

ORIGINAL

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

In re: : 13-1248  
Complaint against : Case No. 12-049  
John Daniel Mismas : Findings of Fact,  
Attorney Reg. No. 0077434 : Conclusions of Law, and  
Respondent : Recommendation of the  
Board of Commissioners on  
Grievances and Discipline of  
Lake County Bar Association : the Supreme Court of Ohio  
Relator :  
:

OVERVIEW

{¶1} This matter was heard on April 29, 2013 in Columbus before a panel consisting of Judge John Willamowski, McKenzie K. Davis, and Judge Otho Eyster, 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} The matter was initially submitted to the panel under a consent to discipline agreement, and the panel recommended acceptance of the agreement and imposition of the proposed sanction of a public reprimand. In December 2012, the Board rejected the proposed agreement and returned the matter to the hearing panel. The parties then entered into stipulations and presented the stipulations and joint exhibits at the hearing.

FILED  
AUG 05 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶3} Respondent was admitted to the practice of law in the State of Ohio in 2004.

Respondent is a sole practitioner maintaining an office in Willoughby, Ohio.

{¶4} On November 16, 2011, Respondent contacted Professor J. Dean Carro seeking a law clerk from the Akron School of Law. Three students responded and Respondent contacted female law student “Ms. C” and scheduled a face-to-face interview for December 9, 2011.

{¶5} After the in-person interview, Respondent and “Ms. C” exchanged many text messages from December 9 through December 28, 2011.

{¶6} Some of the text messages Respondent sent to “Ms. C” the evening of December 9, 2011 and continuing into the next day were sexually explicit and inappropriate.

{¶7} On December 11, 2011, “Ms. C” accepted employment with Respondent notwithstanding the inappropriate text messages she received on December 9 and 10.

{¶8} On December 22, 2011, Respondent texted “Ms. C” an invitation to travel with him to Washington, D.C. on business. “Ms. C” informed Respondent she had a prior commitment and would not travel with him. Respondent sent a text to “Ms. C” telling her, “That’s strike 1 for you. 3 strikes and you are out.”

{¶9} The next day, December 23, 2011, “Ms. C” resigned her position of employment with Respondent.

{¶10} In January 2012, in response to an inquiry from Professor Carro, “Ms. C” told him she was no longer working for Respondent. When asked why, she told him Respondent had acted inappropriately toward her and felt uncomfortable continuing her employment.

{¶11} Relator and Respondent stipulated that Respondent’s conduct violated Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyers fitness to practice law].

### AGGRAVATION, MITIGATION, AND SANCTION

{¶12} Relator and Respondent stipulated the following aggravating factor: vulnerability of and resulting harm to victim of misconduct.

{¶13} Relator and Respondent stipulated the following mitigating factors: absence of a prior disciplinary record; absence of a dishonest or selfish motive; timely good faith effort to rectify consequences of misconduct; full and free disclosure to disciplinary Board or cooperative attitude toward proceedings; character or reputation; chemical dependency or mental disability; and other interim rehabilitation.

{¶14} It is Respondent's contention that the inappropriate text messages he sent were meant in jest and were a way of testing "Ms. C." Respondent testified that he was drinking heavily at the time and has no memory of actually sending the sexually explicit texts. When viewing the texts in retrospect, Respondent says he is embarrassed and refers to his conduct as "disgusting and grotesque."

{¶15} Respondent testified in February 2012, that he realized he was an alcoholic. On March 12, 2012, Respondent began treating with Marilyn M. Wise, LICDC-S, for chemical dependency. Wise, a qualified alcohol/substance abuse counselor, testified that Respondent has a chemical dependency that contributed to his misconduct and has certified he successfully completed an approved treatment program. Respondent still attends two AA meetings a week and continues counseling with Wise. It is Wise's opinion that Respondent "has an excellent prognosis of continued sobriety and healthy mental status and should continue unimpeded the work of the exceptional attorney that he is." Hearing Tr. 18.

{¶16} Respondent has made full and free disclosure to Relator and displayed a cooperative attitude toward these proceedings. Respondent has also shown genuine remorse for his actions and appears to be taking all necessary steps to avoid a recurrence of his misconduct.

{¶17} Relator and Respondent stipulated to a recommended sanction of a public reprimand.

{¶18} The only case the panel found that deals with inappropriate texting is *Disciplinary Counsel v. Detweiler* 135 Ohio St.3d 447, 2013-Ohio-1747. Detweiler sent one of his clients texts saying he wanted to have sex with her and eventually sent her a nude picture of his lower body in a state of sexual arousal. Detweiler was found to have violated Prof. Cond. R. 1.7(a)(2) [prohibiting representation if a lawyer's personal interest will materially limit his ability to carry out appropriate action for the client], and Prof. Cond. R. 1.8(j) [prohibiting a lawyer from soliciting or engaging in sexual activity with a client unless a consensual relationship existed prior to the client-lawyer relationship], as well as Prof. Cond. R. 8.4(h).

{¶19} In imposing a one-year suspension from the practice of law, the Court found the client harmed by Detweiler's misconduct was vulnerable and he acted with a selfish motive and engaged in a pattern of misconduct. In addition, Detweiler had previously been publically reprimanded by the Court for improperly engaging in sexual relations with a client. The Court found the only mitigating factor was Detweiler's cooperative attitude toward the disciplinary proceedings.

{¶20} In the case at hand, "Ms. C" was not a client of Respondent and the only aggravating factor found was the vulnerability of and resulting harm to the victim of the misconduct.

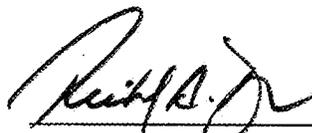
{¶21} Based on the mitigating factors found in this case and the many character letters submitted on Respondent's behalf, the panel finds the stipulated sanction of a public reprimand is appropriate.

{¶22} It is the recommendation of the panel that Respondent receive a public reprimand for his misconduct.

### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on August 2, 2013. The Board adopted the Findings of Fact and Conclusions of Law of the panel. The Board rejects the parties' stipulation to the mitigating factor of absence of a selfish or dishonest motive and finds, in aggravation, that Respondent acted with a selfish motive in his conduct toward Ms. C. The Board adopted the sanction recommended by the panel and recommends that Respondent, John Daniel Mismas, be publicly reprimanded. 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.**



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RICHARD A. DOVE, Secretary