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing answer brief was served via U.S. Mail, postage prepaid, upon respondent's counsel, Christopher James Weber, Esq., Director, Kegler, Brown, Hill & Ritter, Capitol Square, Suite 1800, 65 East State Street, Columbus, OH 43215, and by e-mail at ([cweber@keglerbrown.com](mailto:cweber@keglerbrown.com)), and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio, 43215 this 6th day of January, 2012.



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