

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

FILED
DEC 07 2012
CLERK OF COURT
SUPREME COURT OF OHIO

In re:	:	
Complaint against	:	Case No. 11-070
Edward Royal Bunstine Attorney Reg. No. 0030127	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

OVERVIEW

{¶1} A formal hearing was held in this matter on August 27, 2012 in Columbus, Ohio before a panel consisting of commissioners Sanford Watson, Robert L. Gresham, and William J. Novak, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Respondent, Edward Royal Bunstine was present, representing himself. Relator, Office of Disciplinary Counsel was represented by Heather Hissom Coglianesse.

{¶3} Relator filed a formal complaint alleging rule violations stemming from Respondent's solicitation of sexual activity from a client. Respondent failed to file a timely answer to the complaint, and Relator filed a motion for default judgment on February 22, 2012. Respondent subsequently answered the complaint on March 23, 2012, and this matter was assigned to a hearing panel.

{¶4} In addition to the submission of requests for admissions as well as exhibits, evidence was presented by way of testimony of Respondent, Respondent's wife, Respondent's former client Ashley Nicole Holdren, and Holdren's fiancé Sean Richard Sweesey. After further consideration, admitted into evidence were Relator's Exhibits 1 through 8 and Respondent's Exhibits A through H. Relator's exhibits included Exhibit 7, a video recording of Respondent's visit to Holdren's residence.

{¶5} Relator recommended that Respondent's license to practice law be suspended for two years, with one year stayed. Respondent contended that there were no violations of the Rules of Professional Conduct. The panel finds that Respondent violated two Rules of Professional Conduct and recommends that Respondent be suspended from the practice of law for one year, with six months stayed.

{¶6} Respondent was admitted to the practice of law in Ohio on May 11, 1981. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio. Respondent is not licensed in any other states.

{¶7} Respondent has been previously disciplined, receiving a stayed suspension in 2012. *Disciplinary Counsel v. Bunstine*, 131 Ohio St.3d 302, 2012-Ohio-977. The stayed suspension involved conduct that violated Prof. Cond. R. 8.4(d) and Prof. Cond. R. 8.4(h) when Respondent voluntarily injected himself into a criminal investigation concerning an acquaintance of Respondent's. Bunstine's practice centers around Chillicothe and its surrounding counties.

{¶8} Respondent was charged in the complaint with misconduct in violation of the following: Prof. Cond. R. 1.8(j) [a lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between when the client-lawyer relationship

commenced]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶9} On or about January 19, 2010, Respondent was originally retained by Ashley Holdren to represent her regarding an order granting companionship of her two children to William Scott by the magistrate in the Ross County Court of Common Pleas. Respondent's Ex. A.

{¶10} On January 20, 2010, Respondent filed a motion for new trial or relief from judgment on behalf of Holdren. Respondent's Ex. B.

{¶11} On May 12, 2010, Respondent filed a motion to dismiss the companionship motion filed by Scott on jurisdictional grounds. Relator's Ex. 1; Respondent's Ex. D.

{¶12} On May 13, 2010, the motion to dismiss filed by Respondent was granted by the court in the form of a magistrate's decision and entry. Following that decision, Respondent closed his file. Relator's Ex. 2; Respondent's Ex. E.

{¶13} On or about July 16, 2010, Ashley Holdren visited Respondent's office regarding the possible representation of her in a similarly framed case filed by Scott, this time in the Pike County Juvenile Court to establish companionship with their two children.

{¶14} Prior to Holdren's arrival at Respondent's office, she called Respondent's office and was advised by Respondent's secretary that she would be required to bring any paperwork with her as well as a \$500 retainer. Hearing Tr. 82-83.

{¶15} On or about July 16, 2010, Respondent received a copy of an entry indicating that the Pike County Juvenile Court would continue the hearing on temporary orders until July 21, 2010 because "the mother had requested an attorney because her potential attorney, Edward Bunstine, cannot be present." Relator's Ex. 5; Respondent's Ex. G.

{¶16} On or about July 16, 2010, a meeting took place in Respondent's office and lasted approximately 45 minutes, at which time Holdren asked what payment arrangements could be made for Respondent's representation in the companionship case.

{¶17} Respondent stated that she "could get rid of her fiancé," take her "kids to the babysitter's," and answer the "door naked" or that he would come down to her house and that she could "answer your door naked." Hearing Tr. 88-89.

{¶18} Respondent does not dispute that the foregoing statement was made to Holdren.

{¶19} Holdren testified that Respondent had been a great attorney in the past for her, but she was disgusted, upset, and scared following this comment. *Id.* at 90.

{¶20} During the course of the hearing, one of the issues that attracted the panel's attention was whether or not an attorney-client relationship was established during the July 16, 2010 meeting between Respondent and Ashley Holdren. The evidence adduced at the hearing demonstrated that the motion filed in the new Pike County case involved the same underlying facts as were filed in the original Ross County case. In fact on July 14, 2010, Holdren attended a hearing in Pike County Juvenile Court at which time she stated that Respondent would be her potential attorney and the hearing was continued to July 21, 2010. Further, Respondent admitted that one of the reasons for ultimately driving to Holdren's place of residence was to obtain documents in anticipation of a continued representation of her. *Id.* at 60.

{¶21} At the hearing, Respondent introduced Exhibit H into evidence, a handwritten map from Respondent's office to Holdren's residence. Holdren did not authenticate this map as being her handwriting.

{¶22} Shortly after Holdren left Respondent's office, Respondent called her and asked if he could come to her house at which time Holdren stated that he should not visit her. This conversation took place while Holdren was in her fiancé Shawn Sweesey's motor vehicle.

{¶23} Notwithstanding, Respondent drove approximately 35 minutes to Holdren's residence and into the driveway, where he was confronted by Sweesey and Sweesey's father using a cellular phone to record the confrontation in Holdren's driveway.

{¶24} Following the confrontation in Holdren's driveway, Respondent left and then came back and asked if he could bring his wife to Holdren's home. Holdren attempted to get her children to leave the premises however, but before she could get her children in the car, Respondent returned with his wife who entered Holdren's home and spoke to Holdren. Respondent did not go inside the home with his wife.

{¶25} Following the discussion with Respondent's wife, Holdren allowed Respondent to represent her at the next hearing in Pike County on or about July 21, 2010. However, the matter was continued to a new date at which time Holdren obtained new counsel. Shortly thereafter, Respondent's wife left him.

{¶26} Respondent testified that going to Holdren's home was an act of infidelity and that his conduct was "wrong" and that he committed a "sin." Id. at 55; 64-65.

{¶27} The panel finds by clear and convincing evidence that Respondent violated the following: Prof. Cond. R. 1.8(j); and Prof. Cond. R. 8.4(h).

{¶28} The panel further finds that Relator did not establish by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(d) and dismisses that charge.

{¶29} There is no dispute that a statement was made by Respondent to solicit sexual activity. Respondent's own conduct in driving 35 minutes to the Holdren's home within a short

time after the office meeting manifested a clear intent on his part to obtain an alternative means of payment for the representation of Holdren in the Pike County visitation matter.

{¶30} Soliciting sexual activity is an ethical violation and was recognized as such in *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734. In *Moore*, the Court concurred in the following statement by the Supreme Court of Wisconsin: “By making an unsolicited sexual advance to a client, an attorney perverts the very essence of the lawyer-client relationship. Such egregious conduct most certainly warrants discipline.” *In re Disciplinary Proceedings Against Gibson* (1985), 124 Wis.2d 466, 474-475, 369 N.W.2d 695, appeal dismissed sub nom. *Gibson v. Bd. of Attorneys Professional Responsibility of Wisconsin* (1985), 474 U.S. 976, 106 S.Ct. 375, 88 L.Ed.2d 330. Clearly, Holdren perceived that Respondent’s comment constituted solicitation. That comment meant that Respondent was soliciting sex for services.

{¶31} Not only did Respondent’s conduct violate Prof. Cond. R. 1.8(j), but an attorney who solicits sexual activities from a client violates Prof. Cond. R. 8.4(h). *Akron Bar Assn. v. Miller*, 130 Ohio St.3d 1, 2011-Ohio-4412.

AGGRAVATION, MITIGATION, AND SANCTION

{¶32} Based upon the evidence and exhibits, the panel finds the following aggravating factors: Respondent had a prior disciplinary offense; Respondent acted with a selfish motive; and there was resulting harm to the victim of Respondent’s misconduct.

{¶33} Based upon the evidence and exhibits, the panel finds no mitigating factors in this matter.

{¶34} In determining appropriate sanctions for attorney misconduct, all relevant factors must be considered, including the duties of Respondent, the violations incurred, and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743.

We therefore direct our attention to the recent case, *Akron Bar Assn. v. Miller, supra*. That case involved similar improper conduct consisting of statements made by telephone in the nature of sexual advances from the attorney to the client. Although the Court adopted the recommendation of the Board and ordered that respondent be suspended from the practice of law for six months, that suspension was stayed on the condition that respondent serve a one-year period of probation pursuant to Gov. Bar R. V, Section 9. Respondent Miller had mitigating factors that influenced the sanction imposed. In this case, there are no mitigating factors. Instead Respondent displayed a selfish motive, had a prior disciplinary history, and harmed a vulnerable client, all of which justifies a greater penalty than meted out in *Miller*.

{¶35} Based upon the foregoing, this panel recommends that Respondent be suspended from the practice of law for one year, with the final six months stayed.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 6, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Edward Royal Bunstine, be suspended from the practice of law for one year, with six months stayed. 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.



RICHARD A. DOVE, Secretary