

ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel

Case No. 2012-2049

Relator,

V

Edward Royal Bunstine

Respondent.

:
Respondent's Objections to the Findings
and / or Recommendations of the Board
or to the confirmation of the report on
or to the confirmation of the report on
or to the confirmation of the report on
which the order to show cause was issued

BRIEF OF RESPONDENT EDWARD ROYAL BUNSTINE

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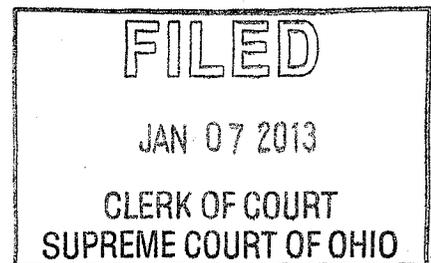


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OHIO STATUTE:

ORC 2907.0118

STATEMENT OF FACTS

On or about July 16, 2010, Ashley Holdren was in Respondent's office discussing a case filed against her in the Pike County Juvenile Court. While discussing the case, Respondent asks Ashley Holdren the following question.

“If I (Respondent) come out to your house, will you answer the door naked?”

Clearly, the question Respondent asked Ashley Holdren was an inappropriate question. Why Respondent asked this question is addressed further on herein. However, at the Board Hearing in this matter, Ashley Holdren testified as follows:

1. At no time did Respondent solicit Ashley Holdren to have sex.
2. At no time did Respondent ever mention any type of sexual activity to Ashley Holdren.
3. At no time did Respondent tell Ashley Holdren that he (Respondent) would represent her if she had sex with Respondent.
4. At no time did Respondent tell Ashley Holdren that he would represent her if she answered the door naked.

What Ashley Holdren states in her testimony is that she assumed Respondent wanted her to answer the door naked so that Respondent and Ashley Holdren would, thereafter, engage in sexual activity. This would be an extremely strong assumption by Ashley Holdren when there occurred no discussion about any type of sexual activity between the Respondent and Ashley Holdren.

Why did Respondent ask an inappropriate question? Before responding to this question, Respondent addresses the initial attorney-client relationship and all of the facts leading up to, and after, the question that was asked.

INITIAL REPRESENTATION

In the fall of 2009, William Scott filed a Motion to Establish Companionship Rights against Ashley Holdren in the Ross County Juvenile Court. Ashley Holdren and William Scott have two (2) children.

On January 7, 2010, a Magistrate's Order was filed by the Court granting William Scott companionship with the two (2) children in accordance with the Ross County Court of Common Pleas Companionship Schedule. *Respondent Exhibit A.*

On January 19, 2010, twelve (12) days after the Magistrate's Order was issued, Respondent was hired by Ashley Holdren regarding the companionship order issued by the Court. On January 20, 2010, Respondent, on behalf of Ashley Holdren, files a Motion for a New Trial / Motion for Relief from Judgment. The Motion for Relief is approved, the Companionship Order vacated, and the matter was set for a pre-trial hearing. On behalf of Ashley Holdren, Respondent filed a Motion to Dismiss the Companionship Motion filed by William Scott. On May 13, 2010, the Motion to Dismiss, filed by Respondent on behalf of Ashley Holdren, was granted by the Court and the case was dismissed. *Respondent Exhibits B – E.*

When Ashley Holdren initially spoke with Respondent, it was brought to Respondent's attention that a Pike County case had previously been opened between Ashley Holdren and William Scott. In fact, there was a child support order that had previously been issued by the Pike County Juvenile Court.

Respondent advised Ashley Holdren, at the initial consultation, that it was Respondent's belief that the Ross County case was improperly filed and that the case

should have been filed in Pike County Juvenile Court. Respondent also advised Ashley Holdren that, if the companionship motion was heard on the merits, there was a good possibility that William Scott would be granted companionship. Ashley Holdren advised Respondent that she had concerns about where William Scott was living and his criminal history. Respondent advised Ashley Holdren to take photographs of both residences and to obtain a criminal history of William Scott at the Pike County Sheriff's Office.

Ashley Holdren, after the initial consultation, elected to hire Respondent. Ashley Holdren hired Respondent because she thought there was a good chance that, if the Ross County case was dismissed, William Scott would give up and not file a new motion in the Pike County Juvenile Court. Ashley Holdren also believed that, if the Ross County case was dismissed, she would have more time to prepare if William Scott did file a new motion in the Pike County Juvenile Court.

When the Ross County case was dismissed on May 13, 2010, Respondent contacted Ashley Holdren and told her about the dismissal, sent her a copy of the Dismissal Entry, and the file of Respondent was closed. The dismissal of the Ross County case ended Respondent's representation of Ashley Holdren. BOTH Respondent and Ashley Holdren acknowledged this fact. *Hearing Transcript Page 66, Lines 15 – 20; Page 82, Lines 1 – 3; Page 83, Lines 1 – 2; Page 132, Lines 10 – 20.*

It should be noted that Commissioner Novak asked Respondent why he would close the file if Respondent knew there was a companion case also filed in Pike County. Respondent would indicate that there was no open case filed in Pike County at that time. There had been a case filed in Pike County, but it had already been closed.

SECOND REPRESENTATION

On or about June 18, 2010, Ashley Holdren is served with a Summons and a copy of a Companionship Motion filed by William Scott in the Pike County Juvenile Court. *Respondent Exhibit F.* Ashley Holdren calls the office of Respondent. Respondent's staff, at the direction of Respondent, advised Ashley Holdren that she needs to make an appointment and to bring in all of her paperwork, the criminal history of William Scott and photographs. Because the case in Ross County was dismissed (not on the merits), Ashley Holdren had not yet provided these documents to Respondent. Ashley Holdren asked the staff about attorney fee costs. The staff told Ashley Holdren that the cost would be \$500.00, which was the same amount charged in the Ross County case.

Did Ashley Holdren make an appointment and come speak to Respondent? She did NOT. Ashley Holdren had no communication with Respondent until the afternoon of July 16, 2010, when she called the office.

Prior to Ashley Holdren calling Respondent's office in the afternoon of July 16, 2010, Respondent received in the mail a courtesy copy of an Entry dated July 15, 2010, issued by the Pike County Juvenile court. *Respondent's Exhibit G.* The Entry states:

"The Court finds that the mother (Ashley Holdren) has requested an attorney because her potential attorney, Edward Bunstine, cannot be present. It is therefore ordered that upon the Plaintiff's motion the case will be continued for hearing on temporary orders on Wednesday, the 21st of July 2010, at 1:00 p.m."

There is no question that Respondent could not be present for the July 14, 2010 hearing. The reason is simple. Respondent did not know anything about the hearing.

Ashley Holdren was not truthful with the Pike County Court. It was not that Respondent could not be present. Respondent had no knowledge of the hearing.

In the afternoon of July 16, 2010, Ashley Holdren called the office and left a message requesting that Respondent call her. Respondent returned the call and advised Ashley Holdren to come into Respondent's office and bring all of her paperwork.

On July 16, 2010, Ashley Holdren came into Respondent's office to discuss the case. Ashley Holdren wanted to hire Respondent to prevent William Scott from obtaining companionship rights with their two (2) children. Respondent already knew the case was set for a hearing on temporary orders for July 21, 2010 at 1:00 p.m. If Respondent elected to represent Ashley Holdren, Respondent had four (4) days to prepare.

When Ashley Holdren came into Respondent's office, all that she brought with her was a copy of the companionship motion filed by William Scott. Ashley Holdren had no criminal records of William Scott and no photographs as previously requested.

Respondent discussed the case in detail with Ashley Holdren. Ultimately, Respondent told Ashley Holdren that Respondent did not want to represent her and charge her attorney fees because Respondent did not believe he could help her with what she wanted done. Respondent advised Ashley Holdren that she might want to consider representing herself because William Scott was representing himself.

Respondent spoke to Ashley Holdren in length regarding all of her options, including how she should represent herself if no attorney was going to represent her.

The issue of attorney fees was not an issue. Respondent did not want to represent Ashley Holdren because Respondent had no evidence to stop the companionship motion.

Once Ashley Holdren was told by Respondent that Respondent did not feel like Respondent could help her, and that attorney fees were not an issue, the comments, statements, and demeanor of Ashley Holdren changed.

The comments, statements, and demeanor of Ashley Holdren when Respondent said “no thanks” precipitated the purpose in asking the question. Ashley Holdren did not want to take “no” as Respondent’s answer. Ashley Holdren was desperate. Ashley Holdren had a hearing in five (5) days and no attorney. Acting on desperation, Ashley Holdren invites the Respondent out to her house to discuss the case.

Respondent states that he has been practicing law for thirty-two (32) years. Respondent believed that the invitation tendered by Ashley Holdren was for bad intentions. Respondent responds to the invitation by making the statement that Respondent does not know how to get to her home. At that time, Ashley Holdren grabs a yellow pad off the desk of the Respondent and draws the Respondent a map. *Respondent Exhibit H.*

Why did Respondent ask the inappropriate question? Respondent wanted to hear the answer. Ashley Holdren testified, at the hearing, that her response was, “absolutely not.” Respondent wishes that this was her response, but it was not. Her response was “yes.” Respondent then asked her a second question. “When do you want me to come out?” Ashley Holdren said, “Call me in twenty minutes on my cell phone” and Ashley Holdren gave Respondent her cell phone number, which is why it is written on the map.

To continue, Respondent called the cell phone number and heard argument before the phone went dead. Respondent called her back approximately thirty minutes later and Ashley Holdren tells Respondent to come out to her house.

At this time, Respondent’s wife has come into the office. Respondent tells his wife that he is going down to Ashley Holdren’s house. Respondent asks his wife where the office camera is because Respondent wants to take pictures of Ashley Holdren’s home and the home of William Scott.

Respondent drives down to the Ashley Holdren home using the map drawn by Ashley Holdren. He misses the driveway to the home of Ashley Holdren and goes up the

road and turns around. Respondent then finds the correct road and sees Ashley Holdren's fiancé and his father standing in the driveway. Respondent could have kept going and not pulled into the driveway. Instead, Respondent pulls into the driveway and has a conversation with Ashley Holdren's fiancé and his father. The fiancé says he is going to tape our conversation and Respondent says to go ahead and tape. Respondent could have left the driveway at any time.

Respondent had nothing to hide and tells the fiancé that what he thinks was going to happen was not going to happen.

Ashley Holdren appears and Respondent asks Ashley Holdren if she would explain to his wife exactly what was said. Ashley Holdren says "yes." Respondent then drives back to Chillicothe and goes to his office, where Respondent's wife is located. Respondent tells his wife exactly what has occurred. Respondent tells his wife that he wants her to drive down with him to the home of Ashley Holdren so that Ashley Holdren can tell her exactly what Respondent said. The drive time from the home of Ashley Holdren to Respondent's office and back is approximately one (1) hour. Upon returning to the home of Ashley Holdren, Respondent's wife and Ashley Holdren go into the home of Ashley Holdren and they have a conversation.

Respondent's wife exits the house and gets in Respondent's truck and they leave the property of Ashley Holdren and drive back to Respondent's office. Respondent's wife leaves Respondent and is gone for two days.

Respondent's wife returns on Sunday, July 18, 2010. Respondent's wife advised Respondent that she has been speaking to Ashley Holdren and Ashley Holdren wants Respondent to represent her at the hearing schedule for July 21, 2010. Respondent agrees to represent Ashley Holdren, but only on the condition that Respondent's wife be present at all meetings and the hearing.

On July 21, 2010, Respondent represents Ashley Holdren at the Pike County hearing. At the hearing, five (5) witnesses testify. At the hearing William Scott testifies that he is involved in an on-going relationship with Ashley Holdren and provides a letter to the Court that was sent to William Scott by Ashley Holdren pertaining to their relationship and the two (2) children.

On August 19, 2010, Ashley Holdren hires new counsel and, thereafter, files a grievance against Respondent, which is written by her new counsel.

ARGUMENT

PROPOSITION OF LAW NO. 1:

The Three Member Panel and the Board incorrectly found that, by clear and convincing evidence, Respondent violated Prof. Cond. R. 1.8(j)

Respondent has filed objections to the Findings of the Panel which the Board has adopted. The Panel / Board found that Respondent violated Prof. Cond. R. 1.8(j) which reads:

“A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-attorney relationship commenced.”

The Panel / Board has made their determination based upon certain Findings of Fact and Conclusions of Law. The Findings of Fact and Conclusions of Law are identified in Paragraphs Nine (9) through Thirty-One (31).

Findings Sixteen (16) through Twenty-Six (26) and Twenty-Nine (29) through Thirty-One (31) pertain to the Prof. Cond. R. 1.8(j) violation. Most of the Findings of the Board are based upon the sole testimony of Ashley Holdren. The evidence shows that

Ashley Holdren perjured herself at the Board Hearing (see Conclusion) and lied to the Pike County Juvenile Court (see Statement of Facts).

Finding Sixteen (16) states that “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. Respondent has no problem with this Finding, although the attorney fee quote of \$500.00 was given to Ashley Holdren back in the third week of June, 2010, when Ashley Holdren called the office of Respondent.

Finding Number Seventeen (17), reads as follows:

“Respondent stated that she “could get rid of her fiancé,” take her “kids to the babysitter,” and answer the “door naked” or that he could come down to her house and that she could “answer the door naked.” Hearing Tr. 88 – 89.

Respondent testified that he never asked Ashley Holdren to get rid of her fiancé or to take the kids to the babysitter. *Hearing Tr. Page 40, Lines 16 – 21.* Finding Seventeen (17) was solely based upon the testimony of Ashley Holdren, with the exception of the acknowledgment regarding the question that Respondent asked Ashley Holdren.

Respondent would object to Finding Number Eighteen (18), which reads as follows:

“Respondent does not dispute that the foregoing statement was made to Holdren”

Respondent assumes that the Panel / Board is referring to the Findings made in Finding Number Seventeen (17). Why this Finding was made when the hearing transcript and the testimony of Respondent reflects the complete opposite is unknown. *Hearing Tr. Page 40, Lines 16 – 21.* Again, Respondent, in his testimony, absolutely disputed making these statements to Ashley Holdren.

Finding Nineteen (19) again is based upon the sole testimony of Ashley Holdren.

Finding Twenty (20) is a Finding by the Panel / Board that an attorney – client relationship was established by the July 16, 2010 meeting between Respondent and Ashley Holdren. Ashley Holdren and Lynn Bunstine testified that Respondent agreed to represent Ashley Holdren on the condition that Respondent’s wife would be present at all meetings and hearings. This occurred on Sunday, July 18, 2012. *Hearing Tr. Page 161 – 162.*

Finding Twenty-One (21) is again based upon the sole testimony of Ashley Holdren. Respondent testified that he saw Ashley Holdren draw the map. *Hearing Tr. Page 39, Lines 12 – 13.* Lynn Bunstine testified that Ashley Holdren told her that she drew the map. *Hearing Tr. Page 160, Lines 3 – 7.* Additionally, Ashley Holdren told Disciplinary Counsel that she drew the map, but it was drawn in the Ross County case. Disciplinary Counsel has this statement in their pleadings.

Finding Twenty-Two (22) is again based upon the sole testimony of Ashley Holdren. Ashley Holdren stated that she taped the conversation held with the Respondent. Where is the tape?

Finding Twenty-Three (23) and Finding Twenty-Four (24) are somewhat correct. Respondent asked Ashley Holdren if he could go and get his wife so that Ashley Holdren could tell her exactly what happened. Respondent drove to his office and back to the home of Ashley Holdren, which took approximately one hour. How long does it take to put her children in the car?

Finding Twenty-Five (25) is not correct. Five (5) witnesses were called at the July 21, 2010 hearing in Pike County. Respondent’s wife left Respondent on the day of the incident, which was July 16, 2010 and not after the hearing. *Hearing Tr. Page 160, Line 24; Page 161, Lines 1 – 2.*

Finding Twenty-Six (26) needs to be corrected. Respondent is a devout Catholic.

Respondent that a sin is wrong based upon the following Catholic prayer:

“I confess to Almighty God, and to you my brothers and sisters, that I have sinned through my own fault, in my thoughts, and in my words, in what I have done, and in what I have failed to do; and I ask blessed Mary, ever virgin, all the angels and saints, and you, my brothers and sisters, to pray for me to the Lord our God.”

Respondent believes that he committed an act of infidelity through his thoughts and words. Respondent believes that making an inappropriate statement is a sin. Respondent believes that acting inappropriately is a sin. The Panel / Board should not perceive the religious beliefs of Respondent as an admission of any guilt. Respondent simply believes in those principles of the church, which is why he testified that he committed acts which he believes were sins against the church.

Finding Twenty-Nine (29) states as follows:

“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 intention on his part to obtain an alternative means of payment for the representation of Holdren in the Pike County visitation matter.”

Respondent does dispute that the statement was made by Respondent to solicit sexual activity. Respondent asked the question for the purpose of hearing the response. Respondent did not drive down to the home of Ashley Holdren to receive an alternate means of payment. What if Respondent had driven down to the Holdren home and,

instead of knocking on the door, had simply honked the horn and waiting until Ashley Holdren came out? Would the Panel feel any differently if those were the facts? Respondent told his wife where he was going and took the office camera. This is undisputed testimony. *Hearing Tr. 158, Lines 9 – 15.*

Finding Thirty (30) states in part:

“ . . . Clearly, Holdren perceived that Respondent’s comment constituted solicitation. That comment meant that Respondent was soliciting sex for services.”

Respondent would object to this Finding. First of all, Respondent asked Ashley Holdren a question for the purpose of hearing the answer. Ashley Holdren testified that she assumed the Respondent wanted her to answer the door naked so that Respondent and Ashley Holdren could, thereafter, engage in sexual activity. This would be a strong assumption by Ashley Holdren when there occurred no discussion of any type of sexual activity between the Respondent and Ashley Holdren. Again, there is no evidence exists that Respondent would have ever gotten out of his truck. Respondent could have gone to the door and told her to put her clothes on if, in fact, she was going to answer the door naked. Both of these scenarios are as possible as the Panel / Board finding. The fact is Ashley Holdren got caught by her fiancé. When she got caught by her fiancé she did the only thing that she could do. Ashley Holdren tried to blame the Respondent.

To conclude on this Argument, Respondent contends that each Finding of the Panel / Board must pass the test of the clear and convincing evidence rule. Respondent would contend that there does not exist clear and convincing evidence that the Respondent violated Prof. Cond. R 1.8(j).

PROPOSITION OF LAW NO. 2:

The Panel and the Board incorrectly found that by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(h), which reads as follows:

“It is professional misconduct for a lawyer to do any of the following: (h) engage in any other conduct that adversely reflects on the lawyer’s fitness to practice law.”

The Panel / Board concluded that an attorney who solicits sexual activities from a client violates Prof. Cond. R. 8.4(h). At the Board hearing, Ashley Holdren testified as follows:

1. At no time did Respondent solicit Ashley Holdren to have sex.
2. At no time did Respondent ever mention any type of sexual activity to Ashley Holdren.
3. At no time did Respondent tell Ashley Holdren that he (Respondent) would represent her if she had sex with Respondent.
4. At no time did Respondent tell Ashley Holdren that he would represent her if she answered the door naked.

What Ashley Holdren states in her testimony is that she assumed Respondent wanted her to answer the door naked so that Respondent and Ashley Holdren would, thereafter, engage in sexual activity. This would be an extremely strong assumption by Ashley Holdren when there occurred no discussion about any type of sexual activity between the Respondent and Ashley Holdren.

Respondent simply asked Ashley Holdren an inappropriate question for the purpose of hearing the response. Respondent’s question was not an act of sexual activity solicitation.

PROPOSITION OF LAW NO. 3:

The Panel / Board found that, 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.

The Respondent questions the Findings of the Panel / Board. It is true that Respondent has one (1) disciplinary offense in thirty-two (32) years of practice. Respondent was found guilty of disorderly conduct(s). The Panel evidently concluded that Respondent acted with a selfish motive. Respondent's purpose in asking the question was to find out the answer. The Panel found that there was resulting harm to the "victim". The "victim" invited Respondent to her home. The "victim" drew a map for Respondent to get to her home. Respondent represented Ashley Holdren at the July 21, 2010 hearing.

PROPOSITION OF LAW NO 4:

The Panel / Board found that based upon the evidence and exhibits, no mitigating factors existed in this matter.

The Respondent believes that being honest and truthful is a mitigating factor.

PROPOSITION OF LAW NO. 5:

The Panel / Board recommended that Respondent be suspended from the practice of law for one year, with the final six months stayed.

Respondent makes reference to Paragraph Thirty-Four (34) and Thirty-Five (35). The Panel cites *Akron Bar Assn. v. Miller, 130 Ohio St.3d 1, 2011 - Ohio-4412*. What Miller said to his client compared to what Respondent asked Ashley Holdren is like comparing

apples to oranges. In the *Miller* case, there existed clear sexual advances. In the present case, no sex was ever mentioned. Ashley Holdren invited Respondent to her house. Ashley Holdren drew a map advising Respondent how to get to her house. Respondent represented Ashley Holdren at the July 21, 2010 hearing.

CONCLUSION

On July 28, 2011, Disciplinary Counsel filed a Complaint against Respondent regarding this matter. Paragraph Nine (9) of the Complaint reads as follows, "TO FIND HOLDREN'S HOUSE, RESPONDENT USED A MAP PREPARED BY HOLDREN IN HER ROSS COUNTY CASE TO SHOW RESPONDENT WHERE HER HOME WAS IN LOCATION TO OTHER PARTIES INVOLVED."

Disciplinary Counsel investigated this matter and spoke to Ashley Holdren prior to ever filing this Complaint. Paragraph Nine (9) of the Complaint filed against Respondent by Disciplinary Counsel was not made up randomly by Disciplinary Counsel. Ashley Holdren told Disciplinary Counsel she prepared this map (Respondent's Exhibit H). Yet, Disciplinary Counsel allowed Ashley Holdren to commit perjury at the Panel Hearing. Disciplinary Counsel should have stopped the proceedings and advised the Panel that there was a significant problem with the testimony of Ashley Holdren. Ashley Holdren testified that she had never seen the map and did not draw the map. The map diagrams not only the location where Ashley Holdren lives, but also the location of surrounding homes, the location of the dumpster, and even the color of the Holdren home. Respondent had never been on the road where Ashley Holdren lives, when the map was drawn by Ashley Holdren.

Ashley Holdren lied to the Pike County Juvenile Judge, as reflected in Respondent's Exhibit G. Ashley Holdren advised the Judge that Respondent could not be present even though Respondent had no knowledge of any hearing.

Ashley Holdren has perjured herself throughout this matter. Ashley Holdren got caught by her fiancé because she tried to get rid of him for the afternoon on July 16, 2010. Turns out there was a trust issue between Ashley Holdren and her fiancé, but Respondent did not find this out until after the fact.

When Ashley Holdren got caught she did the only thing she could do. Ashley Holdren blamed the Respondent. What was she going to say to her fiancé. Ashley Holdren couldn't tell her fiancé that she had invited Respondent out to her home. Ashley Holdren could not admit to drawing the map although she tried to get around this by saying she drew the map during the Ross County case. Lies compound lies.

In reviewing the Findings of Fact and Conclusions of Law, the Panel / Board clearly elected to disregard the apparent problems involving the testimony of Ashley Holdren. Respondent understands this.

Respondent blames himself and no one else in regard to this Disciplinary Proceeding. Respondent would acknowledge that the question he asked Ashley Holdren was inappropriate. Regardless as to what Ashley Holdren said to Respondent, the fact is, the question was inappropriate.

Respondent contends that not every inappropriate question or statement made by an attorney constitutes a violation of the Rules of Professional Conduct. People ask questions for different reasons. This is a known fact of life. People ask questions because they want to hear the response.

The Panel requested at the hearing that written argument be submitted and they requested the parties to provide a definition for sexual activity. Certainly, sexual activity is defined in R.C. 2907.01. Sexual activity means sexual conduct or sexual contact, or both. This definition certainly does not apply.

One article that Respondent found on the internet stated that watching the film "The Last Tango in Paris" was a sexual activity; another article stated that reading "Playboy Magazine" was a sexual activity.

It seems clear and reasonable that the purpose of Prof. Cond. Rule 1.8(j) is to primarily prevent an attorney from soliciting or engaging in sex with a client.

In this case, Respondent could have asked or told Ashley Holdren that he would represent her if she agreed to have sex with him. Respondent was not interested in that. Evidently, there doesn't seem to be much if any of a distinction in reviewing the Board Decision.

There are too many assumptions being made in this. The Panel / Board assumes that by Respondent driving down to the Holdren house this equated to a clear intent on the part of Respondent to obtain an alternative means of payment. Ashley Holdren testified that she assumed that Respondent wanted to engage in sexual activity. Why? Respondent did not ask her to engage in sexual activity.

Fact is no one knows what would have happened. No one knows whether Respondent would have even gotten out of his truck if given the opportunity. Respondent contends that "the cart is being placed ahead of the horse," when it should be the other way.

Respondent would respectfully request this Court to overrule and to vacate the Findings of Fact and Conclusions of Law and the Recommendations of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, for the reasons stated herein.

Respectfully submitted,



EDWARD R. BUNSTINE (0030127)

Respondent

32 South Paint Street

Chillicothe, Ohio 45601

(740) 775-5600

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431 and Heather Hissom, Assistant Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7205, this 7th day of January, 2013, by personal service or U.S. regular mail service or facsimile / e-mail.



EDWARD R. BUNSTINE

Attorney at Law

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE 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