

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,
Relator.

CASE NO. 2012-2049

Edward Royal Bunstine
Respondent.

**RELATOR'S ANSWER TO
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**

Jonathan E. Coughlan (0026424)

Disciplinary Counsel, Relator

Edward Royal Bunstine, Esq. (0030127)

32 South Paint Street
Chillicothe, OH 45601
740.775.5600
740.775.5603 (Facsimile)
bunstinelaw@horizonview.net

Respondent, *pro se*

Heather Hissom Coglianesse (0068151)

250 Civic Center Drive, Suite 325
Columbus, OH 43215-7411
614.461.0256
614.461.7205 (Facsimile)
H.Coglianesse@sc.ohio.gov

Assistant Disciplinary Counsel
Counsel for Relator

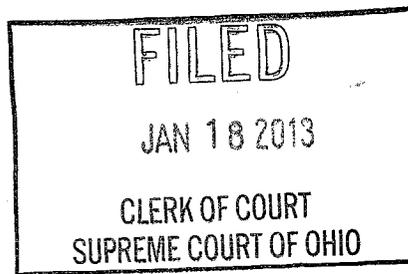


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Disciplinary Counsel, Relator.	:	CASE NO. 2012-2049
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Edward Royal Bunstine Respondent.	:	RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS
	:	
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**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF
COMMISSIONERS' REPORT AND RECOMMENDATIONS**

INTRODUCTION

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

By clear and convincing evidence, the board found violations of Prof. Cond. R. 1.8(j) and Prof. Cond. R. 8.4(h).

The board found no mitigation pursuant to BCGD Proc. Reg. 10(B)(2). The board found aggravation of prior discipline, a dishonest or selfish motive and harm to the victim. BCGD Proc. Reg. 10(B)(1).

The board recommended a one year suspension with six months stayed.

The board's report was certified to this Court on December 7, 2012. This Court issued a Show Cause Order on December 19, 2012. Respondent's objections¹ were filed on January 7, 2013. It is to those objections that relator now responds.

STATEMENT OF FACTS

In 2010, respondent represented Ashley Holdren in a visitation matter filed by William Scott, the father of Holdren's two small children, in Ross County, Ohio. On May 12, 2010 respondent filed a Motion to Dismiss on the basis that Pike County Court of Common Pleas, Juvenile Division (Pike County) had jurisdiction based on a prior determination of child support. (Rel. Ex. 2). The case was dismissed on May 13, 2010.

On May 19, 2010, Scott filed for visitation in Pike County, Ohio. (Rel. Ex. 3). In June 2010, respondent discussed the Pike County case with Holdren on the telephone. (Tr. 27-28).

On July 14, 2010, Holdren attended a hearing in Pike County during which she stated that she wanted respondent to be her attorney. (Rel. Ex. 5). The hearing was continued to July 21, 2010. On July 14, 2010, Holdren called respondent's office to try to schedule a meeting. During the telephone call she was told respondent would charge \$500 for the representation. (Tr. 82-83).

Holdren called respondent's office again on July 16, 2010, and spoke to respondent. Holdren went to respondent's office that same date and met with him. (Tr. 32, 84).

Respondent and Holdren discussed her case in his office. Respondent testified that they discussed the case for 45 minutes. (Tr. 31).

At the end of the meeting in respondent's office, Holdren brought up the subject of the payment of respondent's fee. Holdren testified that she is the one who brought up paying the fee and whether or not respondent would accept payments. (Tr. 87-88). She knew that she had to

¹ Respondent filed both Objections and a Brief in Support of Objections. Relator will respond to both documents herein.

pay him because her next court date was coming up soon. (Tr. 87-88). The next court date was scheduled for July 21, 2010, which was the following week.

Holdren testified that when she asked about paying respondent's fee in payments, he stated "well, maybe we could make other arrangements." (Tr. 88). Holdren testified that she thought maybe respondent wanted more than the \$250 she had, so she asked what he meant. (Tr. 88). It was then that respondent told her to "get rid of your fiancé, take your kids to the babysitter's, and come answer your door naked or I'll come down to your house and you could answer the door naked." (Tr. 89). Holdren denied flirting with respondent or making any gesture that would have led the respondent to believe that she wanted him to come to her home. (Tr. 89). Holdren denied inviting respondent to her home or saying anything of a sexual nature. (Tr. 89).

In fact, Holdren testified that respondent had been a great attorney in the past and that she was shocked by what he said to her. (Tr. 89, 90). She testified that it made her feel "disgusted," "creeped out," "upset," and "scared." (Tr. 90).

Respondent admitted that he asked Holdren to answer her door naked (Tr. 38, 40). Respondent admitted that he called Holdren after she left his office (Tr. 43). Respondent admitted that he drove to Holdren's home that same day. (Tr. 41).

Respondent's actions had an effect on Holdren. Holdren was crying and upset when she left respondent's office. (Tr. 91). She testified that she went directly to the sheriff's office to file a report, but was told that she did not have any evidence. (Tr.92). She testified that she was advised to try to record respondent. (Tr. 93).

Respondent called Holdren after she left his office. Holdren attempted to record respondent and get him to repeat that she should come to the door naked. (Tr. 94-95).

Respondent would not say anything about her coming to the door naked and would only say that Holdren already knew what he wanted. (Tr. 93-95). Holdren told respondent not to come to her home. (Tr. 94-95).

Despite being told not to come to her home, respondent got in his car and drove 35 minutes to Holdren's home in Pike County. (Tr. 45). Holdren was shocked that respondent came to her home. As she stated, "I didn't think he would—to begin with. I never thought he would say something like that; and he did. And then after I told him in his office no, I didn't think he would call my phone; and he did. So I really didn't know what he would do." (Tr. 97).

When respondent pulled in the driveway, Holdren went in the house where she called her father who told her to call respondent's office and say that she did not want him to represent her. (Tr. 99). When Holdren called respondent's office, unbeknownst to her at the time, respondent's wife answered the phone. Holdren stated that she would no longer be using respondent as her lawyer. (Tr. 100). Respondent's wife asked Holdren to say why she did not want respondent to represent her, which Holdren did, including stating that respondent was currently in the driveway. (Tr. 100).

When respondent pulled in the driveway, he was confronted by Holdren's fiancé, Sweesey, and Sweesey's parents, who were there because Holdren called them, and Holdren's neighbor. (Tr. 97-98). This confrontation was taped by Sweesey using his cell phone. (Tr. 144, Rel. Ex. 7).

Holdren testified that she eventually went outside because she "wanted him [respondent] to leave. I wanted him to get out of my driveway." (Tr. 101). Holdren testified that respondent had been in her driveway for a while and she "just wanted it to end and him to leave. Like, you

know, I didn't know why he was still sitting in my driveway. I was so upset and distraught and couldn't believe what had happened and he was still sitting in my driveway." (Tr. 101).

Respondent left and then came back. Respondent asked if he could bring his wife to Holdren's home.

Respondent's actions, and Holdren's concern that he might come back again, caused Holdren to get her children and try to leave. However, before she could get her children in the car, respondent returned. (Tr. 103).

Respondent's wife asked to speak with Holdren in private and they did. Respondent and his wife left and then returned again. (Tr. 105). This time, respondent's wife asked Sweesey to talk to the respondent. (Tr. 105). Respondent admitted asking Holdren to come to the door naked and apologized to Sweesey for it. (Tr. 147-148).

Holdren had respondent represent her at the July 21, 2010, hearing in Pike County because she didn't have time to get new counsel and because respondent's wife "talked" her into it. (Tr. 107). If Holdren had time to get another attorney, she would not have had respondent represent her at the hearing. (Tr. 107). Holdren refused to be alone with respondent and only saw him with her dad, Sweesey, and respondent's wife present. (Tr. 107). Holdren obtained new counsel after the July 21, 2010 hearing.

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

I. THE BOARD PROPERLY FOUND THAT RESPONDENT'S CONDUCT VIOLATES PROF. COND. R. 1.8(J) AND 8.4(H) BY CLEAR AND CONVINCING EVIDENCE.²

Respondent was properly found to have violated both Prof. Cond. R. 1.8(j) and Prof. Cond. R. 8.4(h). There is clear and convincing evidence in the record to support the violations found by the board.

Respondent does not dispute that he asked Holdren to answer the door naked. Respondent does not dispute that he called Holdren after she left his office to see if he could come to her home. Respondent does not dispute he got in his car and drove 35 minutes to Holdren's home, despite being told not to.

According to respondent, this Court is to believe that he only asked Holdren to come to the door naked to see what she would say. Respondent does not offer any explanation why he called Holdren or drove to her home.

At the hearing, respondent offered several reasons why he asked Holdren to come to the door naked and then drove to her home. Among the reasons offered by respondent:

- He testified that he asked Holdren to come to the door naked just to see what she was going to say. (Tr. 71).
- He testified that Holdren invited him to her house to convince him to take her case. (Tr. 34). A fact she denies. (Tr. 89).
- He claimed not to know why he drove to Holdren's home after asking her to come to the door naked. (Tr. 41-42).

- He stated that he went to Holdren's home to obtain additional information related to Holdren's case. Specifically he wanted Scott's criminal record and to take pictures of alleged hazards in Scott's yard. (Tr. 45-46, 59).
- He testified that he did not go to Holdren's home to discuss her case as they had already discussed it. (Tr. 43-44).
- He testified that he wasn't sure if he went to Holdren's home to see her naked. (Tr. 43-45).
- He testified that going to Holdren's home was an act of infidelity, while at the same time claiming that he was not sure what he was going to do when he got to Holdren's home. (Tr. 45, 65).

Respondent's explanations at the hearing were inconsistent and they remain inconsistent.

Respondent claims that he only asked Holdren to come to the door naked to see what she would say. He claims that he was not soliciting sexual activity nor was the comment sexual. In respondent's brief to this Court, he alleges that Holdren "got caught" by her fiancé and changed her story³. Respondent's varied explanations should leave this Court wondering what exactly Holdren was supposed to have gotten caught doing. Respondent wants this Court to believe that Holdren invited respondent to come to her home, where he may or may not have gotten out of his car, where they may or may not have talked to her about her case, during which time she would be unclothed for a non-sexual purpose. Respondent's explanations are inconsistent and simply incredible.

² Respondent's brief objects to each rule violation separately.

³ Respondent's speculative testimony of this nature was not allowed by the panel. (Tr. 178).

a. The board properly found that respondent solicited Holdren and violated Prof. Cond. R. 1.8(j).

Prof. Cond. R 1.8(j) states: “A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.”⁴ [emphasis added]. There is no requirement in the rule that the solicitation be sexually explicit or sexually descriptive. The board correctly found that respondent’s conduct constituted a violation of Prof. Cond. R. 1.8(j).

The board found that respondent asked Holdren to come to the door naked as a solicitation for sexual activity and that respondent’s own actions in driving to Holdren’s home “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.” (Report ¶29).

In *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734, 804 N.E.2d 423, the attorney made unsolicited sexual comments to his client about the size of his penis and sexual positions and inquired about her sexual history. This Court stated that the “public must not be subjected to unsolicited sexual conduct by attorneys in the context of an attorney-client relationship.” *Id.* at paragraph three of the syllabus. By making “unsolicited sexual advances to a client, an attorney perverts the very essence of the lawyer client relationship, and such egregious conduct most certainly warrants discipline.” *Id.* at paragraph four of the syllabus. Moore did not ask the client to have sex or perform sexual acts. Neither Moore nor his client disrobed or engaged in inappropriate touching. Yet, this Court still found that Moore’s conduct constituted unsolicited sexual advances.

⁴ Prof. Cond. R. 1.8(j) is contained in a rule titled “Conflict of Interest: Current Clients: Specific Rules”

In *Toledo Bar Assn. v. Burkholder*, 109 Ohio St.3d 443, 2006-Ohio-2817, 848 N.E.2d 840, Burkholder pursued a divorce client to go on a date, touched her shoulders and leg, and asked if she wanted to see his penis. The Court again found that these actions constituted unwarranted sexual advances.

In *Disciplinary Counsel v. Sturgeon*, 111 Ohio St.3d 285, 2006-Ohio-5708, 855 N.E.2d 1221, the attorney made explicit sexual advances toward clients, solicited actual sexual activity and showed one client his penis. For this behavior, Sturgeon was disbarred. It should be noted, however, that there is no mention in the court decision that Sturgeon actually performed legal work for any of the clients. His actions occurred when the women came to consult him about taking their cases.

If there is any question as to whether or not asking Holdren to come to her door naked constitutes solicitation, Holdren's own testimony says it all. Holdren testified that the comment meant that respondent was soliciting sex. (Tr. 123, 129). In response to a question from respondent, she answered "...what else would you be wanting to do, having me come to my door naked?" (Tr.123). This is a reasonable assumption from any woman asked by a man to answer a door naked.

b. The board properly found that respondent violated Prof. Cond. R. 8.4(h)

The Court has found that attorneys who solicit clients, prospective clients and witnesses violate Prof. Cond. R. 8.4(h).

The board relied on *Akron Bar Assn. v. Miller*, 130 Ohio St.3d 1, 2011-Ohio-4412, 955 N.E.2d 359, in its report. Miller engaged in a sexually explicit telephone call with a client that the client recorded. Miller called his client very early in the morning and made comments about

the client's breasts and suggested that the client perform oral sex on him. It appears that Miller was charged only with violating Prof. Cond. R. 8.4(h), to which he stipulated.

In *Dayton Bar Assn. v. Sams*, 41 Ohio St.3d 11, 535 N.E.2d 298(1989), the attorney's client made sexual advances toward him, which he was interested in. Specifically, the client offered to pay Sams with sexual favors. After the meeting, the client went to the police department and filed a complaint against Sams for solicitation of prostitution. The client then wore a wire to a meeting with Sams where he agreed to waive his fee for three sexual encounters. Sams also offered to purchase prescription diet pills from his client. Respondent was found to have violated DR 1-102(A)(6) for engaging in conduct that reflected adversely on his fitness to practice law. Sams received a six month suspension.

The attorney in *Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, 843 N.E.2d 1205, was found to have engaged in conduct that adversely reflected on his fitness to practice law when he made a comment to a prospective client about her breasts, inappropriately touched her, and made misrepresentations about the incident. The Court found that Quatman's actions and comments "reflected poorly on the legal profession and represented a betrayal of the trust of a vulnerable client" and issued a one year suspension with two years of probation and conditions. *Id.* at 393.

The Court issued an indefinite suspension of Attorney Lockshin who made inappropriate statements to both clients and witnesses. *Cleveland Metro Bar Assn. v. Lockshin*, 125 Ohio St.3d 529, 2010-Ohio-2207, 929 N.E.2d 1028. Lockshin engaged in sexual conversations with an incarcerated client and a former juvenile client, talked to a witness about himself and implied that he had sex with clients, possessed photos of a scantily clad client and asked her for additional photos, asked a client to meet him at a hotel, made a comment about a client's breasts

and inappropriately touched clients on the leg or rubbed their shoulders. Lockshin was only charged with violating DR 1-102(A)(6) for engaging in conduct that adversely reflected on his fitness to practice law. The Court compared Lockshin's conduct with that of Moore, Quatman and Burkholder.

The aforementioned cases support the board's finding that respondent violated Prof. Cond. R. 8.4(h).

c. Respondent had an attorney-client relationship with Holdren

Respondent claims that he could not have engaged in ethical misconduct because Holdren was not his client. The board correctly found that respondent and Holdren had an attorney-client relationship at the time of the solicitation. (Report ¶20).

Respondent attempts to claim that Holdren was not a client at the time that he asked her to answer the door naked and that his wife established an attorney-client relationship with Holdren for him on July 18, 2010.

Respondent's own testimony at the hearing proves that this is not true. Respondent admits that he talked to Holdren on the phone about the case in June 2011. (Tr. 20-12). He admits to meeting with her on or about July 16, 2012, and spending 45 minutes discussing the case during which time he looked at the pleadings. (Tr.31). He also admits that he advised her about the case. (Tr. 38, 47). Respondent also testified that he went to Holdren's home to gather additional information for her case. (Tr. 45-46).

Respondent had previously represented Holdren on the same matter in Ross County and was able to have the case dismissed just two months earlier.

Most importantly, Holdren believed that respondent was her attorney. She believed that respondent was her attorney when she went to the July 14, 2010, hearing in Pike County. (Tr. 82). Holdren told the judge that respondent was her counsel. (Rel. Ex. 5).

Respondent admits that at no time did he tell Holdren he would not accept her case. (Tr. 32, 39, 44). Holdren testified that respondent told her “that he would be able to represent me and, you know, we would try [to] get it dismissed again.” (Tr. 87).

Respondent testified that he went to Holdren’s home to obtain a copy of Scott’s criminal history and take pictures of hazards in Scott’s yard. (Tr.45-46, 59). If respondent was not going to represent Holdren, there would be no reason for him to continue to gather information for the case.

In fact, Panel Chair Novak asked the respondent why he wanted those items. Respondent stated that they were relevant to the case. Panel Chair Novak asked: “And so wouldn’t it be fair to state that you wanted those documents in anticipation of a continued representation of her?” To which respondent replied “Sure.” (Tr. 60).

This Court has held that an attorney-client relationship may be created by implication based on “the conduct of the parties and the reasonable expectations of the person seeking representation.” *Cuyahoga County Bar Assn. v. Hardiman*, 100 Ohio St.3d 260, 2003-Ohio-5596, 798 N.E.2d 369, paragraph one of the syllabus. The Court further held that there does not need to be a formal written contract or the full payment of a retainer. In *Hardiman*, the client made a partial payment of a retainer, but the attorney did not take any action on the client’s legal matter.

The Supreme Court of Oregon held that if an attorney-client relationship existed in the past, it may support the conclusion that an attorney-client relationship was intended during

subsequent contact. In the case of *In re: Conduct of Hassenstab*, 934 P.2d 1110, paragraph four of the syllabus, a woman went to see Hassenstab about a legal matter. Hassenstab had previously represented the woman on an unrelated matter. Prior to discussing the legal matter, Hassenstab asked the woman to masturbate him at a public park, which she did. Hassenstab and the woman then talked about her legal issue. The woman eventually retained Hassenstab for representation. Hassenstab claimed that at the time of the sexual contact, the woman was not a client. The Supreme Court of Oregon rejected this argument. The woman testified that she went to see Hassenstab because he was a lawyer and she thought of him as her lawyer during the meeting.

It is disingenuous for respondent to claim that he could not have solicited Holdren under Prof. Cond. R. 1.8(j) because she was not a client. Based on the testimony from both respondent and Holdren, Holdren was clearly a client at the time that respondent solicited her.

d. The panel properly weighed the credibility and testimony of each witness and found Holdren's testimony credible.

Respondent claims that every finding of fact by the panel that does not support one of his versions of events is wrong and unsupported by the testimony. To support his claims, respondent alleges that Holdren lied throughout the hearing and perjured herself.⁵

As to respondent's claim that the panel only believed Holdren and not his testimony or that of his wife, the panel is the judge of the credibility of the witnesses who appear before them. This Court has stated, "[u]nless the record weighs heavily against a hearing panel's findings, we defer to the panel's credibility determinations, inasmuch as the panel members saw and heard the witnesses firsthand." *Cuyahoga County Bar Association v. Wise*, 108 Ohio St.3d 164, 2006-

⁵ Respondent's tactic is not new. In his prior discipline, he claimed to this Court that one of his own witnesses had a mental disability because her testimony did not support his version of events.

Ohio-550, 842 N.E.2d 35, ¶24, quoting *Cincinnati Bar Assn. v. Statzer*, 101 Ohio St.3d 14, 2003-Ohio-6649, 800 N.E.2d 1117.

In this case, it is not difficult to understand why the panel believed Holdren over respondent. The panel uniformly believed Holdren's testimony. While the panel does not specifically state that they do not find respondent's explanation of his behavior unbelievable, their findings do not support respondent's claims.

Respondent states that Holdren committed perjury during the hearing regarding a map that respondent alleges Holdren drew. The map allegedly led respondent to Holdren's home. Respondent refers to this map as "respondent's exhibit H." It should be noted that this map was excluded from admission at the hearing. (Tr.187). The panel correctly held that Holdren did not authenticate the map. (Report ¶21).

Specifically, respondent alleges that on July 16, 2010, after asking Holdren to come to the door naked, respondent told Holdren he did not know how to get to her home and she drew him a map. Holdren denies drawing respondent a map on July 16, 2010. (Tr. 119). Holdren also denies inviting respondent to her home. (Tr.119). Respondent showed Holdren a map that he purported she drew and she denied drawing it. (Tr. 119-121). Respondent repeatedly asked Holdren if she drew the map he showed her and she consistently denied drawing the map he showed her. (Tr.120-121).

Respondent asked Holdren if she gave a statement under oath to "people" that she drew the map in question. Holdren replied "[n]o." (Tr. 120-121). Respondent does not state to whom Holdren allegedly gave a sworn statement under oath nor does he produce such a statement. Respondent was then allowed to use the map for impeachment purposes. (Tr. 120).

In fact, at one point, respondent stated to Holdren that she could be subject to criminal charges if a handwriting expert were obtained and verified that the map was in her writing. Over objection by relator, Holdren answered, “[c]an we do that?” (Tr. 121). This is hardly the response of a witness caught in a lie.

Respondent asked Sweesey, Holdren’s fiancé, if the map contained Holdren’s handwriting and Sweesey stated that the map was not in Holdren’s writing. (Tr. 152).

Respondent claims that because a statement in relator’s complaint states that Holdren drew a map during the Ross County case that Holdren drew the map respondent attempted to have admitted.

The record is clear that Holdren did not commit perjury or offer inconsistent testimony. A statement in relator’s complaint is not sworn testimony by Holdren as respondent alleges. Respondent states that there was no map during the Ross County case but only the map he showed Holdren at the hearing. Respondent did not question Holdren about this theory or the existence of another map. Respondent had a full and fair opportunity to cross-examine Holdren about the existence of any map and did not. Respondent only asked Holdren about the map he claimed she drew on July 16, 2010. Once Holdren denied drawing the map respondent showed her, he stopped questioning her in that regard.

Holdren’s failure to agree with respondent or provide testimony consistent with his theory does not constitute perjury. Respondent makes very strong allegations against a witness without proof and merely because she does not support his version of events.

Further, even if Holdren had drawn respondent a map on the day in question it does not relieve respondent of his misconduct. He still asked a client to come to the door naked, called her to see if he could come to her home and drove 35 minutes to her home after being told not to.

II. THE BOARD PROPERLY FOUND THE AGGRAVATING FACTORS OF A PRIOR DISCIPLINARY OFFENSE, DISHONEST OR SELFISH MOTIVE AND RESULTING HARM TO THE VICTIM OF RESPONDENT'S MISCONDUCT.

The board properly found the aggravating factors of a prior disciplinary offense, dishonest or selfish motive and resulting harm to the victim of respondent's misconduct. BCGD Proc. Reg. 10(B)(1).

Respondent has prior discipline in which he received a six-month stayed suspension. Respondent's stayed suspension expired on August 13, 2012, just 14 days before the hearing in this matter. *Disciplinary Counsel v. Bunstine*, 131 Ohio St.3d 302, 2012-Ohio-977, 964 N.E.2d 427. In respondent's prior disciplinary case, he also had difficulty determining when someone was his client.

Respondent's conduct clearly exhibits a dishonest or selfish motive. Respondent asked a young client involved in a visitation matter with the father of her two young children to answer the door naked and then drove to her home despite being told not to do so.

Holdren testified that respondent's solicitation made her upset. Holdren testified that she was upset and crying when she left respondent's office. (Tr. 89-90). Holdren also testified that she was scared that respondent would return to her home and harm her and that she had nightmares about it. (Tr. 108). The board correctly found that she suffered harm.

The aggravating factors found by the board are correct. In fact, based on the record, the board could have found additional aggravating factors, like failure to acknowledge the wrongful nature of his conduct, BCGD Proc. Reg. 10(B)(1)(g), but did not.

III. THE BOARD CORRECTLY DID NOT FIND ANY MITIGATING FACTORS IN THIS CASE.

Respondent claims that the board should have found his honesty a mitigating factor. Presumably respondent means that he made a full and free disclosure to the disciplinary board. BCGD Proc. Reg. 10(B)(2)(d).

The record does not support that respondent has made a full and free disclosure in this matter. He has given multiple conflicting explanations, has taken no responsibility and blames the victim, Holdren, for the entire disciplinary matter.

Accordingly, the board properly found that there are no mitigating factors in this case.

IV. THE BOARD PROPERLY FOUND THAT RESPONDENT'S CONDUCT REQUIRES AN ACTUAL SUSPENSION FROM THE PRACTICE OF LAW.

The board relied on the decision of this Court in *Akron Bar Assn. v. Miller*, 130 Ohio St.3d 1, 2011-Ohio-4412, 955 N.E.2d 359, to determine a sanction in this case. In *Miller*, this Court issued a six-month stayed suspension with one year probation to an attorney who made sexual comments to a client.

The board found that based on the aggravating factors in this case, the sanction should be greater than in *Miller* and recommended a twelve-month suspension with six months stayed. The board also properly found that this case does not contain any mitigation. *Miller* contained several mitigating factors including a diagnosed mental illness for which Miller was undergoing treatment.

However, *Miller* is not the only case that this Court should consider in determining the appropriateness of the sanction in this matter. This Court has issued a wide range of sanctions in cases where attorneys solicit clients depending on the egregiousness of the attorney's conduct.

This Court issued a one-year suspension conditionally stayed with two years probation to an attorney who made unsolicited sexual comments to one client and engaged in a consensual sexual relationship with a second client. This Court found that because an attorney holds a fiduciary relationship with a client, the interests of the attorney should not be compromised by personal interests. *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004-Ohio-734, 804 N.E.2d 423.

This Court issued an 18-month suspension with six months stayed to an attorney who suggested a sexual relationship in exchange for legal fees. *Cleveland Bar Assn. v. Feneli*, 86 Ohio St.3d 529, 712 N.E.2d 119 (1999). Feneli made multiple comments to the client suggesting that she could pay her bill in non-monetary ways. Feneli and the client had one sexual encounter. Afterward, Feneli continued to contact the client about paying her bill with sex. The Court found that the “burden is on the lawyer to ensure that all attorney-client dealings remain on a professional level.” *Id.* at 104, quoting *Disciplinary Counsel v. Booher*, 75 Ohio St.3d 509, 510, 664 N.E.2d 522 (1996).

Respondent in this case solicited a client in exchange for legal fees. Not only did respondent ask his client to answer the door naked when he came to her home, but he immediately began making a plan for the two to be together. Respondent told Holdren to get rid of her fiancé and children and to “answer the door naked” when he came to her house. (Report ¶17, Tr. 89). Within just a few minutes of leaving respondent’s office, he called Holdren to see if he could come over. Despite being told “no,” he drove to Holdren’s house and pulled in the driveway.

In *Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, 843 N.E.2d 1205, the Court issued a one-year stayed suspension and two years probation to an attorney who

made a sexual comment and touched a client's breasts during a meeting at the attorney's office. The client did not retain Quatman and reported his misconduct. In this case, respondent not only made a sexual comment but immediately called Holdren and went to her house.

The attorney in *Akron Bar Assn. v. Williams*, 104 Ohio St.3d 317, 819 N.E.2d 677, had one sexual encounter with a client he knew was vulnerable. The client, who was involved in a custody battle, was a drug user who had recently attempted suicide. Williams drove the client to a hotel instead of a parenting class and told the client that she could exchange sex for legal fees. Williams later lied about the sexual encounter during the disciplinary investigation. The Court issued a two year suspension with 18 months stayed.

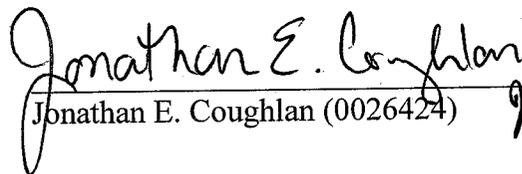
Respondent knew that Holdren was in a vulnerable position. She had a hearing pending on a motion for companionship filed by the father of her two small children and needed to secure counsel for a hearing the next week.

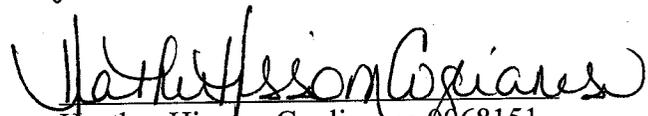
Respondent's conduct requires a severe sanction with a period of actual suspension from the practice of law. Respondent made a sexual comment to Holdren and immediately began to pursue her despite being told "no." Respondent went to Holdren's home. Respondent went beyond making a comment to his client; he became dogged in his pursuit of the culmination of his sexual advance.

CONCLUSION

This Court should find that clear and convincing evidence exists to find that respondent violated both Prof. Cond. R. 1.8(j) and Prof. Cond. R. 8.4(h) through his solicitation of Holdren and by pursuing the solicitation by driving to her home. Respondent's conduct was egregious and the Court should adopt the recommended sanction of the board of a twelve-month suspension with six-months stayed.

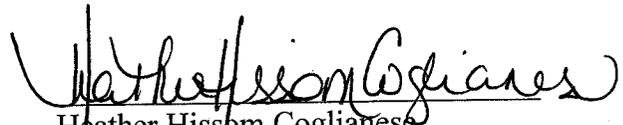
Respectfully submitted,


Jonathan E. Coughlan (0026424) *gmc (0074786)*


Heather Hissom Coglianese 0068151
Assistant Disciplinary Counsel
Counsel of Record
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256
614.461.7205 (Facsimile)
H.Coglianese@sc.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing answer brief was served via U.S. Mail, postage prepaid, upon respondent, Edward Royal Bunstine, Esq., 32 South Paint Street, Chillicothe, OH 45601, and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 S. Front Street, 5th Floor, Columbus, Ohio 43215 this 18th day of January, 2013.


Heather Hissom Coglianese
Counsel for Relator