

ORIGINAL

THE SUPREME COURT OF OHIO

Disciplinary Counsel,	)	Case No. 2012-1711
	)	
Relator	)	
	)	
vs.	)	
	)	
William J. Detweiler,	)	
	)	
Respondent	)	
	)	

OBJECTIONS TO FINDINGS OF  
FACT AND RECOMMENDATION  
OF THE BOARD OF COMMISSIONERS  
ON GRIEVANCES AND DISCIPLINE

BRIEF OF  
RESPONDENT WILLIAM J. DETWEILER

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FILED
NOV 08 2012
CLERK OF COURT SUPREME COURT OF OHIO

## **RESPONDENT'S OBJECTIONS**

### **I. THE BOARD ERRED AS A MATTER OF FACT AND LAW WHEN IT MODIFIED THE RECOMMENDATION OF THE PANEL IN PARAGRAPH 42 OF THE REPORT.**

#### **BRIEF ON OBJECTIONS**

In paragraph 42 of the Findings of Fact, Conclusions of Law and Recommendations of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, the panel recommended that the Respondent receive a one-year suspension, stayed in its entirety upon the conditions that Respondent submit to an evaluation by OLAP, that he comply with any recommended treatment during the suspension period, and that he commit no further misconduct. Respondent had consented to such a sanction during the May 15, 2012 hearing.

The Board then modified this sanction in its Recommendations whereby it stayed only six months of the suspension time based upon the fact that the client owed Respondent \$10,000 in attorney fees and expenses.

Respondent requests that this modification be overturned and the panel's recommendation in paragraph 42 reinstated.

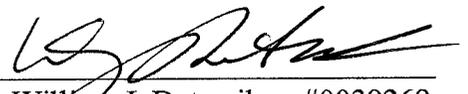
The record reflects that the client did not have to pay these fees and costs as the trial court ordered the husband to pay the full amount of fees and costs during the pendency of the divorce case. Even after this payment of fees and costs, the client never requested the Respondent to withdraw his representation nor did she seek any reimbursement of fees. As noted, in paragraph 24, Respondent continued to represent the client until the September of 2008.

Respondent in no way seeks to minimize the gravity of his actions. The sanction in paragraph 42 is significant and appropriate.

**CONCLUSION**

Respondent requests that this Court apply that sanction and overrule the Board's Recommendation.

Submitted by,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Objections and Brief of Respondent were sent by regular U.S. mail this day of November, 2012, to:

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By   
William J. Detweiler #0039269  
Pro se, Respondent

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

<b>In re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 11-065</b>
<b>William Jeffrey Detweiler Attorney Reg. No. 0039269</b>	:	<b>Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio</b>
<b>Respondent</b>	:	
<b>Disciplinary Counsel</b>	:	
<b>Relator</b>	:	

**OVERVIEW**

{¶1} This matter was heard on May 15, 2012 in Columbus before a panel consisting of Roger S. Gates, Alvin R. Bell and John A. Polito, chair. None of the panel members is from the district where the complaint originated, nor did any of them serve on the probable cause panel that certified this matter to the Board.

{¶2} Philip King represented Relator. Respondent, William Jeffrey Detweiler, appeared at the hearing pro se.

{¶3} On January 13, 2012, the parties filed an agreement for consent to discipline, pursuant to BCGD Proc. Reg. Section 11.

{¶4} The panel recommended approval of the consent to discipline agreement including the jointly recommended sanction of a six-month stayed suspension.

{¶5} On February 10, 2012, the Board voted to reject the consent to discipline agreement and agreed upon sanction. The case was returned to the hearing panel for further proceedings.

{¶6} The parties filed agreed stipulations of facts, mitigation, and sanctions on April 25, 2012, and the case was heard on May 15, 2012.

{¶7} The panel finds Respondent engaged in conduct that violated three Rules of Professional Conduct. For the reasons set forth below, the panel rejects the sanction agreed to by the parties and recommends Respondent be suspended from the practice of law for one year, with the suspension stayed in its entirety upon conditions.

#### **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

{¶8} Respondent was admitted to the practice of law in Ohio on November 16, 1987. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶9} On October 1, 2010, the Supreme Court of Ohio in *Disciplinary Counsel v. Detweiler*, 127 Ohio St.3d 73, 2010-Ohio-5033, publicly reprimanded Respondent for engaging in sexual activity with his client in violation of Prof. Cond. R.1.8(j). The misconduct in this matter predated the misconduct for which Respondent was publicly reprimanded.

{¶10} At all times relevant, Respondent was a partner at the law firm of Roderick, Linton Belfance, LLP, and his areas of practice are divorce, domestic relations, and family law.

{¶11} In June 2007, Karen Varner hired Respondent to handle her divorce case against her husband Richard Varner.

{¶12} While Respondent had represented Mrs. Varner in other matters before June 2007, there was never a sexual relationship between them.

{¶13} At engagement, Mrs. Varner paid Respondent an initial retainer of \$3,500.

{¶14} On June 28, 2007, Respondent filed a divorce complaint for Mrs. Varner in the Summit County Common Pleas Court under Case No. DR-2007-06-2064.

{¶15} In July 2007, Respondent began exchanging text messages of a personal nature with Mrs. Varner.

{¶16} Initially, Respondent's text messages seemed harmless to Mrs. Varner, asking her about her well-being or discussing a Cleveland Browns football game.

{¶17} Respondent began sending texts messages to Mrs. Varner asking her to lunch socially.

{¶18} Mrs. Varner was concerned about Respondent's intentions so she did not accept Respondent's invitations to lunch. At that time, Mrs. Varner did not make her discomfort known to Respondent.

{¶19} Afterwards, Respondent's text messages to Mrs. Varner became sexual in nature. Specifically, Respondent texted Mrs. Varner about her outfits and how they made Respondent feel sexually and indicated that he wanted to have sex with Mrs. Varner.

{¶20} Respondent continued "sexting" Mrs. Varner and Respondent admits that sometime between November 2007 and January 2008, he sent Mrs. Varner a nude picture of himself via text message showing Respondent's lower body with his erect penis exposed.

{¶21} By this time, Mrs. Varner owed \$10,000 in attorney fees and expenses and could not afford another attorney. Therefore, she continued Respondent's representation and tried her best to avoid his sexual advances.

{¶22} Respondent admits that sometime in early 2008, after sending the nude text picture, he sent Mrs. Varner a text message asking her to have oral sex with him. Mrs. Varner

responded by text message rejecting Respondent's solicitation.

{¶23} In the summer of 2008, Mrs. and Mr. Varner temporarily reconciled their marriage.

{¶24} On September 17, 2008, Mrs. and Mr. Varner voluntarily dismissed the divorce case and terminated Respondent's representation.

{¶25} At no time did Mrs. Varner have sex with Respondent or meet with him socially.

{¶26} The parties have stipulated and the panel finds by clear and convincing evidence that Respondent's conduct violates the following: Prof. Cond. R. 1.7(a)(2) [a lawyer shall not continue representation where there is a substantial risk of a conflict of interest between the client's interest and the lawyer's own personal interests]; Prof. Cond. R. 1.8(j) [a lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship preexisted]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on his fitness to practice law].

#### **AGGRAVATION, MITIGATION, AND SANCTION**

{¶27} The parties have stipulated and the panel finds that an aggravating factor is present in that there was a vulnerability of and resulting harm to the victim of the misconduct.

{¶28} The panel finds that Respondent acted with selfish motives.

{¶29} The panel finds that Respondent engaged in a pattern of misconduct when consideration is given to the previously sanctioned although subsequent similar conduct referred to in ¶9 above.

{¶30} The parties stipulated and the panel finds that Respondent displayed a cooperative attitude toward the disciplinary proceedings.

{¶31} The parties agreed to a stipulated sanction of a six-month stayed suspension upon the condition that Respondent commit no additional misconduct. Relator cites the cases of

*Disciplinary Counsel v. Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935 and *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734 as authority for stayed suspension.

{¶32} In *Siewert*, Respondent had previously been suspended for 24 months, with 18 months stayed for neglecting legal matters. Respondent subsequently violated Prof. Cond. R. 1.8(j), and received a six months stayed suspension upon conditions in accordance with the consent for discipline agreement.

{¶33} In the *Moore* case, Respondent was charged with misconduct under the Code of Professional Responsibility with misconduct similar to Respondent Detweiler including engaging in sexual activity with a client which would be a violation of Prof. Cond. R. 1.8(j).

{¶34} The panel in *Moore* recommended a one-year stayed suspension upon conditions. The Board modified the sanction to a six-month actual suspension. The Court, relying upon mitigating factors including Respondent's remorse, apologies, and testimony from his treating psychologist, ordered a one-year stayed suspension with conditions as initially recommended by the panel.

{¶35} The panel finds that the agreed upon sanction of a six-month stayed suspension is not appropriate for Respondent. The *Siewert* case is distinguishable in that Siewert's client engaged in a consensual sexual relationship with him and moved into his house during the legal representation. Additionally, expert medical testimony indicated that Siewert suffered from depression and alcoholism which likely contributed to his misconduct. Siewert was seeking treatment for his problems which the panel and the Court cited as making it unlikely for repeat offenses.

{¶36} As noted in the findings of facts, Respondent's sexual advances toward his client were offensive, unwelcome, and rejected. The nonconsensual nature of the conduct increases the

sanction from the public reprimand cases cited in *Moore* supra at 101 Ohio St.3d 263.

{¶37} Other cases involving Prof. Cond. R. 1.8(j) or former DR 1-102(A) or DR 5-101(A) violations have resulted in public reprimands including: *Disciplinary Counsel v. Paxton*, 66 Ohio St.3d 163, 1993-Ohio-99; *Disciplinary Counsel v. Engler*, 110 Ohio St.3d 138, 2006-Ohio-3824; *Cincinnati Bar Assn. v. Schmalz*, 123 Ohio St.3d 130, 2009-Ohio-4159; and *Allen Cty. Bar Assn. v. Bartels*, 124 Ohio St.3d 527, 2010-Ohio-1046.

{¶38} The Supreme Court has also imposed actual suspensions in other cases involving similar rule violations including: *Disciplinary Counsel v. Cirincione*, 102 Ohio St.3d 117, 2004-Ohio-1810 (one-year suspension, with six months stayed for sexual relations with client that led to financial support); *Disciplinary Counsel v. Booher*, 75 Ohio St.3d 509, 1996-Ohio-248 (one-year suspension for having sexual relations with client); *Cleveland Bar Assn. v. Feneli*, 86 Ohio St.3d 102, 1999-Ohio-140 (18-month suspension, with six months stayed for having sexual relations in lieu of fees); *Akron Bar Assn. v. Williams*, 104 Ohio St.3d 317, 2004-Ohio-6588 (two-year suspension, with 18 months stayed for having sexual relations at least ten times over three months and lying about it); and *Disciplinary Counsel v. Krieger*, 108 Ohio St.3d 319, 2006-Ohio-1062 (two-year suspension, with one year stayed for having sexual relationship with one client and sexually harassing two others while lying during the investigation and showing little remorse).

{¶39} In *Akron Bar Assn. v. Miller*, 130 Ohio St.3d 1, 2011-Ohio-4412, the Court found that lewd misconduct that did not involve an actual sexual relationship was a violation of Prof. Cond. R. 8.4(h) and ordered a six-month stayed suspension, with one-year probation. The Court stated that the crucial question of what sanction to apply is the precise nature of Respondent's conduct.

{¶40} The panel finds that Respondent's conduct herein most closely resembles that in *Moore* even though no sexual relations occurred. The panel further finds that the aggravating factor of a pattern of misconduct coupled with the lack of mitigating factors requires a sanction greater than the six months stayed suspension recommended by the parties.

{¶41} The panel accepted Respondent's assertions that he was remorseful and recognized the severity of his conduct. Respondent testified that in an attempt to strengthen trust in his marriage, he provided his wife with passwords to his personal and business email accounts. This is troubling as it could lead to subsequent Prof. Cond. R. 1.6 violations of client confidences. The marital trust issues should be monitored through counseling and not measures that jeopardize client confidences.

{¶42} Under the facts and circumstances of this case, the panel recommends that Respondent receive a one-year suspension, stayed in its entirety upon the conditions that Respondent submit to an evaluation by OLAP, that he comply with any recommended treatment during the suspension period, and that he commit 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 5, 2012. The Board adopted the Findings of Fact and Conclusions of Law of the panel. However, the Board voted to modify the sanction proposed by the panel and recommends that Respondent, William Jeffrey Detweiler, be suspended for one year, with six months stayed upon the conditions contained in ¶42 of this report. The Board's modification of the sanction is based on the fact that Respondent's advances occurred at a time when the client owed Respondent approximately \$10,000 in fees and expenses and could not afford to discharge Respondent in favor of another

attorney [see ¶21 of this report], thus causing the client to feel “completely trapped.” Stipulated Ex. 3. The Board further recommends that the costs 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 Recommendation as those of the Board.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Secretary**