

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF THE SUPREME COURT OF OHIO**

**In re:**

**Case No. 2014-097**

**N. Shannon Bartels  
Attorney Reg. No. 0064012**

**Respondent**

**Disciplinary Counsel**

**Relator**

**Findings of Fact,  
Conclusions of Law, and  
Recommendation of the  
Board of Professional Conduct  
of the Supreme Court of Ohio**

**OVERVIEW**

{¶1} This matter was heard on May 28, 2015 in Columbus before a panel consisting of Patricia A. Wise, Teresa Sherald, and Sharon L. Harwood, chair. None of the panel members resides in the district from which the complaint arose.

{¶2} Respondent was present at the hearing, represented by Charles J. Kettlewell. Scott Drexel appeared on behalf of Relator.

{¶3} This matter was filed with the Board on November 25, 2014. On May 14, 2015, Respondent and Relator filed a joint motion to waive hearing and agreed stipulations with recommended sanction. The panel denied the joint motion to waive hearing as the panel wished to meet and question Respondent because the matter was related to the same alleged rule violation for which Respondent received discipline in 2010. Based on the evidence presented by the parties, the panel finds Respondent engaged in misconduct and recommends a sanction of a one-year suspension, stayed on conditions.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} Respondent was admitted to the practice of law in the state of Ohio on November 14, 1994 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶5} Respondent was previously disciplined by the Supreme Court of Ohio in a consent to discipline agreement in the matter of *Allen Cty. Bar Assn. v. Bartels*, 124 Ohio St.3d 527, 2010-Ohio-1046. In that matter, Respondent engaged in sexual activity with a client she represented in a post-decree divorce matter on the date the judgment in the case was entered. Respondent continued her relationship with the client until September 1, 2008. On September 22, 2008, Respondent received a letter from an attorney about problems with the judgment and forwarded those to her client. Respondent was confronted by the client's wife and admitted the activity. A grievance was filed and Respondent admitted violation of Prof. Cond. R. 1.8(j) having sexual activity with a client. Respondent received a public reprimand due to the fact that the isolated conduct did not hinder the effective representation of the client. The Court's opinion cited to the case of *Cincinnati Bar Assn. v. Schmalz*, 123 Ohio St.3d 130, 2009-Ohio-4159.

{¶6} In the matter presented at hearing, Respondent was retained by Troy Bailey on November 2, 2012 to represent him in a divorce proceeding. Respondent represented Bailey in his divorce from November 8, 2012 until at least July 3, 2013 when the divorce entry was granted.

{¶7} In late February or early March 2013, Respondent and Bailey exchanged multiple text messages with one another that contained sexual messages. The messages were mutual and reciprocal in content and expressed a mutual desire to engage in sexual intercourse. The parties did not engage in sexual intercourse.

{¶8} On April 26, 2013, Respondent replied to several text messages from Bailey's cell phone and texted to Bailey that she was not interested in primarily having sex. After which, Respondent received a text message that if the results of the divorce proceeding were not satisfactory to him, disciplinary authorities might be interested in receiving the text messages and photos between them as she had been disciplined for similar conduct.

{¶9} On May 15, 2013, Respondent and Bailey had a phone conversation about the divorce. Bailey at some point put a female on the phone who told Respondent that Bailey had better get everything he wanted from the divorce proceeding and to bring \$3,000 to the hearing scheduled on May 21, 2013. Respondent told the female that she was committing extortion and hung up.

{¶10} On May 21, 2013, Respondent attended Bailey's hearing. Bailey was present, but the female was not. No reference was made to the phone call and no request for money was made to Respondent.

{¶11} There was no further communication between Respondent and Bailey about the text messages, extortion attempt, or Respondent's prior discipline between May 21, 2013 and finalization of the divorce on July 3, 2013.

{¶12} On September 10, 2013, Respondent received a text from Bailey's cell phone number stating if Bailey did not receive a refund of at least \$2,500 from Respondent by September 30, 2013 the Ohio State Bar Association and Better Business Bureau would be contacted.

{¶13} On that same date, Respondent reported the extortion attempt to the Allen County Sheriff's Office. Subsequent to this, the sheriff's office determined that Bailey's girlfriend had sent the messages and that Bailey was aware of what his girlfriend was doing.

{¶14} On January 30, 2014, both Bailey and his girlfriend pled guilty to obstruction of justice in the Allen County Court of Common Pleas.

{¶15} Respondent acknowledges that by exchanging sexual text messages that she violated Prof. Cond. R. 1.8(j) having sexual activity with a client. The panel finds, by clear and convincing evidence, that Respondent violated this rule.

{¶16} Respondent, on examination by Relator about the purpose of Prof. Cond. R. 1.8(j), stated that “The underlying purpose of the rule was to protect clients vulnerable clients from predatory attorneys who might try to use that as leverage for fees or to, you know, get whatever they get the client to do whatever they wanted in a case or something.” Hearing Tr. 74. Respondent went on in further questioning to state that she did not take advantage of Bailey but “I guess according to the case law sext messaging is sexual activity and therefore I violated the rule because I engaged in that with him.” Hearing Tr. 75.

{¶17} On questioning from the panel on Respondent’s awareness of sext messaging violating the rule, Respondent acknowledged that she was not initially aware that this activity could be a violation of the rule. When further questioned about sending photos she said at the time she did not know it was a violation, but now she does. Hearing Tr. 90.

#### **MITIGATION, AGGRAVATION, AND SANCTION**

{¶18} The stipulated aggravating factor is the March 25, 2010 prior discipline of a public reprimand for a violation of Prof. Cond. R. 1.8(j).

{¶19} The stipulated mitigating factors include full and free disclosure and cooperation toward the proceeding and evidence of good character.

{¶20} When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties Respondent violated and the sanctions imposed in

similar cases. Both Respondent and Relator presented multiple case examples to support differing ranges of sanction and conditions of stayed suspensions, although none directly matches the fact pattern presented in this case. In their joint recommendation, Respondent and Relator rely heavily on *Disciplinary Counsel v. Detweiler*, 127 Ohio St.3d 73, 2010-Ohio-5033. In that case, as similar to Respondent's initial case, there was sexual activity with a client during representation that was consensual, no prior discipline, and no compromise of the client interest resulting in public reprimand. The parties also cite *Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 2013-Ohio-1747. In this second offense, Detweiler engaged in sext messaging including a nude photograph. In this case, the texts were unwelcome advances and nonconsensual. The client in that case felt trapped and could not afford new counsel. In that matter, which involved misconduct in addition to Prof. Cond. R. 1.8(j), the Court imposed a one-year suspension. The distinction made by Relator and Respondent in this matter is that the only rule violation here is Prof. Cond. R. 1.8(j) and there was consensual participation with no adverse impact on the representation. Therefore, they jointly recommend a one-year suspension stayed in its entirety.

{¶21} In the 2013 *Detweiler* opinion, the Court reviewed examples of its sanctions ranging from public reprimand to indefinite suspension and disbarment. The 2013 case determination of a one-year suspension was due to repeated unsolicited and unwelcome sexual advances toward a vulnerable client followed by a naked photo when those advances were ignored.

{¶22} Based upon the foregoing, the panel recommends acceptance of the proposed joint recommendation of a sanction of a one-year suspension all stayed in its entirety.

{¶23} The panel notes this is Respondent's second violation of Prof. Cond. R. 1.8(j), and that the misconduct in this case commenced approximately three years after she was publicly reprimanded by the Supreme Court. In light of her responses to questions from Relator and the

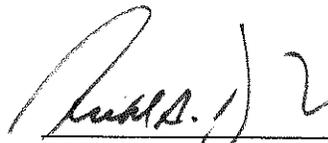
panel as set forth in ¶¶16-17 above, the panel is troubled by Respondent's continued lack of awareness or understanding that her conduct in this matter was contrary to the letter and spirit of the rule. Although facts of this case and the precedents cited by the parties support the recommended sanction of a one-year stayed suspension, the panel believes the stayed suspension should be conditioned on Respondent's compliance with the following: (1) completion of an additional six hours of CLE, approved by Relator, on professional conduct and professionalism, focused on proper communications and interaction with clients; and (2) working with a mentoring attorney, approved by Relator, for one year.

### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on October 2, 2015. The Board adopted the findings of fact and conclusions of law of the panel. After discussion, the Board voted to amend the recommendation of the panel and recommends that Respondent, N. Shannon Bartels, be suspended from the practice of law in Ohio for one year, with six months stayed on the conditions of (1) completion of an additional six hours of CLE, approved by Relator, on professional conduct and professionalism, focused on proper communications and interaction with clients, (2) no further misconduct, and (3) payment of the costs of this proceeding. The Board further recommends that upon reinstatement, Respondent shall work for a period of one year with a mentoring attorney approved by Relator. The Board's recommendation is premised on the need to protect the public from Respondent's misconduct, in light of the fact that this case represents her second violation of Prof. Cond. R. 1.8(j) within a five-year period and her responses to questions as set forth in ¶¶16-17 of this report. In approving this recommendation, the Board considered the decision of the Supreme Court in *Lake Cty. Bar Assn. v. Mismas*, 139 Ohio St. 346, 2014-Ohio-2483 [one-year

partially stayed suspension imposed against an attorney who sent sexually explicit text messages to a law student employee and demanded sexual favors as a condition of her employment].

**Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Director**