Supreme Court of Ohio Clerk of Court - Filed November 12, 2015 - Case No. 2015-1638

BEFORE THE SUPREME COURT OF OHIO

In re:	:	
	:	Sup. Ct. Case No. 2015-1638
	:	Board Case No. 2014-097
	:	
N. Shannon Bartels	:	Objections to Findings of Fact,
Attorney Reg. No. 0064012	:	And Recommendations of the
	:	Board of Professional Conduct
Respondent	:	Of the Supreme Court of Ohio
	:	
Disciplinary Counsel	:	
	:	
Relator	:	
	:	

ATTORNEY N. SHANNON BARTELS OBJECTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF THE BOARD OF PROFESSIONAL CONDUCT OF THE SUPREME COURT OF OHIO

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E. ORC § 2907.01(A)(B) and (C)

INTRODUCTION AND STATEMENT OF FACTS

Now comes Respondent, N. Shannon Bartels, by and through counsel and pursuant to Gov. Bar Rule V hereby objects to the Findings of Fact, and Recommendations of the Board of Professional Conduct of the Supreme Court of Ohio, a copy which is attached hereto as **Exhibit A**. This case was presented via Stipulations entered into by Relator and Respondent's Counsel which are summarized briefly herein as follows:

Respondent was admitted to the practice of law in the State of Ohio on November 14, 1994. On March 25, 2010, respondent received a public reprimand for violating Prof. Cond. R. 1.8(j) by engaging in a sexual relationship with a client. *Allen Cty. Bar Assn. v. Bartels*, 124 Ohio St.3d 527, 2010-Ohio-1046. On November 2, 2012, respondent was retained by Troy E. Bailey to represent him in a pending divorce proceeding. Respondent and Bailey had been referred to one another by a mutual personal friend. Respondent and Bailey signed a fee agreement with Bailey agreeing to pay respondent for her legal services at the rate of $180 per hour. The fees Bailey paid to respondent totaled to $2,994.00.

Respondent's representation of Bailey in his divorce proceeding continued from November 8, 2012 until at least July 3, 2013, when the court's entry granting Bailey's divorce was filed in the Hardin County Court of Common Pleas.

Commencing in *late February or early March 2013*, respondent and Bailey began exchanging multiple text messages with one another that contained sexual messages. *These "sext" messages continued for a period of approximately one month.* The "sext" messages were *mutual and reciprocal* in their sexual content, expressing among other things, a mutual desire to engage in sexual intercourse. *Respondent and Bailey did not actually engage in sexual intercourse with one another.* (Italics emphasis added.)

On or about April 26, 2013, respondent received and replied to numerous text messages that were sent to her from Bailey's cell phone. In the text messages, respondent acknowledged that she had been interested in dating Bailey and "hanging out" with one another and that it might have led to a sexual relationship, but that it eventually became clear to respondent that Bailey was primarily just interested in having sex and that she wasn't sure that was what she wanted. At the conclusion of the text message exchanges on April 26, 2013, one of the text messages received by respondent contained what appeared to be a veiled threat that, if the results of Bailey's divorce proceeding weren't satisfactory to him, the disciplinary authorities might be interested in receiving the text messages and photographs between them in light of the fact that respondent had been previously disciplined for similar conduct.

On May 15, 2013, respondent and Bailey had a telephone conversation about the divorce proceeding. At one point during their conversation, Bailey told respondent that someone wanted to speak with her and he then he put a female on the telephone. The female refused to identify herself but told respondent that she had better get Bailey everything he wanted from his divorce proceeding. She also told respondent that she should bring $3,000 to the scheduled divorce hearing on May 21, 2013. Respondent told the female on the telephone that she was committing extortion and that it is a crime. Respondent ultimately hung up the telephone on the female caller.

Respondent attended the May 21, 2013 hearing in Bailey's divorce proceeding. The female with whom respondent spoke by telephone on May 15, 2013 was not present at the hearing. Neither Bailey nor respondent made any reference to the telephone call and Bailey neither requested any monetary payment from respondent nor made any reference to respondent's prior discipline or to their exchange of sext messages.

Between May 21, 2013 and the finalization of Bailey's divorce on July 3, 2013, no references were made by respondent or Bailey about their sext message exchanges, the purported extortion attempt, or respondent's prior discipline. On September 10, 2013, respondent received a text message from Bailey's cell phone number. The text message stated that, if Bailey did not receive a refund of at least $2,500 from respondent by September 30, 2013, the Ohio State Bar Association and the Better Business Bureau would be contacted.

On September 10, 2013, respondent reported the extortionate conduct to the Allen County Sheriff's Office and gave a statement to the Sheriff's Office at that time. In its investigation of the extortion attempt, the Sheriff's Office interviewed a number of individuals, including respondent, Bailey, and a woman named Ann Perkins. The Sheriff's Office investigation determined that, at the time of the events set forth in this Complaint, Perkins was Bailey's girlfriend. Perkins discovered that Bailey and respondent had been exchanging sext messages and became very angry. The extortionate text messages that were sent on Bailey's cell phone were actually sent by Perkins, not by Bailey. Bailey denied that he personally sent any of the threatening or extortionate text messages to respondent. However, Bailey acknowledged that he was aware of what Perkins was doing.

On January 29, 2014, a Bill of Information was filed in Allen County Court of Common Pleas Case No. CR 2014 0037, charging Perkins with obstructing justice in violation of ORC section 2921.32(A)(5), a fifth degree felony. On January 30, 2014, a Bill of Information charging Bailey with the same offense was filed in Case No. CR 2014 0038. Perkins and Bailey pled guilty to the charged offenses on the date that the respective Bills of Information were filed. Respondent stipulated to a violation of Prof. Cond. Rule 1.8(j), and Respondent's counsel and Relator's Counsel stipulated to aggravating factors and mitigating factors and jointly

recommended a sanction of a twelve month all stayed suspension. See Agreed Stipulations attached hereto as **Exhibit D.**

OBJECTION NO. 1

Respondent objects to the Board's Recommendation that she should be actually suspended from the practice of law for one year with six months stayed contrary to the jointly recommend sanction by Respondent's Counsel and Relator's Counsel and the Panel's recommended sanction of a twelve month *all stayed* suspension.

BRIEF IN SUPPORT

The Board adopted the findings of fact and conclusions of law of the Panel, which heard all of the evidence and was best able to observe Respondent's demeanor during the hearing. However, in the Board's deviation from the Panel's recommended sanction it appears to have taken into consideration only one or two questions and Ms. Bartels' responses thereto[1] rather than the entirety of the record, including Respondent's complete testimony and Respondent's acceptance of responsibility for a violation of Prof. Cond. Rule 1.8(j) long before the May 28, 2015 hearing.

In responding during her testimony that she did not initially understand at the time of the conduct in *March-February of 2013* that sending text messages of a sexual nature ("sexting") was a violation of Prof. Cond. Rule 1.8(j), Respondent was open and forthcoming with the Panel, following up this statement with her acknowledgment she certainly realized and accepted responsibility later and at the hearing. To that end, Prof. Cond. Rule 1.8(j) provides only, "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." (Italics

[1] On page 6 of **Exhibit A** the Board References testimony in Paragraphs 16 and 17 for increasing the recommended sanction.

added.) Although italicized herein for emphasis, sexual activity is not italicized in the Ohio Rules of Professional Conduct and is not a defined term under Prof. Cond. Rule 1.0.[2] Prof. Cond. Rule 1.8(j) itself does not define what constitutes the "sexual activity" that is prohibited by the Rule and, as such, same is left open to interpretation. Comments 17-19 of Prof. Cond. Rule 1.8 elaborate on the prohibition against Client-Lawyer Sexual Relationships, but nowhere in these Comments is there any discussion of consensual texting or "sexting," without any actual physical contact, rising to the level of "sexual activity" as conduct which is prohibited by Prof. Cond. Rule 1.8(j).

As such, from both a plain reading of Prof. Cond. Rule 1.8(j), its Comments, and Ohio case law in existence as of March-February of 2013, it would not have been completely evident to an Ohio attorney that consensual, mutual, and reciprocal text messages between consenting adults, wherein no actual physical sexual contact ever occurred during the course of the attorney-client relationship, was, in fact, in violation of Prof. Cond. Rule 1.8(j).

To the extent the Board appears to conclude that Respondent *first* acknowledged her misconduct at the May 28, 2015 hearing, this conclusion is simply not supported by the evidence in the Record. The evidence before the Court is that Respondent waived a probable cause determination on November 25, 2014 **(Exhibit B)** and admitted a Prof. Cond. Rule 1.8(j) violation in her Answer filed December 29, 2014. **(Exhibit C)** Clearly Respondent accepted responsibility long before the actual May 28, 2015 hearing and any inference from the Board to the contrary is simply not supported by the record.

As the Board's Findings acknowledge, there are no cases which exactly match the fact pattern presented in this case. Of perhaps even greater significance, however, is the fact that

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[2] ORC § 2907.01(A)(B) and (C) graphically define "sexual activity" but do not include any reference to text messages or "sext" messages. **(Exhibit E)**

there were no cases published prior to *March-February of 2013* when the Respondent's conduct occurred with "texting for approximately one month" that put Respondent on notice that consensual text messaging could be considered "sexual activity" under Prof. Cond. Rule 1.8(j). As such, Respondent was not on notice that sending and receiving *consensual* text messages of a sexual nature, while stopping short of having any physical sexual relationship, could nevertheless be charged as violation of Prof. Cond. Rule 1.8(j) in February-March of 2013, the time the text/"sext" messages were exchanged in this case. As such, it was not until other cases were decided and Respondent reflected on the situation that she became aware that her conduct exchanging consensual text messages could be, in fact, in violation of Prof. Cond. Rule 1.8(j). Since realizing her mistake, Respondent has repeatedly accepted responsibility and shown remorse throughout this proceeding. The Board's Findings actually note Respondent's "full and free disclosure and cooperation" and the evidence of her good character as mitigating factors.

However, the Board's additional finding that Respondent's "continued lack of awareness or understanding that her conduct was contrary to the letter and spirit of the rule" has no basis in the evidence before this Court. The Board references Respondent's prior violation of Prof. Cond. Rule 1.8(j) in support of the above finding, but the Board fails to distinguish between the facts of Respondent's first case, where a physical sexual relationship actually occurred towards the end of her representation of a client, and the present case, where all parties agree that Respondent never engaged in any physical act with a client.[3] In this case, the parties engaged only in mutual, reciprocal, consensual text conversations with discussions of dating after the attorney-client relationship terminated, but there was no actual physical sexual relationship between the parties and both the Panel and the Board determined that Respondent's conduct did

[3] **Exhibit D** Agreed Stipulations at paragraph 6.

not hinder her effective representation of the client.

The Board's subsequent determination that six months *actual* suspension and six months stayed suspension should be imposed is contrary to those same findings and is not supported by the evidence in the record. Although the Board stated that its recommendation was based upon a need to protect the public from Respondent's misconduct, all parties acknowledge that the text messages exchanged in this situation were mutual and reciprocal.[4] There was no finding that Ms. Bartels abused her position or that the client was vulnerable or the recipient of unwanted advances as was the case in *Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 2013-Ohio-1747, and *Lake Cty. Bar Assn. v. Mismas*, 139 Ohio St.3d 346, 2014-Ohio-2483, respectively.

Finally, in making the recommendation of six months suspension and six months stayed suspension, the Board appears to have relied solely upon the case of *Lake Cty. Bar Assn. Mismas,* 139 Ohio St.3d 346. However, the fact pattern in *Mismas* is readily distinguished from the present case. In *Mismas* the attorney sent sexually explicit text messages to a law student who was seeking employment and the Court found he demanded sexual favors from her as a condition of her employment, thus abusing the prestige and power of his profession and taking advantage of her vulnerable position.

Although Respondent admits that she engaged in inappropriate conduct which could affect the dignity and reputation of the profession as a whole, she did not abuse her position or take advantage of a vulnerable client. Respondent did not make unwelcome sexual advances, but rather responded to and participated in consensual and mutual text messages between two consenting adults.

Finally, it is noteworthy that *Detweiler* was decided May 2, 2013 and *Mismas* was

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[4] **Exhibit D** Agreed Stipulations at Paragraph 5 and **Exhibit A** Board Findings at Paragraph 7.

decided June 12, 2014. It was stipulated that the text messages of a sexual nature in the present case were exchanged commencing in late February or early March 2013 and continued for a period of approximately one month.[5] As such, both of the cases the Board cites as authority to increase the Panel's recommended sanction were published *after* Ms. Bartel's conduct in the present case even occurred. As such, Ms. Bartels had no notice in March and February of 2013 that *Detweiler* and *Mismas* would subsequently be decided elaborating on the Court's view of the prohibitions contained in Prof. Cond. Rule 1.8(j) to include mutual consensual text messaging to be included as "sexual activity" under Prof. Cond. Rule 1.8(j). It bears repeating that Prof. Cond. Rule 1.8(j) itself and Comments thereto do not define "sexual activity" at all, and the Ohio Revised Code section that does define "sexual activity," ORC § 2907.01(A)(B) and (C), does not include texting or "sexting" in its definition. **(Exhibit E)**

It is also noteworthy that Respondent's first case, *Allen Cty. Bar Assn. v. Bartels*, 124 Ohio St.3d 527 was resolved through a Consent to Discipline Agreement. As such, prior to the May 28, 2015 hearing in the present case, Respondent never appeared before any Panel or anyone else to have any discussion about the underlying policies behind Prof. Cond. Rule 1.8(j) or the Comments thereto to even consider whether consensual text messages could run afoul of the Rule. Text messages had nothing to do with Respondent's prior discipline, and Respondent believed in good faith, albeit erroneously, that she was complying with Prof. Cond. Rule 1.8(j) when she refused engaging in any actual physical sexual conduct with Bailey while she was still representing him.

In light of the vast differences in the fact patterns between the *Mismas* and *Detweiler* cases and the present case, it is respectfully submitted that the Board's reliance on both *Mismas*

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[5] **Exhibit D** Agreed Stipulations at Paragraph 5.

and *Detweiler* is misplaced and the recommendation of an increased suspension based on *Mismas* is effectively an *ex post facto* application of subsequent case law to Ms. Bartels' facts.

This honorable Court has long held:

> "[I]n determining the appropriate length of the suspension and any attendant conditions, we must recognize that **the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public.**" *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286, ¶ 53; see, also, *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 100, 70 O.O.2d 175, 322 N.E.2d 665. As we stated in Weaver, " 'In [a] disciplinary matter, **the primary purpose is not to punish an offender; it is to protect the public against members of the bar who are unworthy of the trust and confidence essential to the relationship of attorney and client**; it is to ascertain whether the conduct of the attorney involved has demonstrated his unfitness to practice law, and if so to deprive him of his previously acquired privilege to serve as an officer of the court.' " Id., quoting In re Pennica (1962), 36 N.J. 401, 418-419, 177 A.2d 721. "We are ever mindful that the primary **purpose of the disciplinary process is not to punish the offender but to protect the public** from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship." *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E.2d 368. (Bold emphasis added.)

It is respectfully submitted the a twelve month all stayed suspension, the sanction that was jointly recommended by both Relator's counsel and Respondent's counsel after extensive research and contemplation, and the sanction recommended by the Panel who heard firsthand the testimony and reviewed all of the evidence in this case, should be the sanction adopted by this honorable Court as it more than adequately protects the public and includes mentoring and monitoring to confirm Ms. Bartels' compliance with the terms of the stay. It is respectfully submitted that any increased sanction from the Panel's recommendation disproportionately punishes Ms. Bartels for conduct that is readily distinguishable from both *Mismas* and *Detweiler* *infra* as there was neither a vulnerable client nor a vulnerable prospective employee involved in the present case.

Respectfully submitted,

By _____

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Attorney for Respondent,
N. Shannon Bartels

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon:

Scott J. Drexel
Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215-7411

And

Richard A. Dove, Director
Board of Professional Conduct
Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, Ohio 43215-3431

electronically and by depositing same in the U.S. Mail, postage pre-paid, this 12th day of November, 2015.

By _____
Charles J. Kettlewell

Attorney for Respondent,
N. Shannon Bartels

Supreme Court of Ohio Clerk of Court - Filed October 05, 2015 - Case No. 2015-1638

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

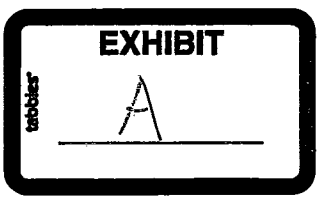
Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio

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

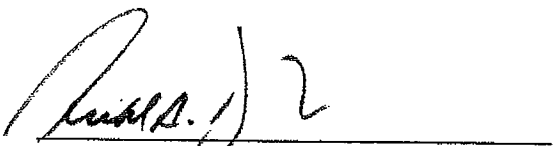
panel as set forth in ¶¶16-17 above, the panel is troubled by Respondent's continued lack of awareness or understanding that her conduct in this matter was contrary to the letter and spirit of the rule. Although facts of this case and the precedents cited by the parties support the recommended sanction 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.



RICHARD A. DOVE, Director

FILED

NOV 25 2014

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

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

In re:

Complaint against

N. Shannon Bartels, Esq.
Bartels Law Office
319 N. Elizabeth Street, Suite B
Lima, Ohio 45801

Attorney Registration No. (0064012)

Respondent,

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

Relator.

No. _____

WAIVER OF DETERMINATION OF PROBABLE CAUSE

(Rule V(6)(D)(1) of the Supreme Court Rules for the Government of the Bar of Ohio)

Pursuant to the provisions of Rule V(6)(D)(1) of the Supreme Court Rules for the Government of the Bar of Ohio, respondent N. Shannon Bartels, by and through her attorney, Charles J. Kettlewell, stipulates that there is probable cause for the filing of a Complaint in the above-referenced proceeding and hereby waives the determination of probable cause by a Probable Cause Panel of the Board of Commissioners on Grievances and Discipline.

Dated: November 24th, 2014

By: _____
Charles J. Kettlewell (Reg. No.0072448)
Attorney for Respondent
N. Shannon Bartels

EXHIBIT
B

COPY

FILED

JAN 02 2015

BOARD OF PROFESSIONAL CONDUCT

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

In re:

Complaint against

N. Shannon Bartels, Esq.
Bartels Law Office
212 N. Elizabeth Street, First Floor
Lima, OH 45801

Lima, Ohio 45801

Respondent,

Case No. 14-097

FAXED/EMAILED FILED ON 12/29/14

ANSWER

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

Relator.

ANSWER

No comes respondent, N. Shannon Bartels, Esq., and for her response to the Complaint of the relator, Disciplinary Counsel, states the following:

1. Admits the allegations in paragraph 1.

2. Admits the allegations in paragraph 2.

3. Admits the allegations in paragraph 3.

4. Admits the allegations in paragraph 4.

5. Admits that in March 2013 Mr. Baily initiated the exchange of "sext messages" by sending Respondent an explicit message and further admits Respondent and Bailey exchanged hundreds of text messages. Denies for lack of knowledge that Respondent and Bailey exchanged hundreds of "sext messages."

6. Denies the allegations in paragraph 6.

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7. Admits the allegations in paragraph 7.

8. Admits the allegations in paragraph 8.

9. Admits the allegations in paragraph 9.

10. Admits the allegations in paragraph 10.

11. Admits the allegations in paragraph 11.

12. Admits the allegations in paragraph 12.

13. Admits the allegations in paragraph 13.

14. Admits the allegations in paragraph 14.

15. Denies for lack of knowledge the allegations in paragraph 15.

16. Denies for lack of knowledge the allegations in paragraph 16.

17. Admits the allegations in paragraph 17.

18. Admits Respondent exchanged "sext messages" with Bailey as stated herein in violation of Prof. Cond. Rule 1.8(j) and denies the remaining allegations in paragraph 18.

Respectfully submitted,

By_____

CHARLES J. KETTLEWELL (0072448)
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Charles@legalethics.pro

Attorney for Respondent,
N. Shannon Bartels

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon:

Scott J. Drexel
Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215-7411

electronically and by depositing same in the U.S. Mail, postage pre-paid, this 30th day of December, 2014.

By _____
Charles J. Kettlewell

Attorney for Respondent,
N. Shannon Bartels

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

FILED
MAY 14 2015
BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint Against

N. Shannon Bartels, Esq.
Bartels Law Office
212 N. Elizabeth Street, First Floor
Lima, Ohio 45801

Atty. Reg. No. 0064012

RESPONDENT

Case No. 2014-097

AGREED STIPULATIONS

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

RELATOR

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, N. Shannon Bartels, by and through her counsel of record, Charles J. Kettlewell, do hereby stipulate to the admission of the following facts, conclusions of law, aggravating and mitigating circumstances and exhibits.

As reflected below, relator and respondent also make a joint recommendation as to the appropriate sanction to be imposed in this proceeding.

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STIPULATED FACTS

1. Respondent, N. Shannon Bartels, was admitted to the practice of law in the State of Ohio on November 14, 1994. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

2. On March 25, 2010, respondent received a public reprimand for violating Prof. Cond. R. 1.8(j) by engaging in a sexual relationship with a client. *Allen Cty. Bar Assn. v. Bartels*, 124 Ohio St.3d 527, 2010-Ohio-1046.

3. On November 2, 2012, respondent was retained by Troy E. Bailey to represent him in a pending divorce proceeding. Respondent and Bailey had been referred to one another by a mutual personal friend. Respondent and Bailey signed a fee agreement on that date, with Bailey agreeing to pay respondent for her legal services at the rate of $180 per hour. Over the course of respondent's representation of Bailey in the divorce proceeding, Bailey paid attorney fees to respondent totaling $2,994.

4. Respondent's representation of Bailey in his divorce proceeding continued from November 8, 2012 until at least July 3, 2013, when the court's entry granting Bailey's divorce was filed in the Hardin County Court of Common Pleas.

5. Commencing in late February or early March 2013, respondent and Bailey began exchanging multiple text messages with one another that contained sexual messages. These "sext" messages continued for a period of approximately one month. The sext messages were mutual and reciprocal in their sexual content, expressing among other things, a mutual desire to engage in sexual intercourse.

6. Respondent and Bailey did not actually engage in sexual intercourse with one another.

7. On or about April 26, 2013, respondent received and replied to numerous text messages that were sent to her from Bailey's cell phone. In the text messages, respondent acknowledged that she had been interested in dating Bailey and "hanging out" with one another and that it might have led to a sexual relationship, but that it eventually became clear to respondent that Bailey was primarily just interested in having sex and that she wasn't sure that was what she wanted.
8. At the conclusion of the text message exchanges on April 26, 2013, one of the text messages received by respondent contained what appeared to be a veiled threat that, if the results of Bailey's divorce proceeding weren't satisfactory to him, the disciplinary authorities might be interested in receiving the text messages and photographs between them in light of the fact that respondent had been previously disciplined for similar conduct.
9. On May 15, 2013, respondent and Bailey had a telephone conversation about the divorce proceeding. At one point during their conversation, Bailey told respondent that someone wanted to speak with her. He then he put a female on the telephone. The female refused to identify herself but told respondent that she had better get Bailey everything he wanted from his divorce proceeding. She also told respondent that she should bring $3,000 to the scheduled divorce hearing on May 21, 2013. Respondent told the female on the telephone that she was committing extortion and that it is a crime. Respondent ultimately hung up the telephone on the female caller.
10. Respondent attended the May 21, 2013 hearing in Bailey's divorce proceeding. The female with whom respondent spoke by telephone on May 15, 2013 was not present at the hearing. Neither Bailey nor respondent made any reference to the telephone call and Bailey neither requested any monetary payment from respondent nor made any reference to respondent's prior discipline or to their exchange of sext messages.

11. Between May 21, 2013 and the finalization of Bailey's divorce on July 3, 2013, no references were made by respondent or Bailey about their sext message exchanges, the purported extortion attempt, or respondent's prior discipline.

12. On September 10, 2013, respondent received a text message from Bailey's cell phone number. The text message stated that, if Bailey did not receive a refund of at least $2,500 from respondent by September 30, 2013, the Ohio State Bar Association and the Better Business Bureau would be contacted.

13. On September 10, 2013, respondent reported the extortionate conduct to the Allen County Sheriff's Office and gave a statement to the Sheriff's Office at that time.

14. In its investigation of the extortion attempt, the Sheriff's Office interviewed a number of individuals, including respondent, Bailey, and a woman named Ann Perkins. The Sheriff's Office investigation determined that, at the time of the events set forth in this Complaint, Perkins was Bailey's girlfriend. Perkins discovered that Bailey and respondent had been exchanging sext messages and became very angry. The extortionate text messages that were sent on Bailey's cell phone were actually sent by Perkins, not by Bailey.

15. Bailey denied that he personally sent any of the threatening or extortionate text messages to respondent. However, Bailey acknowledged that he was aware of what Perkins was doing.

16. On January 29, 2014, a Bill of Information was filed in Allen County Court of Common Pleas Case No. CR 2014 0037, charging Perkins with obstructing justice in violation of ORC section 2921.32(A)(5), a fifth degree felony. On January 30, 2014, a Bill of Information charging Bailey with the same offense was filed in Case No. CR 2014 0038. Perkins and Bailey pled guilty to the charged offenses on the date that the respective Bills of Information were filed.

STIPULATED VIOLATION

17. By exchanging "sext" messages with Bailey during the course of her representation of him in a pending divorce proceeding, respondent violated Prof. Cond. R. 1.8(j).

STIPULATED AGGRAVATING FACTOR

18. Respondent has a record of prior discipline (Gov. Bar R. V(13)(B)(1)): Effective March 25, 2010, respondent received a public reprimand for misconduct that was substantially similar to the misconduct involved in the current proceeding, i.e., a violation of Prof. Cond. R. 1.8(j).

STIPULATED MITIGATING FACTORS

19. Full and free disclosure to the Board or cooperative attitude toward proceeding (Gov. Bar R. V(13)(C)(4)): Respondent has participated in this proceeding, both at the investigative stage and before the Board. Moreover, respondent has acknowledged that she exchanged sext messages with Bailey and that, by doing so, she violated Prof. Cond. R. 1.8(j).

20. Character or reputation (Gov. Bar R. V(13)(C)(5)): Respondent submitted character letters from ten individuals, including a Magistrate, four attorneys, a juvenile court probation officer and four community members. These individuals attest to respondent's competence as attorney and reflect that she has an excellent reputation for honesty and integrity in both the legal and the general communities. Moreover, several of the character letters reference respondent's extensive volunteer activities for various organizations, including Living Options for Developmentally Disabled Individuals ("LODDI"), a non-profit corporation that purchases houses to rent to persons with developmental disabilities, and the Hope Visitation and Exchange Center, a local facility that provided a controlled environment and supervision for parenting and companionship times of children with troubled parents. Several of the character letters also

reflect respondent's service as a guardian for elderly and special needs persons. Finally, all but one of the character letters reflect at least a general awareness on the part of the author of the nature of the issues involved in this proceeding.

STIPULATED EXHIBITS

Exhibit 1	Respondent's Attorney Registration
Exhibit 2	Supreme Court opinion in *Allen Cty. Bar Assn. v. Bartels*, 124 Ohio St.3d 527, 2010-Ohio-1046
Exhibit 3	Bartels Law Office Retainer Agreement with Troy Bailey signed November 8, 2012
Exhibit 4	Court Docket re *Sandra K. Bailey v. Troy E. Bailey*, Hardin County Court of Common Pleas Case No. DRB 2012-3015
Exhibit 5	Handwritten report of respondent to the Allen County Sheriff's Office dated September 10, 2013
Exhibit 6	Allen County Sheriff's Office Supplemental Offense Report dated November 26, 2013
Exhibit 7	Bill of Information, Plea and Judgment Entry of Conviction in *State of Ohio v. Ann M. Perkins*, Allen County Court of Common Pleas Case No. CR 2014 0037
Exhibit 8	Bill of Information, Plea and Judgment Entry of Conviction in *State of Ohio v. Troy E. Bailey*, Allen County Court of Common Pleas Case No. CR 2014 0038
Exhibit 9	Character letters submitted on behalf of respondent:

(a) Dennis D. Rockhold, President of Rockhold Wentling Financial Advisors;
(b) Cynthia K. Ring, Financial Consultant
(c) Ted E. Cornwell, Esq. of Cornwell & Mackey, LLC
(d) Mark E.G. Davis, Esq., of Davis Law LLC
(e) C. Bradford Kelly, Esq., of Huffman, Kelley, Brock & Gottschalk, LLC
(f) Linda Parish, former Executive Director, Hope Visitation & Exchange Center
(g) Magistrate Dennis S. Kerber
(h) Berlin R. Carroll II, Juvenile Court Probation Officer
(i) Andrew King, Esq., of Andrew King & Associates
(j) Kimberly A. Wilkerson

JOINT RECOMMENDATION REGARDING APPROPRIATE SANCTION

The parties agree and hereby jointly recommend that, in light of respondent's admitted misconduct and the presence of significant mitigating circumstances, the appropriate sanction to be imposed upon her in this proceeding is a one-year stayed suspension.

In making this joint recommendation, the parties have been guided by the Supreme Court's opinion in *Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 2013-Ohio-1747.

In *Detweiler*, the respondent attorney had previously received a public reprimanded for engaging in an improper sexual relationship with his client. *Detweiler*, 135 Ohio St.3d 447, at ¶ 2.

In the subsequent disciplinary proceeding, a former client paid Detweiler a $3,500 retainer to handle her divorce. After filing the divorce complaint, Detweiler began sending text messages of a personal nature to the client. The initial text messages were innocuous but later included social invitations and thereafter progressed to comments of a sexual nature. Detweiler texted the client about her clothing and how it made him feel sexually. He also texted the client that he wanted to have sex with her. A few months later, Detweiler sent the client a nude photograph of his lower body in a state of sexual arousal. Although the client did not initially make her discomfort with Detweiler's text messages known to him, after he asked her to have oral sex with him, the client sent a text message rejecting his solicitation. *Id.*, at ¶ 7.

At the time Detweiler sent the nude photograph of himself to the client, she had already paid him approximately $10,000 in fees and expenses and could not afford to retain new counsel. Therefore, she continued with his representation but tried to avoid his sexual advances until, more than one year after retaining Detweiler, the client voluntarily dismissed her divorce complaint and temporarily reconciled with her husband. *Id.*, at ¶ 8.

Detweiler never had sex with his client and at no time did they even meet on a social basis. *Id.*, at ¶ 8.

In determining the appropriate sanction to be imposed upon respondent Detweiler, the Supreme Court noted that the parties had stipulated in aggravation that Detweiler's client was vulnerable, that Detweiler had acted with a selfish motive and that he had engaged in a pattern of misconduct. *Id.*, at ¶ 12. Moreover, the Supreme Court noted, in part, as follows (*Id.*, at ¶ 20):

> "Not only did Detweiler make repeated unsolicited and unwelcome sexual advances toward a vulnerable client, but when she ignored those advances, he upped the ante by sending her a nude photograph of himself in a state of sexual arousal. Based on this disturbing escalation of the improper and offense conduct Detweiler directed toward his client, we are not convinced that a stayed suspension will adequately protect the public from future harm."

Therefore, the Supreme Court suspended Detweiler from the practice of law for one year and conditioned his reinstatement on the submission of proof that he has submitted to an OLAP evaluation and complied with any treatment recommendations. *Id.*, at ¶ 21.

The parties respectfully submit that, in the current proceeding, the evidence demonstrates that the sext messages between respondent and Mr. Bailey were mutual and that the conduct was entirely consensual. The only aggravating factor is respondent's prior discipline for a previous violation of Prof. Cond. R. 1.8(j). While it is of concern to relator that respondent has again engaged in conduct for which she was previously disciplined, it appears that, in both cases, the conduct – although inappropriate – was entirely consensual. In mitigation, respondent has been cooperative throughout the investigation and pending proceedings and, additionally, has submitted letters of judges and attorneys attesting to her character and good reputation.

Under the circumstances, the parties agree that a stayed one-year suspension is the appropriate disposition of this proceeding.

CONCLUSION

The above are stipulated to and entered into by agreement of the undersigned parties on this 14th day of May, 2015.

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Respondent

2907.01 Sex offenses general definitions.

As used in sections 2907.01 to 2907.38 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial purposes rather than primarily for a genuine scientific, educational, sociological, moral, or artistic

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(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

Effective Date: 01-01-2004; 08-03-2006; 08-17-2006; 2007 SB10 01-01-2008