

THE SUPREME COURT OF OHIO

LORAIN COUNTY BAR ASSOCIATION :
LEGAL ETHICS AND GRIEVANCE :
COMMITTEE :
c/o Lorain County Bar Association :
The Lawyer's Loft :
627 West Broad Street :
Elyria, OH 44035 :

CASE NO. 14-2005

Relator,

RELATOR'S EMERGENCY EX-
PARTE MOTION FOR IMMEDIATE
INTERIM REMEDIAL SUSPENSION
PURSUANT TO GOV. BAR R. V § 5a
& S.CT PRAC. R. 4.01(A)

v.

MICHAEL W. FINE, ESQ. :
Fine Legal Services, LLC :
5050 Waterford Drive :
Sheffield Village, OH 44035 :
Registration No. 0007800 :

Respondent.

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Now comes Relator, Lorain County Bar Association Legal Ethics and Grievance Committee, by and through the undersigned Bar Counsel, and hereby respectfully moves this Honorable Court, pursuant to Gov. Bar R. V §5a(A)(1) and S.Ct. Prac. R 4.01(A), for an Emergency *Ex Parte* Immediate Interim Remedial Suspension of Respondent, Attorney Michael W. Fine, Registration No. 0007800.

FILED
NOV 18 2014
CLERK OF COURT
SUPREME COURT OF OHIO

I. INTRODUCTION

Respondent was admitted to the practice of law on May 11, 1981. (See Exhibit "1," Ohio Supreme Court Attorney Registration Sheet, attached and incorporated herein)

Relator moves for an order imposing an immediate interim remedial suspension of Respondent's privilege of practicing law in the State of Ohio because he has engaged in serious misconduct that is harmful to his clients, the public, and the administration of justice.

As set forth more fully below, Respondent has engaged in a pattern of gross misconduct during his representation of current clients through the use of hypnotherapy and thereby poses a substantial threat of serious harm to all of his clients and the public. As such, Respondent's current ability to practice law is severely suspect and highly questionable.

Accordingly, Relator respectfully requests that this Court immediately suspend Respondent's license to practice law on an emergency interim remedial basis.

Pursuant to Gov. Bar R. (5a)(A)(1)(b) and (*previous*) S.Ct. Prac. R. 4.01(C) (*current*) S.Ct. Prac. R. 4.01(A), this Court should do so immediately and before the filing of any memorandum in opposition as the "interests of justice warrant immediate consideration."

II. CERTIFICATE OF RELATOR THAT ADVANCE NOTICE OF THIS MOTION WAS PROVIDED

On November 10, 2014 at approximately 6:00 p.m., Bar Counsel contacted Robert V. Housel ("Attorney Housel"), attorney for Respondent, and discussed this case in detail. During that conversation, Bar Counsel informed Attorney Housel that Relator was considering filing an Emergency *Ex-Parte* Motion for Immediate Interim Suspension. The parties discussed a number

of issues relative to this matter including said Motion. (See Exhibit “2,” Affidavit of D. Chris Cook, Bar Counsel, attached and incorporated herein, at ¶12.)

On November 14, 2014 pursuant to Gov. Bar R. V § 5a(A)(1)(a)&(b), Bar Counsel formally notified Attorney Housel in writing that Relator had voted to file the Motion, that it would be filed “early next week,” and that Attorney Housel would be provided “with a complete, unredacted copy, including all Exhibits in Support.” (Exhibit “2;” See Exhibit “A,” Letter of 11/14/14 to Attorney Housel, redacted, attached thereto and incorporated therein, at ¶13.)

III. PROPOSED FINDINGS OF FACT – ALLEGATIONS OF PROFESSIONAL MISCONDUCT AND SUGGESTION THAT RESPONDENT POSES A SUBSTANTIAL THREAT OF SERIOUS HARM TO THE PUBLIC

Pursuant to Gov. Bar R. V § 5(a)(A)(1)(b), Relator proposes the following Findings of Fact – Allegations of Professional Misconduct and Suggestion That Respondent Poses a Substantial Threat of Serious Harm to the Public, to wit:

Respondent, Michael W. Fine, is currently licensed to practice law in the State of Ohio, and is subject to the rules for the Government of the Bar and the Rules of Professional Conduct.

A. Jane Doe 1

Allegations have been raised that Respondent engaged in a pattern of sexual misconduct during his representation of a current client, Jane Doe 1, (“Doe 1”), through the use of hypnotherapy.

On or about February 7, 2013 Doe 1 retained the services of Respondent to represent her in a custody matter. (See Exhibit “3,” Affidavit of Jane Doe 1, attached and incorporated herein, at ¶1, filed under seal.) Doe 1’s representation was based upon a written fee agreement with

Respondent wherein he agreed to represent her in a custody matter. (Id. at ¶3; See Exhibit “A,” Fee Agreement, attached thereto and incorporated therein.) Doe 1 paid Respondent \$1,500.00 as a fee for his services. (Id. at ¶3.)

After a number of meetings with Respondent at his office, Doe 1 began to notice that she was wet in her vaginal area, that her bra was disheveled, and that she could not recall the entire duration of the meetings. (See Exhibit “3,” at ¶4.)

Doe 1 met with Respondent approximately once a week at his office, usually at his request. (Id. at ¶5.) During all meetings with Respondent, only he and Doe 1 were present. (Id. at ¶6.)

Doe 1 also had meetings with Respondent alone in conference rooms at the Lorain County Justice Center and began to notice afterwards that she was wet in her vaginal area, that her bra was disheveled, and that she could not recall the entire duration of these meetings. (See Exhibit “3,” at ¶7.)

Doe 1’s custody case finalized with the Court in August, 2013. (Id. at ¶8.) Despite the fact that the case was finalized, Doe 1 and Respondent remained in contact over the next several months due to continuing issues related to Doe 1’s custody case and in particular, visitation issues. (Id. at ¶9.) Doe 1 trusted Respondent with custody issues involving her son and looked to him for advice and counseling. (Id. at ¶10.)

In addition to the above, on a number of occasions after speaking with Respondent on the phone, Doe 1 noticed that she could not recall the entire duration of the conversations that they had and that afterwards she was wet in her vaginal area. (See Exhibit “3,” at ¶11.)

As such, on or about September 17, 2014 Doe 1 went to the Sheffield Village Police Department and reported her concerns about the irregularities of her meetings with Respondent and her phone calls involving Respondent to Patrolman Soto. (Id. at ¶12.) Patrolman Soto advised Doe 1 not to return to Respondent's office. (Id. at ¶13.)

Based upon Doe 1's concerns, on or about September 17, 2014 she began tape recording her conversations with Respondent. (See Exhibit "3," at ¶14; Transcript of 9/17/14 Call, omitted and not included herein.)

Doe 1 recalled in total her September 17, 2014 conversation with Respondent. (Id. at ¶15.) The transcript of the September 17, 2014 call does not contain any inappropriate conversations between Doe 1 and Respondent. (Id. at ¶16.)

On or about September 24, 2014 Doe 1 met with Respondent at his office in Sheffield Village, Ohio and again noticed the same physical sensations, bra misalignment, and memory loss afterwards. (Id. at ¶17.)

On October 10, 2014 Doe 1 recorded a second, lengthier conversation with Respondent but could only recall a small portion of that conversation. (See Exhibit "3," at ¶18; See Exhibit "B," Transcript of 10/10/14 Call, attached thereto and incorporated therein.)

The October 10, 2014 conversation began with discussions about normal legal matters and then turned into questions about where Doe 1 was and whether she was alone. (Id. at ¶19; Exhibit "B," pgs. 10, 14.) Respondent then began to use "code" words that induced Doe 1 to enter a trance-like stage. (Id. at ¶20; Exhibit "B," pg. 15.)

Throughout pages 16 through 28 of the Transcript, Respondent engaged in a sexually charged discussion with Doe 1 wherein he discussed her **"coming," having "pleasure and**

arousal and excitement,” “releases,” the “most massive, most incredible, most powerful whole body orgasm in your entire life,” “multiple orgasms,” that he is Doe 1’s “teacher,” and that they have a “special bond,” and that their conversations are “private conversations between us, nobody else, just us, right,” that she is “being made love to by the world’s greatest lover,” that she will not “cancel her next meeting,” and that all she will remember about their conversation is that “we talked about legal matters.” (See Exhibit “3,” at ¶21; Exhibit “B,” pgs. 16-28, emphasis added.)

The conversation ends with a few pages of legitimate conversation about Doe 1’s case. (Id. at ¶22; Exhibit “B,” pgs. 28-29.)

In addition, Doe 1 recorded a third conversation with Respondent on October 21, 2014 wherein Respondent placed Doe 1 in a trance and attempted to set up a meeting with her for the next day and told Doe 1 to bring a vibrator. (See Exhibit “3,” at ¶23; See Exhibit “C,” Transcript of 10/21/14 Call, attached thereto and incorporated therein.)

The October 21, 2014 transcript consists of 24 pages of text. (Id. at ¶24; Exhibit “C.” As early in the conversation as page one of the Transcript, Respondent inquires as to where Doe 1 is and whether she is alone. (Id. at ¶25; Exhibit “C,” pg.1 & pgs. 2, 4.)

After a short conversation about her case, Respondent began inducing Doe 1 into a trance by using hypnotic techniques. (Id. at ¶26; Exhibit “C,” pg.5)

From this point on in the conversation, Respondent engaged in a graphic sexual discussion with Doe 1 in which he inquires if she **“feels pleasure,” is “excited,” is “aroused,” that he is the only one to give her “the most pleasure you have ever had in your life,” that**

she will feel “a wave of arousal,” that she is “going to bring – you said you had a vibrator,” that she should hide the vibrator “in her purse,” and that she will want to see “what happens with the vibrator,” that she will have a “hardening of her nipples,” did she “have sex this morning,” did she “masturbate this morning,” does she “masturbate every day,” that he will make her feel “the most amazing pleasure every,” and that she will “build towards a massive orgasm,” that she is “soaking wet,” that he is her “teacher and you are my student,” that she would have “not just a vaginal orgasm, but a quick oral orgasm,” that “I can do it to you, with you all the time, can’t I,” that “I am the only one who knows how to trigger it,” he again inquires about the “vibrator,” and that this is all “a secret and no one’s going to know, right,” that she is also going to bring her “horniness, your arousal, and your excitement,” that she is going to have a “life-changing experience,” that his voice “is like a vibrator inside of you,” that she “was taught be me,” and that “your juices are flowing, incredibly flowing,” and she is “rubbing on your clit . . . so raw, so hard . . . so aroused or excited. ” He again asks her to bring her vibrator to their meeting. (Id. at ¶27; Exhibit “C,” pgs. 5-21, emphasis added.)

Respondent concludes by instructing Doe 1 that “you’ll only recollect what we were talking about your case until we see each other tomorrow. Do you understand?” (Id. at ¶28; Exhibit “C,” pg.21.) Respondent then wakes Doe 1 from her trance and spends the last part of the conversation discussing legitimate legal matters. (Id. at ¶29; Exhibit “C,” pgs. 22-24.)

After listening to the recording, Doe 1 took it to the Sheffield Village Police Department where Patrolman Soto also listened to it and advised Doe 1 to cancel her next day’s appointment with Respondent. (Id. at ¶30.) Doe 1 cancelled her appointment with Respondent who continued

to aggressively contact Doe 1 and attempt to schedule appointments with Doe 1 at his office. (Id. at ¶31.)

On October 21, 2014 the Sheffield Village Police Department referred this matter to the Lorain County Prosecutor's Office who assigned the matter to Investigator Richard Thomas for investigation. (See Exhibit "4," Affidavit of Richard Thomas, Investigator, Lorain County Prosecutor's Office, attached and incorporated herein, at ¶2.)

In his affidavit, Investigator Thomas detailed the hypnotic techniques utilized by Respondent and the explicit sexual content of the conversations contained on the October 10, 2014 and October 21, 2014 audio recordings produced by Doe 1. (Id. at ¶3-5.)

Based on the information produced by Doe 1, a search warrant was obtained to record Doe 1's next meeting with Respondent at his office. (See Exhibit "4," at ¶6)

On or about November 7, 2014 the Sheffield Village Police Department and Lorain County Prosecutor's Office arranged to wire Doe 1 for her meeting with Attorney Fine. (See Exhibit "3," at ¶32; See Exhibit "4," at ¶6.) Doe 1 was provided with a wire listening device and an oculus video recording devise. (Id. at ¶33; Id.)

Investigator Thomas, along with other law enforcement officers, were monitoring the meeting from a nearby location undercover. (Id. at ¶34; Id.)

Doe 1 met with Respondent in his office and was immediately placed into a trance. (See Exhibit "3," at ¶35; See Exhibit "D," copy of DVD from 11/7/14 sting operation, attached thereto and incorporated therein.) Shortly after the meeting began, Respondent directs Doe 1 to sit on a couch. (See Exhibit "4," at ¶6.) For unknown reasons, a video camera was on Respondent's desk. (Id.)

Respondent held Doe 1's hand and began a graphic sexual discussion with her while positioning himself next to her and rubbing her right shoulder while she sat on the couch. (See Exhibit "3," at ¶36; Id.) At this point, Investigator Thomas and the other police entered the room. (See Exhibit "4," at ¶6.)

The content of the graphic sexual discussion was almost identical in nature and content to the two recorded phone calls, except that at one point Respondent stated "**and you will insist to me that I touch you in any way that brings you pleasure.**" (Id. at ¶37; Exhibit "D," see also: Exhibit "E," Transcript of video recording at pg. 9, lines 24-25, attached thereto and incorporated therein, emphasis added.)

Respondent also told Doe 1 "**you are free to touch yourself. To play with yourself. To get yourself off. Have every experience that you so crave and desire.**" (See Exhibit "3;" Exhibit "E" at pg 8, lines 3-5 attached thereto, emphasis added.)

Respondent further stated "**I want you to look into my eyes. You are going to feel such attraction and arousal and excitement that you are going to demand that I touch you and you touch me. Do you understand?**" (Id. at pg. 8, lines 22-25, emphasis added.)

Respondent asked Doe 1 if she wanted him to "take control." (Id. at pg. 9, line 14.) Respondent then stated "**And when you do, incredible power and arousal will fill you. Fill you and fill you to the most amazing climax you can ever imagine. Because isn't that what you desire.**" (Id. at pg. 9, lines 16-19, emphasis added.) When Doe 1 responded "yes," Respondent stated "**at the count of 3, you won't be able to control yourself. You will remain ravenous, incredibly horny, amazingly, amazingly aroused and excited person, and you will**

insist that I touch you in any way that brings you pleasure. Do you understand?" (Id. at pg. 9, lines 21-25; pg. 10, line 1, emphasis added.)

Doe 1 has observed a copy of a DVD ("The DVD") that shows the conduct described in paragraphs 34-37 above, which is truly and accurately depicted on Exhibit "D." (See Exhibit "3," at ¶38.) Doe 1 attests that she female in The DVD and that the male in The DVD is Respondent. (Id. at ¶39; Exhibit "D.")

Doe 1 did not knowingly, voluntarily, or intentionally enter into any sexual or physical relationship of any nature with Respondent. (Id. at ¶40.) Further, Doe 1 did not knowingly, voluntarily, or intentionally engage in graphic sexual discussions or sexual discussions of any nature for any reason with Respondent. (Id. at ¶41.)

Doe 1 continued to go back to Respondent and continued her professional relationship with him because she needed Respondent's legal assistance for her child. (Id. at ¶42.)

Doe 1 did not understand or appreciate what was happening to her during her interactions with Respondent until she began tape recording her conversations with him. (Id. at ¶43.) Once Doe 1 realized that something significantly suspicious was going on, she went to the Sheffield Village Police. (Id. at ¶44.)

Doe 1 did not go to the police sooner because she feared that her concerns would not be taken seriously. (Id. at ¶45.) Doe 1 feels very violated and disappointed that someone she trusted would do something like this to her and feels that Respondent should not be a lawyer because she does not want this to happen to anyone else and does not want any other women to feel like they are crazy. (Id. at ¶46-47.)

The video of the meeting between Doe 1 and Respondent, with the consent of the Prosecuting Attorney, was presented to Relator on November 12, 2014. (Exhibit "4," at ¶7.)

B. Jane Doe 2

In addition to the allegations raised by Doe 1, a second client of Respondent's, Jane Doe 2, ("Doe 2"), has come forward alleging that Respondent engaged in similar misconduct during his recent representation of her in a dissolution proceeding.

In September, 2014 Doe 2 retained the services of Respondent to represent her in a dissolution proceeding. (See Exhibit "5," Affidavit of Jane Doe 2, attached and incorporated herein, at ¶1, filed under seal.)

Doe 2's representation was based upon a written fee agreement with Respondent wherein he agreed to represent her in a dissolution proceeding. (Id. at ¶2; See Exhibit "A," Fee Agreement, attached thereto and incorporated therein.) Doe 2 paid Respondent \$1,000.00 in fees for his services to date. (Id. at ¶3.)

Doe 2's first meeting with Respondent was held in a conference room at his office and occurred after business hours and occurred in September, 2014. (Id. at ¶4.) Shortly after the meeting began, Respondent began to discuss relaxation and meditation techniques with Doe 2 in an effort to calm her as she was upset about the personal nature of her case. (Id. at ¶5.)

Multiple times during their meeting, Respondent commented on Doe 2's physical appearance and suggested that she remove her coat and sweater. (Id. at ¶6.) Respondent also inquired into the nature of Doe 2's sexual relationship with her husband and whether they had "rough sex." (Id. at ¶7.)

As part of his meditation and relaxation techniques, Respondent sat beside Doe 2; touched Doe 2's fingers, forearm, and forehead; asked her if her arms felt "weightless;" told her to place her finger tips together and imagine two green dots coming together; told her to focus on his voice while he counted-down from ten; told her that she would feel a "wave of relaxation;" told Doe 2 that her eyes would "feel heavy;" and told Doe 2 to "think of a happy place – the sounds, the smell, etc." (Id. at ¶8.)

Based on the foregoing conduct, Doe 2 verily believes that Respondent was attempting to hypnotize her. (Id. at ¶9.)

Doe 2 met with Respondent three additional times. (Id. at ¶10.) During all meetings with Respondent, only he and Doe 2 were present, and the first three meetings were after hours. (Id. at ¶11.)

The last meeting between the parties was not scheduled but impromptu as Doe 2 went to Respondent's office unannounced to check on the progress of her case. (Id. at ¶12.)

At all meetings between Respondent and Doe 2, Respondent engaged Doe 2 in the same relaxation techniques as described above and/or commented on her looks and physical appearance. (Id. at ¶13.) Further, Doe 2 felt the loss of time during her meetings with Respondent as she cannot recall how so much time passed during their meetings for what she remembers discussing. (Id. at ¶14.)

In her last meeting with Respondent, approximately two weeks ago, Respondent did not have Doe 2's dissolution paperwork completed or even begun, despite being paid months ago. (Id. at ¶15.)

Doe 2 subsequently learned that Respondent no longer works with the firm she initially hired. (Id. at ¶16.) Doe 2 advised one of the attorney's at the firm, Joel Fritz ("Attorney Fritz"), that she felt as though she might have been hypnotized. (Id. at ¶17.) In response to this statement, Attorney Fritz recommended that Doe 2 contact the Lorain County Prosecutor's Office. (Id. at ¶18.)

Doe 2 did so and met with Investigator Rich Thomas of The Prosecutor's Office who directed Doe 2 to D. Chris Cook, Bar Counsel for Relator. (Id. at ¶19-20.)

Doe 2 feels creepy and disgusted by Respondent's conduct. (Id. at ¶21.) Doe 2 further feels sick that Respondent treated her this way because she was so upset and distraught about her marital situation when she went to him and feels that Respondent "picked her out" to do this to. (Id. at ¶22.)

Doe 2 does not believe that Respondent should be a lawyer any more. (Id. at ¶23.)

C. Expert Report – Dr. Ross Santamaria, Ph.D.

Dr. Ross Santamaria, Ph.D. has offered scientific support for both the therapeutic and manipulative use of hypnosis. (See Exhibit "6," Report of Dr. Ross Santamaria, Ph.D; See Exhibit "A," Resume, attached thereto and incorporated therein.)

As defined by Dr. Santamaria, hypnosis is "a state of consciousness involving focused attention and reduced peripheral awareness characterized by an enhanced capacity for response to suggestion." (Id.)

According to Dr. Santamaria, hypnosis can be used to manipulate individuals in "immoral, unethical illegal an[d] inappropriate ways." (Id., emphasis added.)

Dr. Santamaria reviewed the video and part of the telephone transcripts between Respondent and Doe 1. After reviewing same, Dr. Santamaria stated, “professional boundaries which are expectations and interactions that would be considered appropriate within the attorney-client relationship have been totally violated by Attorney Fine.” (Id., emphasis added.)

It appears to Dr. Santamaria that Respondent has experience using hypnosis and is utilizing it for his own sexual gratification and not for the benefit of the client. (Id.)

Therefore, it is Dr. Santamaria’s opinion that Respondent has committed a violation of the Ohio Rules of Professional Conduct and poses a substantial threat of serious harm to the public. (Id., emphasis added.)

IV. PROPOSED CONCLUSIONS OF LAW

In the matter of Doe 1, Respondent engaged in sexual misconduct with his client. The sexual relationship arose from and occurred during the attorney-client relationship. The Ohio Supreme Court has consistently disapproved of lawyers engaging in sexual conduct with clients where the sexual relationship arises from and occurs during their professional relationship.

Cleveland Bar Assn. V. Kodish (2006), 110 Ohio St.3d 162.

In the matter of Doe 2, Respondent employed hypnotic techniques upon Doe 2 strikingly similar to those that he utilized in conversations and meetings with Doe 1. As will be illustrated by the caselaw below, Respondent’s attempts to substantially impair Doe 2’s senses are a sufficient threat to warrant immediate concern even though the techniques he employed did not culminate in any *known* sexual activity.

To allow Respondent to practice law with knowledge that he has engaged in such gross misconduct “poses a substantial threat of serious harm to the public.” Gov. Bar R. (5a)(A)(1.)

Under Gov. Bar R. (5a)(A)(1), this Court may impose an interim remedial suspension of an attorney if “substantial, credible evidence” is received that demonstrates the attorney “poses a substantial threat of serious harm to the public” even before the attorney has had an opportunity to respond.

A. Hypnosis Cases

Respondent utilized hypnotic therapy to facilitate the impairment of and sexual exploitation of his clients. This type of conduct has been criminalized in several states.

In a case with similar facts, the Ohio Court of Appeals, Fifth District upheld a conviction of a psychiatrist for attempting to engage in sexual conduct with his female patient. *State of Ohio v. Nierras*, (Oct. 10, 1980), 1980 Ohio App. LEXIS 10118.

In *Nierres*, a male psychiatrist attempted to have sexual intercourse (vaginal intercourse and fallatio) with his female patient of ten months standing, a married woman who had come to him for medical help. *Nierres*, at *1.

Just as with Doe 1, upon receiving her complaint about the doctor, police furnished the complainant with a radio transmitter which she concealed in her purse when she visited her psychiatrist. *Id* at *1. The officers listened to the radio transmissions of two visits and made a tape recording of each simultaneously with their own listening. *Id*.

The evidence was overwhelming that the psychiatrist knew the complainant believed herself to be dependent upon his help to hold her marriage together and recover her impaired

nervous and emotional health. Id. Notwithstanding this knowledge, the psychiatrist told the complainant she wanted to make love to him *when she was under hypnosis* and explained, "I would never have wanted it if you did not imply it" when she protested his pressuring her to have sex with him." Id., at *2. He further asked her to disrobe and engage in sexual acts with him. Id.

The Appellate Court determined that the fact that complainant did not submit to her psychiatrist upon the occasion in question was not exculpatory. Id., at *3. Specifically, the court held that the fact that a victim of a sexual assault resisted on the date in question does not per se negate the proposition that the ability to control her conduct was substantially impaired.

In short, "substantially impaired" does not mean totally powerless. Id., at HN1.

As such, where a psychiatrist actually does the requisite overt act intending to employ coercion which would cause a person of ordinary resolution to submit to his sexual advances, the fact that he is unsuccessful is not exculpatory. Id., at HN2.

In addition, several cases from the State of Michigan have also documented a defendant's use of hypnosis to facilitate the sexual assault of his victim and have supported convictions of those defendants for such conduct.

In *People v. Sorscher*, 151 Mich. App. 122 (Mich. App 1986), the complainant, who was 15 at the time, was placed under hypnosis by the defendant at his dental office. No one else was present in the office when the defendant proceeded to rub complainant's neck, head and shoulders, telling him that he was the only person that could make him "feel this good." *Sorscher*, 151 Mich. App. at 125.

The defendant further asked complainant where else he would like to be rubbed. Id. Pursuant to complainant's response, defendant rubbed complainant's head, arms and legs. Id. While he was rubbing complainant's legs, defendant placed his hand on complainant's crotch and placed complainant's hand on his crotch telling complainant to hold him. Id. at 126. Complainant testified that he was powerless to resist. Id.

The defendant presented a defense of confabulation, essentially arguing that there is no scientific basis for the theory of hypnosis. Id. As it relates to hypnosis, confabulation refers to the manufacturing of factual data. Id. The defendant's expert testified that a hypnotized person often has a difficult time separating factual material from fantasy. Id.

The defendant was nevertheless convicted of criminal sexual conduct in the fourth degree. On appeal, the defendant contended that the testimony regarding hypnosis was inherently unreliable and should not have been admitted. Id. at 128.

The Michigan Supreme Court had previously held that testimony of witnesses which had been tainted by hypnosis was inadmissible in criminal cases. Id. at 129; citing, *People v. Gonzalez*, 415 Mich. 615 (1982). The *Sorscher* court, however, held *Gonzalez* to be inapplicable in the matter at bar as the thrust of its holding was to exclude evidence which had been obtained through hypnosis as a method for improving a witnesses' memory. Id. at 129-130.

In *Sorscher*, however, hypnosis was not used as a scientific technique to obtain evidence against the defendant. Id. at 130. Rather, it was used by defendant as an aid in the commission of a sexual assault. Id. As such, the court held, "***as a matter of public policy, a defendant should not be***

able to put a person under hypnosis, sexually assault that person and then claim that the person is incompetent to testify because the testimony is tainted by hypnosis." Id at 130 (emphasis added.)

The *Sorscher* court quoted the trial judge: "Common sense dictates that it would be derisive to the legal system to permit a criminal offender to cause a condition to a victim and then assert that he is thereby prejudiced by the very condition that he is responsible for." Id.

In a case similar to *Sorscher*, the Michigan Court of Appeals recently upheld a conviction on two counts of criminal sexual conduct where hypnosis was utilized to facilitate a sexual assault. *People v. Stetler*, Case No. 310396 (Mich. App. 2013).

In *Stetler*, the defendant was a licensed physician's assistant and registered nurse who researched hypnosis from the internet and texts and began to use hypnosis to treat his patients.

In one instance, the defendant's patient agreed to have hypnotic therapy in his office. Therein, the defendant utilized language similar to that used in other sessions, however, he soon began to make odd references. He told her to imagine a "pleasurable spot" and to imagine that he was rubbing her shoulders. He also told her to imagine that he was rubbing her "all over now in that area that, you know, brings a woman pleasure." The defendant also told her to imagine "a big, strong man like me thrusting in and out, in and out to bring you pleasure." He told her that the pleasure was building and getting more powerful and that she was going to "come", which she understood to mean that he wanted her "to orgasm."

The defendant then told her that it was ok to touch herself and told her to do so. She stated that she began to rub herself and he suggested that she should expose her breasts. She complied and he pulled her shirt down further and began to pinch her nipple. Eventually, she put her shirt back in

place and put her arms across her chest. After he realized that she was not responding to his sexual suggestions any more, she said he "went back into talking about . . . smoking" and then brought her out of hypnosis.

As in *Nierras*, *Sorscher* and *Stetler*, Respondent utilized hypnotic therapy to engage in or attempt to engage in sexual misconduct with his clients. This conduct is criminal in nature; severely limits Respondent's ability to practice law; and "poses a substantial threat of serious harm to the public."

Under these conditions, the immediate interim remedial suspension of Respondent's license is appropriate.

B. Attorney Sexual Misconduct Cases

On July 08, 2014 this Court imposed an immediate interim remedial suspension on an attorney who had recently been indicted for, and was awaiting trial on, eighteen felony sexual crimes he was alleged to have committed against a number of his female clients and others. *Columbus Bar Assn. v. Armengau*, Case No. 2014-0997.

The *Armengau* matter involved allegations of sexual assault, kidnapping, public indecency, gross sexual imposition, rape ("with specifications" – the specifications with respect to rape charges were later dismissed from indictment) and sexual battery of five women, two of whom were Armengau's former clients. Armengau was indicted on eighteen counts on May 20, 2013. (See *Columbus Bar Assn. v. Armengau*, Case No. 2014-0997, Relator's Motion for Interim Immediate Interim Remedial Suspension.)

One of the allegations related to a sexual relationship in which Armengau engaged for a period of twelve years with a client *while he represented her* from the time she was seventeen. Other grievances were received from female clients of Armengau regarding inappropriate sexual conduct.

The relator in *Armengau* argued that these allegations raised ethical issues including conflicts of interests between the client and attorney's personal interests; illegal acts that reflected adversely on the lawyer's trustworthiness; conduct involving fraud or deceit, and conduct adversely reflecting on the lawyer's fitness to practice law.

This Court has further sanctioned attorneys for engaging in sexual activity with clients in cases with facts far less egregious than those involved herein. In *Disciplinary Counsel v. Detweiler* (2013), 135 Ohio St.3d 447, 2013-Ohio-1747, this Court imposed a one-year suspension on an attorney who began sending his divorce client text messages of a personal nature.

While the attorney's initial texts appeared to be harmless inquiries, the latter texts included social invitations to the client which then progressed into comments of a sexual nature, or "sexting." *Detweiler*, at ¶7. In addition, the attorney admitted that he sent the client a nude picture of his lower body in a state of sexual arousal. *Id.*

This Court considered the vulnerability of the client and the attorney's dishonest and selfish motives to find violations of: (1) Prof. Cond. R. 1.7(a)(2) – prohibiting a lawyer from representing a client if the lawyer's personal interests will materially limit his ability to carry out appropriate action for the client; (2) Prof. Cond. R. 1.8(j) – prohibiting a lawyer from soliciting or engaging in sexual

activity with a client unless a consensual sexual relationship existed prior to the client-lawyer relationship; and, (3) Prof. Cond. R. 8.4(h) - prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law. Id. at ¶9.

Similarly, in *Disciplinary Counsel v. Bunstine* (2013), 136 Ohio St.3d 276, 2013-Ohio-3681, this Court imposed a suspension of one year with six-months stayed upon a lawyer for a violation of Prof. Cond. R. 1.8(j) which prohibits a lawyer from soliciting or engaging in sexual activity with a client unless a consensual sexual relationship existed prior to the client-lawyer relationship.

In *Bunstine*, after a consultation regarding fees, the attorney suggested that he come to the grievant's home and that she get rid of her fiancé, get a babysitter and answer her door naked.

Bunstine, at ¶10.

The attorney drove to the grievant's home that night and was confronted by the grievant's fiancé. Id. at ¶11.

The attorney attempted to place blame on the grievant for the circumstances and testified that it was only after she invited him to her home that he asked her whether she would answer the door naked. Id. at ¶18.

The Court found that with regard to sexual conduct, even if the grievant had initiated the inappropriate conversation, that would not negate the attorney's misconduct – the burden is on the lawyer to ensure that the attorney-client dealings remain on a professional level. Id. at ¶19.

Respondent has engaged in misconduct even more reprehensible than that sanctioned in *Detweiler* and *Bunstine*. As in *Detweiler*, Respondent has certainly harmed vulnerable clients

and acted with a dishonest and selfish motive. Both Doe 1 and Doe 2 retained Respondent to represent them in domestic matters which involved their personal affairs.

As this Court stated in *Disciplinary Counsel v. Booher* (1996), 75 Ohio St. 3d 509, “The client's reliance on the ability of her counsel in a crisis situation has the effect of putting the lawyer in a position of dominance and the client in a position of dependence and vulnerability. The more vulnerable the client, the heavier is the obligation upon the attorney not to exploit the situation for his own advantage. Whether a client consents to or initiates sexual activity with the lawyer, the burden is on the lawyer to ensure that all attorney-client dealings remain on a professional level.” *Id.*

Finally, in the matter of *Lake County Bar Association v. Mismas* (2014), 139 Ohio St.3d 346, 2014 –Ohio- 2483, this Court suspended the license of an attorney for sending a handful of inappropriate, sexually-charged text messages to an intern hired by his firm.

The complaintant was not a client of Attorney Mismas but an employee; as such, there was no attorney-client relationship. Nevertheless, this Court found “. . . Mismas did not just send sexually explicit text messages to a law student he sought to employ – he abused the power and prestige of our profession to demand sexual favors from her . . .” *Id.* at ¶3.

The Court went on “**When an attorney engages in sexually inappropriate conduct of this nature, it causes harm not only to the individual to whom the conduct is directed but also to the dignity and reputation of the profession as a whole.**” *Id.* at ¶23, emphasis added.

In the case at bar, the conduct by Respondent is *worse* than that of Mismas because 1) it involves vulnerable clients, 2) he uses hypnosis to incapacitate his own clients for his own sexual

gratification, 3) the victims are not sure what really even happened to them, 4) Relator has a good-faith believe that even more victims will come forward, 5) the nature and content of the graphic sexual vulgarity employed by Respondent is nauseating, and 6) Respondent physically touched both clients while under hypnosis.¹

Accordingly, pursuant to Gov. Bar R. V §5a(A)(1)(b) Relator proposes the following findings of fact and conclusions of law:

1. Respondent is currently licensed to practice law in the State of Ohio and is subject to the Rules for the Government of the Bar and the Code of Professional Responsibility.

2. Respondent is presently the subject of a pending Motion for Immediate Interim Remedial Suspension filed by Relator in the Supreme Court of Ohio pursuant to Gov Bar R. V(5a) and S. Ct. Prac.R 401(A).

3. Relator has provided substantial, credible evidence that Respondent has engaged in conduct where his personal interests have materially limited his ability to carry out appropriate action for his clients in violation of Prof. Cond. R. 1.7(a)(2).

4. Relator has provided substantial, credible evidence that Respondent solicited or engaged in sexual activity where no consensual relationship existed prior to the client-attorney relationship in violation of Prof. Cond. R. 1.8(j).

¹ While the extent of the physical touching that can be proven is limited to hand-holding, shoulder rubbing, etc., recall that Jane Doe 1 reports that on multiple occasions her bra was misaligned and Respondent requests no-less than four (4) times in the taped conversation of October 21, 2014 to “bring your vibrator” to the next meeting.

5. Relator has provided substantial, credible evidence that Respondent has engaged in conduct that adversely reflects on his fitness to practice law in violation of Prof. Cond. R. 8.4(h).

6. Relator has provided substantial, credible evidence that Respondent has engaged in conduct involving dishonest, fraud, deceit or misrepresentation; engaged in conduct that is prejudicial to the administration of justice, and engaged in that adversely reflects on his fitness to practice law, all in violation of Prof. Cond. R. 8.4 (c), (d) & (h).

7. Relator has provided substantial, credible evidence that Respondent has repeatedly engaged in conduct that establishes that he poses a substantial risk of serious harm to his clients and to the public that adversely reflects on his fitness to practice law in violation of Prof. Cond. R. 8.4(h).

Under these conditions, the immediate interim remedial suspension of Respondent's license is appropriate.

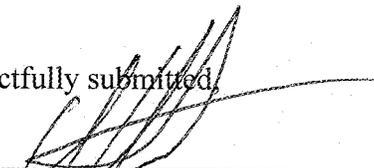
V. CONCLUSION

Based upon all of the foregoing, Relator has presented substantial, credible evidence that Respondent poses a substantial threat of serious harm to the public based on his recent misconduct.

As such, there is a substantial threat that the public may be harmed if Respondent is not immediately suspended from the practice of law.

Accordingly, this Honorable Court should suspend Respondent on an emergency, immediate, interim remedial basis pursuant to Gov. Bar R. V § 5(a).

Respectfully submitted,



D. CHRIS COOK, #0061073

The Commons

520 Broadway, Third Floor

Lorain, OH 44052

PH: (440) 246-2665

FX: (440) 246-2670

email: cooklaw@centurytel.net

Attorney for Relator & Bar Counsel

Lorain County Bar Association

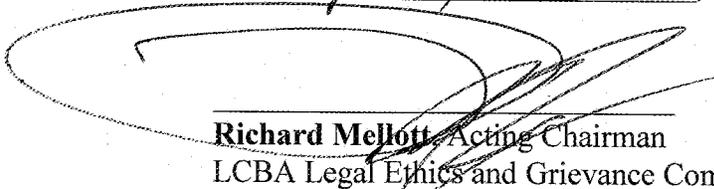
Legal Ethics and Grievance Committee

CHAIRMAN'S CERTIFICATE

The undersigned Acting Chairman of the Lorain County Bar Association Legal Ethics and Grievance Committee hereby certifies that D. Chris Cook, Esq., is duly authorized to represent Relator, Lorain County Bar Association, in the premises and has accepted the responsibility for prosecuting the Emergency *Ex Parte* Motion for Immediate Interim Remedial Suspension to its conclusion and for filing a timely complaint with the Board of Commissioners on Grievances and Discipline should the facts and evidence subsequently establish probable cause to do so.

After investigation, Relator, Lorain County Bar Association, believes reasonable cause exists to warrant the filing of the Motion pursuant to Gov. Bar R. V §5(a).

Dated: Nov 18, 2014



Richard Mellott, Acting Chairman
LCBA Legal Ethics and Grievance Committee

PROOF OF SERVICE

A copy of the foregoing Emergency *Ex-Parte* Motion for Immediate Interim Remedial

Suspension has been sent via Hand-Delivery and/or Regular U. S. Mail this 18th day of

November, 2014 to the following:

Richard Dove, Esq.
Board of Commissioners on
Grievance & Discipline
Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, OH 43215-3431

Scott Drexel, Esq.
Office of Disciplinary Counsel
Supreme Court of Ohio
250 Civic Center Drive, Ste. 325
Columbus, OH 43215-7411

Eugene P. Whetzel, Esq.
Ohio State Bar Association
Certified Grievance Committee
1700 Lakeshore Drive
Columbus, OH 43204

Jeannie Motylewski, Exec. Director
LCBA
627 Broad Street
Elyria, OH 44035

Michael W. Fine, Esq.
Fine Legal Services, LLC
5050 Waterford Drive
Sheffield Village, OH 44035
RESPONDENT

Robert V. Housel, Esq.
ROBERT V. HOUSEL CO., L.P.A.
1660 West 2nd Street
Skylight Office Tower, Suite 950
Tower City Center
Cleveland, Ohio 44113
Attorney for Respondent



D. CHRIS COOK

Attorney for Relator & Bar Counsel
Lorain County Bar Association
Legal Ethics and Grievance Committee

Attorney Information

The address and telephone information found in this listing has been provided to the Office of Attorney Services by the attorney. The directory lists an attorney's business address. An attorney's residence address is displayed **only** if the attorney has not provided a valid business address. See, **Gov. Bar R. VI, Sec. 1(G)**. "Invalid" next to the address indicates that mail sent to this address has been returned as undeliverable or that the attorney has not provided a complete mailing address. Also note that the record displays the attorney's current name on file in our records. If you believe any information listed below is incorrect, please **click here** for instructions

Current Name: **Michael William Fine**

Current Registration: **Active** **See Definitions below**

Ohio Admission: 05/11/1981 Discipline and Sanction History: **No**

Registration Number: 0007800

Attorney Title: Attorney at Law
 Office: Fine Legal Services, LLC
 Employer Address: 5050 Waterford Drive
 Sheffield Village, OH 44035
 Office Phone: 440.328.8007

Law School: Cleveland State University
 How Admitted: By Exam

CLE Enforcement

Discipline or Sanction History

New Search

Previous Search List

Questions or Comments: **Office of Attorney Services, 614.387.9320**

DEFINITIONS

Active

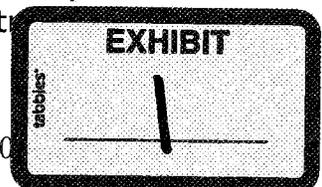
Active attorneys may practice law in Ohio, assuming all other requirements are met.

Inactive

Inactive attorneys may not practice law in Ohio or hold themselves out as authorized to practice law in Ohio. See, **Gov. Bar R. VI, Sec. 2.**

Retired

Attorneys registered for retired status must have been at least 65 years old at the time of their retired registration. Retired attorneys may not practice law in Ohio or hold themselves out as authorized to practice law in Ohio. See, **Gov. Bar R. VI, former Sec. 3.** Retired registration status is no longer available as a regist



AFFIDAVIT

STATE OF OHIO

SS

LORAIN COUNTY

D. CHRIS COOK, being first duly sworn according to law, states that he has personal knowledge of all the facts contained in this Affidavit and that he is competent to testify to the matters stated herein.

[1] That Affiant is a member of Lorain County Bar Association ("LCBA") and an attorney in good-standing in the State of Ohio.

[2] That Affiant is Supreme Court Certified Bar Counsel for LCBA.

[3] That LCBA's Certified Legal Ethics and Grievance Committee ("The Committee") opened an investigation into Attorney Michael Fine's ("Attorney Fine") conduct while he was representing one Jane Doe 1 ("Doe 1") and one Jane Doe 2 ("Doe 2").

[4] That LCBA assigned the investigation of Attorney Fine to Attorney Gail Reeves ("Attorney Reeves"), a member of The Committee.

[5] That based upon a presentation by the Lorain County Prosecutor's Office and materials prepared and presented by Bar Counsel, at an Emergency Meeting of The Committee on November 12, 2014 The Committee found probable cause that Attorney Fine violated the Ohio Rules of Professional Conduct ("ORPC") and the Ohio Rules For The Government of The Bar ("ORGB") and found substantial, credible evidence that he poses a substantial threat of serious harm to his clients and to the public.

[6] That thereafter, the matter was forwarded to Affiant for prosecution and preparation and filing of an Emergency *Ex Parte* Motion For Immediate Interim Remedial Suspension ("The Motion").



[7] That Affiant has attached six (6) Exhibits to The Motion.

[8] That Affiant personally compiled all six (6) Exhibits, some of which have sub-exhibits, and hereto attests to their accuracy and that they are true and accurate copies of the originals and incorporates by reference same herein.

[9] That Exhibits "3" and "5" have been filed Under Seal with this Court.

[10] That Exhibit "6," Dr. Santamaria's report, was sent to Affiant via email on November 16, 2014 in response to a specific series of questions that were posed to Dr. Santamaria by Affiant and that Exhibit "6" is a true and accurate copy of said email and that same is incorporated herein by reference.

[11] That Affiant has personally observed the DVD video disk attached to Exhibit "3" as Exhibit "D," and that the DVD accurately and truly portrays Respondent and Jane Doe 1.

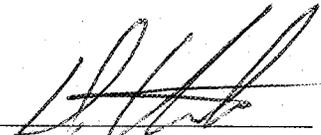
[12] That Affiant personally spoke to Robert V. Housel ("Attorney Housel"), attorney for Respondent, on Monday, November 10, 2014 about this case and about the possibility of filing The Motion.

[13] That Affiant wrote to Attorney Housel on November 14, 2014 and advised him in writing that The Committee had authorized the preparation and filing of The Motion. (See Exhibit "A," Letter to Attorney Housel, 11/14/14, redacted, attached hereto and incorporated herein.)

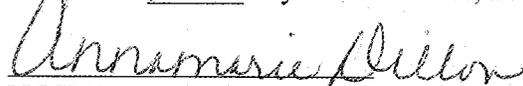
[14] That Affiant further states, that, based upon his review and investigation of this matter, and the supporting documentation and Exhibits contained in the Motion, including the case law and expert report by Dr. Santamaria, that substantial, credible evidence exists, by a clear and convincing standard, that Respondent poses a substantial threat of serious harm to his clients and to the public and should be immediately enjoined from the practice of law.

AFFIANT FURTHER SAYETH NAUGHT.

11/17/14
DATE


D. CHRIS COOK, ESQ.

Sworn to before me and subscribed in my presence this 17th day of November, 2014.


NOTARY PUBLIC

Annamarie Dillon
Notary Public, State of Ohio
My Commission Expires 3-7-15

COOK & NICOL, LLC

520 Broadway, Third Floor
Lorain, Ohio 44052
P: (440) 246-2665
F: (440) 246-2670

D. Chris Cook, Esq.
Wayne R. Nicol, Esq.

Of Counsel, Lindsey Poprocki

November 14, 2014

Robert V. Housel, Esq.
ROBERT V. HOUSEL CO., L.P.A.
1660 West 2nd Street
Skylight Office Tower, Suite 950
Tower City Center
Cleveland, Ohio 44113

VIA E-MAIL & REGULAR U.S. MAIL
bobhousel@yahoo.com

GOV. BAR R. V§5a(A)(1)(a)&(b)

CONFIDENTIAL

Re: *L.C.B.A. v. Michael W. Fine*
**Lorain County Bar Association Certified Legal Ethics & Grievances
Committee
Case No. 14-382**

Dear Attorney Housel:

As you may recall, the undersigned represents the Lorain County Bar Association ("LCBA"). Pursuant to our discussion Monday evening, the Bar has opened an investigation into the conduct of Attorney Fine relative to his representation of [REDACTED]

I should also disclose to you that another former client of Attorney Fine has come forward and made a formal complaint about his conduct similar in nature to that of [REDACTED]. The most recent complainant, [REDACTED], like [REDACTED], has provided an Affidavit outlining serious misconduct regarding comments, touching, and hypnosis.

On Wednesday morning, November 14, 2014 at an emergency meeting of the LCBA's Certified Legal Ethics and Grievance Committee ("The Committee"), representatives of the Lorain County Prosecutor's Office ("The Prosecutor"), in fulfillment of their ORPC Rule 8.3(a) obligation, presented The Committee with an outline of their investigation of Attorney Fine and his conduct directed at his client, [REDACTED]

The Committee reviewed transcripts of phone calls, a video of a meeting between the parties, relevant case law, and were provided with the informal opinion of a psychiatrist who was consulted by The Prosecutor.



Robert V. Housel, Esq.
ROBERT V. HOUSEL CO., L.P.A.
November 14, 2014
Page two

At the conclusion of the presentation, a motion was made and properly seconded directing Bar Counsel to immediately prepare and file an Emergency Motion For Interim Remedial Suspension of Attorney Fine. After short discussion, the motion carried and I have been preparing same for filing early next week.

Once the Motion is ready, you will be provided with a complete, unredacted copy including all Exhibits in Support. Please accept this correspondence, along with our discussion last Monday, as fulfillment of our Gov. Bar R. *V*§5a(A)(1)(a)&(b) obligation to provide notice of our intention.

As before, thank you for your attention to this matter and do not hesitate to contact me should you have any questions or concerns or wish to discuss any aspects of same.

Very truly yours,

D. CHRIS COOK//ss

D. CHRIS COOK

Bar Counsel

Lorain County Bar Association

cooklaw@centurytel.net

DCC/12

cc: Mike Illner, Chair
Richard Mellott, Acting Chair
Jeannie Motylewski, Exec. Director
Gail Reeves, Investigator
Anthony Cillo, Chief Criminal Prosecutor

EXHIBIT "3"

AFFIDAVIT OF JANE DOE 1

UNDER SEAL



STATE OF OHIO

SS

LORAIN COUNTY

AFFIDAVIT OF RICHARD THOMAS

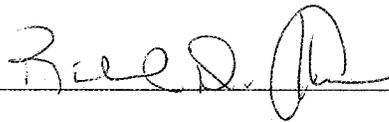
I Richard Thomas, having been duly sworn according to law, state the following:

1. I am and have been during all events related hereunder, employed as an investigator with the office of Lorain County Prosecutor, Dennis Will. Prior to that time I spent a career in law enforcement, including serving as Chief of Police in the City of North Ridgeville, Ohio.
2. During October of 2014, a matter was referred to this office from the Sheffield Village Police Department, and was assigned to me for investigation.
3. It was related to me that a female client of Attorney Michael Fine, hereafter called "Jane Doe" had contacted Sheffield police stating that she had strange memories and feelings after numerous meetings and conversations with Attorney Fine. She would be unable to recall substantial portions of the meetings, and afterwards she would realize her clothes and bra were out of place and moved, and her vagina was wet. She relates that she has had frequent meetings and phone calls with Fine, at times on a weekly basis for over a year.
4. Upon instruction that more definite evidence was needed, on October 22, 2014, Jane Doe produced audio recordings of phone calls with Fine from October 10 and 21. The October 21 recording begins with a discussion of her court case, but when Fine learns she is alone, he places her into a trance. Thereafter, the conversation is of an explicit sexual nature, wherein he induces her into multiple orgasms. Fine refers to himself as her "teacher" and "instructor" and that they have a special "bond" and "connection". Fine also declares himself the "world's greatest lover" and that she needs to see him all the time in "private and just for us". Fine assures her that she will appear normal and only remember their discussions regarding legal matters.
5. The October 21 phone call recording is of similar nature. Again Fine places her in a hypnotic spell and commences a lengthy sexually explicit conversation. Fine discusses inducing for her sexual pleasure and a "wave of arousal and excitement". He reminds her to bring a vibrator to an upcoming office meeting. He discusses masturbation, vaginal and oral orgasms. Fine explains that he will cause her "horniness and arousal and excitement" and a "life-changing experience" Several references are made to the vibrator and intimate contact with her sexual organs. He confirms that he wants this experience to happen continually in the future and that it will be secret without the ability of her to recall.



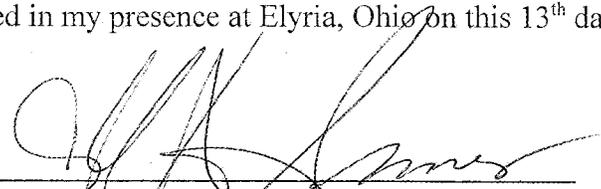
6. Based upon this information, a search warrant was obtained to record Jane Doe's next meeting with Fine at his office. She was fitted with an audio and video recording device. I along with other law enforcement officers were monitoring the meeting which occurred on November 7, 2014 from a nearby location. Shortly after the meeting begins, Fine hypnotizes Jane Doe and directs her to sit on a couch. There is a video camera on the desk. Fine begins sexual dialogue, explaining sexual acts that he will do for her, while sitting next to her and holding and massages her hand and rubs her shoulders. At this point I and the other police enter the room.
7. The video of the meeting, with consent of the Prosecuting Attorney was presented to the Lorain County Bar Association Ethics & Grievance Committee on November 12, 2014. I hereby certify that the video submitted with this affidavit is a true and authentic copy of the video taken on November 7, and accurately depicts the events occurring in the office of Attorney Michael Fine on that date.
8. I also allowed Dr. Ross Santamaria, a local psychologist to view the video. He opined that Jane Doe was hypnotized and that Mr. Fine is an accomplished hypnotist. Attorney Fine is not licensed in the State of Ohio as a therapeutic hypnotist.

I hereby swear to, affirm and verify that the statements contained in this Affidavit are true to the best of my personal knowledge and belief.



Richard Thomas, Affiant

Sworn to before me and subscribed in my presence at Elyria, Ohio on this 13th day of November, 2014.



Gerald A. Innes, Notary Republic
My Commission has no expiration date.

EXHIBIT "5"
AFFIDAVIT OF JANE DOE 2
UNDER SEAL



D. Chris Cook, Esq.

From: Martha Santamaria [santamariam79@hotmail.com]
Sent: Sunday, November 16, 2014 6:36 PM
To: D. Chris Cook, Esq.
Cc: rick.thomas@lcprosecutor.org
Subject: Re: Hypnosis Investigation
Attachments: Ross Resume.jpg

Dear Mr. Cook:

Hypnosis is "a state of consciousness involving focused attention and reduced peripheral awareness characterized by an enhanced capacity for response to suggestion."

There is a scientific body of information that supports it. Hypnosis can be used in a therapeutic manner. It can also be used to manipulate individuals in immoral, unethical, illegal and inappropriate ways.

I reviewed the video of Attorney Michael Fine and a female client that was recorded by the investigators from the Lorain County Prosecutor's Office. I also reviewed part of the telephone transcripts between Attorney Fine and his client.

Professional boundaries which are expectations and interactions that would be considered appropriate within the attorney - client relationship have been totally violated by Attorney Fine. In my opinion, I strongly feel that vulnerable clients, such as trauma survivors, children, and the public in general need to be protected from this attorney.

It appears that Attorney Fine has experience using hypnosis and that he is using it for his own sexual gratification and not for the benefit of the client.

It is my opinion that Attorney Michael Fine has committed a violation of the Ohio Rules of Professional Conduct and he poses a substantial threat of serious harm to the public.

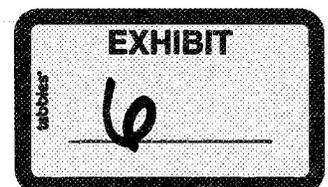
If I can help in any way in this matter, please do not hesitate to contact me.

Submitted by:

Ross Santamaria, Ph.D.

Ohio State Board of Psychology
License No. 1269

Sent from Windows Mail



11/17/2014

- RESUME -

Ross Santamaria, Ph.D.

Clinical Psychologist

Westlake Office

24700 Center Ridge Rd.
Westlake, Ohio 44145
(440) 835-3688

Children's Developmental Center

150 Erie Court
Amherst, Ohio 44001
(440) 984-2416

Education:

Ph.D. Case Western Reserve University

Major: Psychology

M.A. Case Western Reserve University

Major: Counseling

B.A. Oberlin College

Major: Chemistry & Biology

Licensed Psychologist Number 1269, Ohio State Board of Psychology

Licensed Professional Clinical Counselor, Number E1184

Current Positions:

Private Practice, Westlake

Children's Developmental Center, Psychologist

Elyria Memorial Hospital, Psychologist

Consulting Police Psychologist for Several Northern Ohio Departments

Experience:

Director of Diversion & Forensic Services, Medina County (Retired)

Practicing Clinical Psychologist

Police Psychologist

Court Psychologist

Consulting Psychologist & Intern Supervisor

Assistant Professor, Case Western Reserve University & Cleveland State University

Hospital Staff Psychologist

Private Practice of Clinical Psychology

Employee Assistance Psychologist

