

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

ANDREW EDWARD RUSS,
Respondent.

Supreme Court Case
No. SC23-1289

The Florida Bar File
No. 2024-00,024 (2A)

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REPORT OF REFEREE

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On September 12, 2023, The Florida Bar filed its Complaint against Respondent in these proceedings. Respondent did not submit an answer to the complaint after having been served with a copy of the complaint. On January 12, 2024, a default was entered against Respondent.

On February 9, 2024, a final hearing was held in this matter. Respondent did appear for the final hearing. The Bar submitted four exhibits for consideration which were accepted by the court; specifically Exhibit 1 (Amended Complaint and Certificate filed in Ohio), Exhibit 2

(Overview of the facts by the Board of Professional Conduct of the Supreme Court of Ohio), Exhibit 3 (Slip Opinion No.2023-Ohio-1337), and Exhibit 4 (Order of the Supreme Court of Ohio). Respondent filed his health chart for consideration by the court.

The Referee has used independent discretion and recollection of the evidence and testimony that were presented during the entirety of this case. The legal authority relied upon by the Referee in making the recommendations below is included within this report. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida. In addition to membership in The Florida Bar, respondent is currently a member of the State Bar of Ohio.

Narrative Summary of Case. The following allegations and rules from the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct dated December 09, 2022, and the Ohio

Supreme Court Order dated April 27, 2023, provide the basis for the discipline to be imposed in this matter:

COUNT ONE - SEXUALLY SOLICITOUS TEXTS

A. Respondent was appointed as counsel in the Muskingum County Court of Common Pleas, Juvenile Division to represent C.L. on allegations that her newborn daughter, K.P., was an abused, neglected, or dependent child.

B. C.L. was a vulnerable client because (a) she was a young mother facing the possibility of losing custody of her child due to the child testing positive for the presence of fentanyl at birth; (b) because she had a mental health disorder; and (c) because she did not have the support of her parents.

C. Respondent did not have a consensual sexual relationship with C.L. prior to the formation of the attorney-client relationship.

D. After his appointment, respondent began communicating with C.L. through text message, and at times in-person, expressly soliciting a sexual relationship with C.L. Those solicitations included:

"I'm interested in a relationship with you."

"I want you."

"I think we have that daddy/daughter dynamic going on."

"As afar (sic) as time with you I can send (sic) considerable time not a problem with as dating/spending time and I'm sexually attracted to you."

"BTW you have a nice body can't wait to get my hands all over it."

"I want you to be my woman and I want your p***y little girl." "Show me a little of what's mine."

"Let me be your BF."

"I have a confession: I have always wanted a young GF about the age of my daughter where we have the daddy/daughter dynamic in and out of the bedroom."

"I kinda like the idea of treating you lovingly like a girlfriend/daughter and that is a big turn on for me sexually."

E. Although respondent did not have a physical sexual relationship with C.L., he acknowledged that the above solicitations and similar communications with C.L. were sent to solicit a sexual relationship with C.L.

F. During the course of the representation and the communications described above, C.L. became uncomfortable with respondent's advances. She mentioned what was occurring to the biological father of the child, who was involved in the juvenile court proceeding. C.L. stated to the biological father, "My attorney is a creep. And I'm stuck with him ... WTF."

G. During a visit by the assigned guardian ad litem (GAL) to C.L. 's home, C.L. also told the GAL about the inappropriate sexual solicitations she received by text message. The GAL filed a grievance as a result of this information.

H. Disciplinary Counsel began an investigation into the matter requesting a written response from respondent as to the alleged improper solicitation of sexual activity with C.L.

Before making a response, respondent again contacted C.L. by text message to ascertain what C.L. had said to or provided Disciplinary Counsel in its investigation, including whether she told Disciplinary Counsel the truth about the text communications respondent had with C.L. Believing C.L. would not supply Disciplinary Counsel the text messages or tell Disciplinary Counsel about the interactions he had with C.L., respondent wrote in his response to the Letter of Inquiry:

“I did not send sexually inappropriate text messages as Mr. Wagner alleged in his [the GAL] grievance.”

“I believe that, due to his inexperience, Mr. Wagner was misled by C.L. somehow in an attempt by her to either: gain leverage in her case; gain favor with the GAL so he would make a more favorable recommendation; or because she blamed me somehow for the failure of settlement with the result that the child was not going to be placed with her.”

I. These statements were false, and the purpose of this and other statements was an attempt to shift blame away from respondent and onto C.L. for what took place.

J. During the investigation of the matter, Disciplinary Counsel took the deposition of respondent about the facts underlying the grievance. It was through that deposition respondent discovered that his text messages to C.L. had been supplied to Disciplinary Counsel. Until he learned he had been found out, respondent was not going to admit to Disciplinary Counsel that he sent the previously described text messages.

K. Based upon the parties' stipulations, and the testimony adduced at the hearing, the panel found, by clear and convincing evidence, that respondent engaged in professional misconduct in violation of the following Ohio Rules of Professional Conduct, as charged in Count One of the amended complaint: 1.80 (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; 8.1(a) (a lawyer shall not knowingly make false statement of material fact); and 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law).

COUNT TWO - FAILURE TO APPEAR/TIMELY APPEAR IN COURT PROCEEDINGS.

L. Respondent stipulated to both being tardy for periods of 15 to 60 minutes to six hearings, and failing to appear to four hearings, all of which would have proceeded timely with the presence of the parties including his own clients, other counsel and the court except for his tardiness. Respondent did not offer any valid excuse for this conduct.

M. Respondent stipulated that his conduct resulted in his being removed from the Licking County Court of Common Pleas, probate-juvenile division list of attorneys eligible for appointment as counsel, by order of Judge Lang.

N. Based upon the parties' stipulations, and the testimony adduced at the hearing, the panel found, by clear and convincing evidence, that respondent engaged in professional misconduct in violation of the following Ohio Rules of Professional Conduct, as charged in Count Two of the amended complaint: 8.4(d) (conduct prejudicial to the administration of justice).

III. **RECOMMENDATIONS AS TO GUILT.**

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

By operation of Rule 3-4.6, Rules Regulating The Florida Bar, I find that the Order of the Supreme Court of Ohio issued on April 27, 2024, shall be considered as conclusive proof of such misconduct in this disciplinary proceeding.

Respondent was found to have violated the following Ohio Disciplinary Rules of Professional Conduct: 1.8 (j) (prohibiting a lawyer from soliciting or engaging in sexual activity with a client unless a consensual sexual relationship existed prior to the client-lawyer relationship); 8.1 (a) (prohibiting a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter); 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyers fitness to practice.); and 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice).

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence

(b) Suspension is appropriate when a lawyer causes injury or potential injury to a client and: (1) knowingly fails to perform services for a client; or (2) engages in a pattern of neglect with respect to client matters.

7.1 Violations of other duties owed as a professional

(b) Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Bryant, 813 So.2d 38 (Fla. 2002)-

Violation of several state bar rules, including rule forbidding attorney from engaging in sexual conduct with client which exploits attorney-client relationship, warranted one-year suspension from practice of law.

The Florida Bar v. Mogil, 763 So.2d 303 (Fla. 2003)-

A foreign jurisdiction's adjudication of guilt is conclusive proof of guilt of the attorney misconduct charged; the burden then rests with the attorney to demonstrate why the foreign judgment is not valid or why Florida should not accept it and impose sanctions based thereon.

The Florida Bar v. Roberto, 59 So.3d 1101 (Fla. 2011)- Attorney who had sexual relations with clients while he was representing them created conflict of interest in violation of rule that a lawyer shall not represent a client if there is a substantial risk the representation will be "materially limited" by the lawyer's own personal interests, where sexual relationship impaired attorney's exercise of his professional judgment. Such conduct warranted a one-year suspension from the practice of law.

The Florida Bar v. Sherman, SC2020-1550 (Fla. July 22, 2021)- Respondent engaged in a consensual sexual relationship with a client resulting in the birth of a child and then later impermissibly used and revealed the information he obtained during the representation to disadvantage the client in a paternity action. Respondent also engaged in

deceptive conduct by pretending to be the client to send messages to the opposing party that was represented by counsel. Finally, respondent drafted a motion for the client while the client was acting pro se and failed to put the parties on notice that the motion was prepared with the assistance of counsel. Such conduct warranted a one-year suspension from the practice of law.

The Florida Bar v. Lee Segal, SC2023-1067 (Fla. Aug. 10, 2023) [TFB # 2021-10,292 (06D), et al.] - The pre-complaint conditional guilty plea and consent judgment for discipline was approved and respondent was suspended from the practice of law for one year. In three different matters, respondent engaged in misconduct including conflict of interests with his clients and evasive and misrepresentative statements made to the courts.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

In the Ohio allegations and orders, they described the client as vulnerable, which is an understatement in my view, in a dependency case. What we ask of parents in dependency is that they put aside any distractions and focus on the tasks put to them to try and put their family back together.

One of the most direct, most important resources that we give parents in dependency, is a lawyer; Notice, an opportunity to be heard, an opportunity to be represented by a lawyer. Outside of criminal cases, it is really the only place where we appoint free lawyers; and so, there's a special vulnerability of a parent in a dependency case.

The franchise of a law license is really the entire profession's representation that everyone who exercises that franchise shares and is

bound and committed to the values associated with our shared legal education, our licensure, the oaths that we take, and the professionalism by which we are bound. That membership in the Bar is a representation of all of us. That is really what I am looking at in Bar cases; which is, do I need to be worried about that representation and in a case like this, I do.

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that be disciplined by:

- A. Two-year suspension; and
- B. Payment of The Florida Bar's costs.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 62

Date admitted to the Bar: September 25, 2003

Prior Discipline: None (in Florida).

Aggravating Factors:

- (4) multiple offenses;
- (8) vulnerability of the victim; and
- (9) substantial experience in the practice of law.

Mitigating Factors:

- (1) absence of a prior disciplinary record (in Florida); and
- (8) physical or mental disability of impairment or substance-related disorder.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

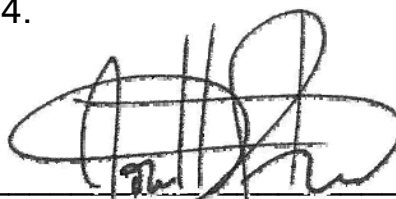
I find the following costs were reasonably incurred by The Florida Bar:

Investigative Costs	\$23.16
Court Reporters' Fees	\$289.60
Administrative Fee	\$1,250.00

TOTAL	\$1,562.76
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It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 6th day of March, 2024.



Jonathan Eric Sjostrom, Referee
Leon County Courthouse
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Conformed Copies to:

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