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

INTRODUCTION

On November 25, 2014, the board certified a one-count complaint against respondent, N. Shannon Bartels, alleging a violation of the Ohio Rules of Professional Conduct stemming from her engaging in "sexting" with a client. After a hearing on fully stipulated facts, the panel found that respondent violated 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 between them with the lawyer-client relationship commenced). The panel adopted the parties stipulated recommended sanction of a one-year stayed suspension.

On October 5, 2015, the Board of Professional Conduct (board) recommended a one-year suspension with six-months stayed, prompting this Court to issue an Order to Show Cause on October 13, 2015.¹ Relator joins in respondent's request to stay the one-year suspension in its entirety.

STATEMENT OF FACTS

On May 28, 2015, this case was presented to the panel via agreed stipulations, attached as Appendix B, which are summarized as follows:

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 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

¹ The board's report is attached as Appendix A. *See* S. Ct. Prac. R. 16.02(B)(5)(b).

course of respondent's representation of Bailey in the divorce proceeding, Bailey paid attorney fees to respondent totaling \$2,994. 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.

Beginning in late February or early March 2013, respondent and Bailey began exchanging multiple text messages with one another that contained sexual messages and photographs. 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.

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. 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 messages, 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 threatened 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 the Complaint in this proceeding, 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.

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

Relator joins the arguments put forth by respondent in support of a one-year stayed suspension. Relator, respondent, and the hearing panel agreed that a one-year stayed suspension was appropriate for respondent's conduct. The board, however, disagreed, and recommended imposition of a one-year suspension with six-months stayed. Report at p. 6. In reaching its recommendation, the board relied on this Court's decision in *Lake Cty. Bar Assn. v. Mismas*, 139 Ohio St.3d 346, 2014-Ohio-2483. Mismas received a one-year suspension, with six-months stayed, for sending sexually explicit text messages to a law student he sought to employ. Mismas was found to have violated Prof. Cond. R. 8.4(h) (prohibiting a lawyer from engaging in other conduct that adversely reflects on the lawyer's fitness to practice law). Originally, the panel and the board recommended a public reprimand, but this Court imposed an actual suspension because Mismas abused the power and prestige of his position in order to demand sexual favors from the law student as a condition of her employment.

When trying to determine the appropriate sanction, relator and respondent looked towards the guidance provided in *Mismas* and *Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 2013-Ohio-1747. Detweiler received a one-year suspension for sending unwanted sexually explicit text messages to a client. Detweiler was found to have violated Prof. Cond. R. 1.7(a)(2) (prohibiting representation if a lawyer's personal interests will materially limit his ability to carry out appropriate action for the client); 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 between them with the lawyer-client relationship commenced); and Prof. Cond. R. 8.4(h) (prohibiting a lawyer from engaging in other conduct that adversely reflects on the lawyer's fitness to practice law). Like the respondent in this case, Detweiler also had a previous disciplinary case involving his inappropriate sexual relationship with a client in violation of Prof. Cond. R. 1.8(j).

Relator believes that a one-year stayed suspension is appropriate for the respondent in this case because, although she does have a prior disciplinary case for engaging in a sexual relationship with a client, her conduct was of a mutual and consensual nature. Further, no sexual conduct ever materialized between respondent and Bailey. Respondent did not abuse her power as an attorney, nor did the sexting impair her ability to effectively advocate on behalf of her client. Further, the panel was in the best position to assess the credibility of respondent, and the panel agreed that a one-year stayed suspension was appropriate. Finally, when assessing the egregious nature of the conduct of *Mismas* and *Detweiler*, respondent's conduct in this case does not rise to the same level of misconduct. For these reasons, relator joins respondent in her request for this Court to stay the one-year suspension in its entirety.

Respectfully submitted,



Scott J. Drexel 0091467
Disciplinary Counsel
Counsel of Record
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256
614.461.7205 – (fax)
Scott.Drexel@sc.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing answer brief was served via U.S. Mail, postage prepaid, upon respondent's counsel, Charles John Kettlewell, Esq., 445 Hutchinson Avenue, Suite 100, Columbus, Ohio 43235, and upon Richard A. Dove, Director, Board of Professional Conduct, 65 S. Front Street, 5th Floor, Columbus, Ohio 43215 this 25th day of November, 2015.



Scott J. Drexel
Counsel for Relator

**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.

{¶18} 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.

{¶19} 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

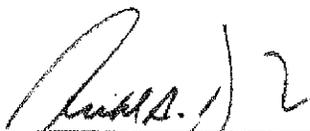
panel as set forth in ¶¶16-17 above, the panel is troubled by Respondent's continued lack of awareness or understanding that her conduct in this matter was contrary to the letter and spirit of the rule. Although facts of this case and the precedents cited by the parties support the recommended sanction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

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

FILED

MAY 14 2016

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint Against

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

Case No. 2014-097

Atty. Reg. No. 0064012

RESPONDENT

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.

Appendix B

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 reprimand 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.”

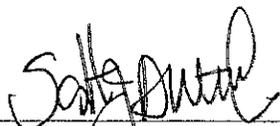
Therefore, the Supreme Court suspended Detweiler from the practice of law for one year and conditioned his reinstatement on the submission of proof that he has submitted to an OLAP evaluation and complied with any treatment recommendations. *Id.*, at ¶ 21.

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.

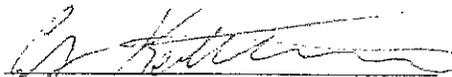
Under the circumstances, the parties agree that a stayed one-year suspension is the appropriate disposition of this proceeding.

CONCLUSION

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



Scott J. Drexel (0091467)
Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256
scott.drexel@sc.ohio.gov
Relator



Charles J. Kettlewell (0072448)
Charles J. Kettlewell LLC
445 Hutchinson Avenue, Suite 100
Columbus, Ohio 43235
(614) 436-2750
Charles@legalethics.pro
Counsel for Respondent



N. Shannon Bartels, Esq. (0064012)
Bartels Law Office
212 N. Elizabeth Street, First Floor
Lima, Ohio 45801
(419) 224-1353
bartelslaw@gmail.com
Respondent