**5.5: Personal Conflicts of Interest**

*Way out in Reno, Nevada, where romance blooms and fades, a great Philadelphia lawyer was in love with a Hollywood maid. Come, love, and we’ll go ramblin’, down where the lights are so bright. I'll win you a divorce from your husband, and we can get married tonight.*[[1]](#footnote-0)

*Am I the only one who hears the screams and the strangled cries of lawyers in love?*[[2]](#footnote-1)

*Do I look like I’m asking for it?*[[3]](#footnote-2)

*It's harder to be friends than lovers, and you shouldn’t try to mix the two. Cause if you do it and you’re still unhappy, then you know that the problem is you.*[[4]](#footnote-3)

[**Model Rule 1.8: Current Clients: Specific Rules**](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_8_current_clients_specific_rules/)

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

[**Model Rule 1.8, Comments [17]-[19]: Client-Lawyer Sexual Relationships**](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_8_current_clients_specific_rules/)

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer’s basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization’s legal matters.

[***Walter v. Stuart,* 67 P.3d 1042 (Utah 2003)**](https://scholar.google.com/scholar_case?case=7724888234142833495)

**Summary:** Attorney Alan Stewart represented client Beth Walter in a divorce proceeding. Stewart told Walter that he was divorced, and they began a personal relationship, which soon became sexual. Eventually, Walter learned that Stewart was actually married and ended the relationship. Walter filed an action against Stewart, alleging breach of fiduciary duty. The trial court granted Stewart’s motion for summary judgment, but the Supreme Court reversed, finding that issues of fact existed.

This case arises out of an attorney-client relationship, which turned sexually intimate, between one-time client Beth Walter and her former attorney Alan Stewart. Following her discovery that Stewart was married, Walter filed claims against Stewart for breach of fiduciary duty, fraud, intentional infliction of emotional distress, reckless misconduct, breach of contract, and battery. Upon Stewart's motion, the trial court entered summary judgment against Walter on all of her claims. Walter now appeals. We reverse in part, affirm in part, and remand.  
  
BACKGROUND

In June of 1998, Walter retained Stewart as her attorney in a divorce action. Through that representation, Stewart learned that Walter was in a “fragile emotional state and had personal self esteem issues,” including a “doubt in her ability to have a successful relationship.” Walter decided to relocate to Maryland. In the first part of April of 1999, Walter phoned Stewart several times, anxious that her divorce be finalized so she could move.  
  
During his representation of Walter, Stewart became “very flirtatious, often commenting regarding Walter’s personal appearance and grooming.” In April of 1999, Stewart began to call Walter daily and, on April 15, took her on a lunch date. Following the lunch date Stewart asked Walter, “If you move to Maryland, how are we supposed to have a relationship?” Walter then “decided to postpone the move to see where Stewart’s ‘relationship’ with her would head.”  
  
Through the first part of May, Stewart continued to tell Walter “that he was waiting to hear from her husband’s lawyer to finalize the divorce.” On May 12, after personally contacting her ex-husband and the trial court, Walter learned that her divorce had actually been finalized on April 26.

The divorce decree required Walter to pay her ex-husband an amount of money. On May 13, Walter asked Stewart about paying the judgment. Stewart told her “to hold off on payment to see if her ex-husband would pursue collection and further advised her that if her ex-husband tried to collect on the amount due, she could make arrangements to pay before a judgment was levied against her.” Walter took Stewart’s advice and did not make the payment. Also upon finalization of her divorce, Walter desired to resume the use of her maiden name and asked Stewart “why her name change was not reflected in the divorce decree.” He told her that she could take the decree to the Department of Social Security to have her name changed, which she did.  
  
Stewart and Walter continued to see each other on a personal basis, and on June 5, 1999, Stewart kissed Walter, tried to undress her, and said that he wanted to “make love.” Upon Walter’s questioning, Stewart told her that he was a divorced father of four children. The two did not engage in sexual relations that day but did become sexually intimate on July 22, 1999. “On that night as they discussed sleeping together, Walter told Stewart that she would only do so if they were going to have an exclusive-monogamous relationship, a condition with which Stewart readily concurred and agreed to.”  
  
During their personal relationship, Stewart took Walter on numerous dates in public as well as on business trips. He never wore a wedding ring. He displayed on his desk an engraved clock that Walter gave him, and wore clothing she gave him. The two also spoke of getting married.  
  
In August of 1999, Walter received an order to show cause for her failure to pay her ex-husband what she owed him under the divorce decree. Walter contacted Stewart, and he said that he would take care of the matter and declined her offer to pay for his services. He then made payment arrangements with the attorney for Walter’s ex-husband, and the show-cause hearing was canceled. “For his services rendered and as a token of appreciation, Walter bought Stewart a $100 fountain pen."  
  
In October of 1999, Walter considered breaking off her relationship with Stewart. However, when she expressed those feelings to him, he “told her that he loved her, that he wouldn’t accept her breaking up with him and that he would ‘stalk her and wait for her in the parking garage at work.’” They continued to see each other, exchanged Christmas gifts, and spent much of New Years Day 2000 together. Although their dates became less frequent in 2000, Stewart continued to express a commitment to their relationship.  
  
In September of 2000, while pursuing an unrelated international adoption, Walter was told by the Immigration and Naturalization Service that she had illegally resumed use of her maiden name since a name change was not included in her divorce decree. Walter contacted Stewart, who told her that she would need to petition the court to amend the divorce decree. Because Walter’s ex-husband would not cooperate in the action, she “retained Stewart’s services once more to petition the court for a name change and paid him the sum of $350.00.”  
  
The hearing on Walter’s name change was held on November 2, 2000. “Following the hearing, Stewart escorted Walter to her car. When they got to the car he grabbed her around the waist and asked her to have sex with him.” “Because of the on again-off again nature of Stewart’s relationship with her during the latter half of 2000, Walter became curious regarding his marital status.” In a phone conversation on November 12, Stewart told Walter that he and his wife were back together and that he had not been divorced, but only separated. After their phone conversation, Stewart went to Walter’s home and told her that “he reconciled with his wife to be with his children, that he was under discipline by his church for a previous affair, and that he had been living with his mother.” Stewart nevertheless expressed a desire to keep in contact.  
  
Over the next four days, Stewart called Walter “approximately four times a day,” and, on November 16, took her out to lunch. On the evening of November 16, Walter called Stewart’s wife and learned that Stewart had been married for twenty years, had never separated from his wife, had not been disciplined by his church for a previous affair, and that he had not lived with his mother at any time during his affair with Walter. Shortly after Walter’s conversation with Stewart’s wife, Stewart called Walter and told her that she had ruined his life and then hung up. The two have not spoken since.  
  
Walter filed a complaint against Stewart. Her complaint includes claims for breach of fiduciary duty, fraud, intentional infliction of emotional distress, reckless misconduct, breach of contract, and battery. Stewart moved for summary judgment on all of Walter’s claims. The trial court granted Stewart’s motion in its entirety, stating simply that Walter’s battery claims were barred by the statute of limitations and that Walter “failed to support by Affidavit facts sufficient to support” her other claims. She now appeals.

ANALYSIS

I. Breach of Fiduciary Duty

"Actions for breach of fiduciary duty are grounded on the fundamental principle that attorneys must be completely loyal to their clients and must never use their position of trust to take advantage of client confidences for themselves or for other parties. In all relationships with clients, attorneys are required to exercise impeccable honesty, fair dealing, and fidelity.” Indeed, due to their “professional responsibility and the confidence and trust” that their clients “legitimately repose” in them, attorneys “must adhere to a high standard of honesty, integrity, and good faith in dealing with” their clients. Attorneys are “not permitted to take advantage of their position or superior knowledge to impose upon clients; nor to conceal facts or law, nor in any way deceive clients without being held responsible therefor.”

“The essential elements of legal malpractice based on breach of fiduciary duty include the following: (1) an attorney-client relationship; (2) breach of the attorney's fiduciary duty to the client; (3) causation, both actual and proximate; and (4) damages suffered by the client.”

It is undisputed that an attorney-client relationship existed between Stewart and Walter through at least April of 1999. In May, Walter sought advice from Stewart regarding a sum of money she owed her ex-husband under the divorce decree. Stewart “advised Walter to hold off on payment to see if her ex-husband would pursue collection and further advised Walter that if her ex-husband tried to collect on the amount due, she could make arrangements to pay before a judgment was levied against her.” This evidence, when viewed in the light most favorable to Walter, indicates that both Stewart and Walter anticipated further representation of her in the divorce action. It is undisputed that Stewart later represented Walter on an order to show cause, which came about because of the advice he gave her regarding payment of the judgment. He represented her again in a name change hearing. Therefore, viewing the facts in a light most favorable to Walter, an attorney-client relationship existed between the parties at all relevant times.  
  
As to a breach of the duty owed Walter, the facts viewed in a light most favorable to her indicate that Stewart took advantage of information he gained during his representation of her to initiate first a dating relationship and then a sexually intimate relationship with Walter. He also misrepresented his marital status and the state of her legal affairs for his own interests. Stewart’s conduct can be reasonably construed as taking advantage of a client’s fiduciary trust through deception. Walter has thus stated facts sufficient to place the element of breach of duty into dispute.  
  
Walter states damages that she claims were caused, actually and proximately, by Stewart's conduct. The reason for the dissolution of the parties’ relationship, as well as the timing of that dissolution relative to the damages Walter alleges, raise a reasonable inference supporting both actual and proximate causation. “Causation is an issue of fact, and we refuse to take it from the jury if there is any evidence upon which a reasonable jury could infer causation.” We cannot, therefore, rule against Walter as a matter of law on this element.  
  
Stewart contends that “emotional injury, unaccompanied by a tangible manifestation of that injury,” is not recoverable in a claim for breach of fiduciary duty. Walter, however, has alleged the following damages arising from Stewart’s breach of duty: emotional pain, a need for mental health counseling, physical pain, medical bills, loss of employment, and a need for sexual therapy.  
  
Because none of the elements of breach of fiduciary duty can be resolved against Walter as a matter of law, we reverse the grant of summary judgment on this claim.

**Questions:**

[***City Bar Ass’n v. Williamson*, 117 Ohio St. 3d 399 (Ohio 2008)**](https://scholar.google.com/scholar_case?case=17539762954934365527)

**Summary:** Attorney Karl Williamson represented a female client in a domestic-violence action pending in Fairfield Municipal Court. He began to represent her, and eventually she and her two children moved in with him. When she and her husband reconciled after five months, she and her two children moved out. Resultantly, Williamson withdrew from representation. The Supreme Court held that Williamson’s relationship with his client violated the professional rule and warranted indefinite suspension.

Respondent, Karl E. Williamson has been admitted to the practice of law in Ohio since 1990. The Board of Commissioners on Grievances and Discipline now recommends that we indefinitely suspend respondent’s license to practice based on findings that he became intimately involved with a client after agreeing to represent her. On review, we agree that respondent committed professional misconduct as found by the board and that an indefinite suspension is appropriate.

Relator, Butler County Bar Association, charged respondent with two counts of misconduct, the first relating to respondent’s affair with his client and the second for his failure to appear in response to relator’s investigative subpoenas. Attempts to serve the complaint by certified mail were unsuccessful and the mail was unclaimed, and relator served the Clerk of the Supreme Court. A master commissioner appointed by the board heard the case, made findings of fact and conclusions of law, and recommended an indefinite suspension. The board adopted the master commissioner's findings of misconduct and recommended sanction.

Misconduct

Count One

In May 2004, respondent agreed to represent a female client in proceedings to terminate her marriage before the Butler County Common Pleas Court. He also agreed to help her through a domestic-violence action pending in Fairfield Municipal Court. The client paid respondent $500 toward a requested $1,000 fee.

Respondent began dating his client shortly after she hired him. Their relationship became intimate in the end of May 2004, after the client paid the $500 and respondent had appeared at a preliminary hearing in the domestic-violence case against her husband. By mid-June 2004, respondent had allowed the client and her two children to move in with him. The client and her children continued to reside with respondent until October 2004, when the client and her husband reconciled.

In a letter to his client dated May 27, 2004, respondent claimed to be withdrawing as her lawyer in the divorce or dissolution proceedings. Afterward, he began denying their attorney-client relationship in correspondence to the lawyer representing her husband, although he continued to assist her in secret. As part of his plan to hide their affair, respondent also directed his client not to refer to him in public as her lawyer and promised to have another attorney, one of his colleagues, “sign off” on any required papers. The colleague later testified in a deposition that respondent never consulted him about the client.

By engaging in an affair with his client and continuing to represent her, respondent risked his client’s legal and personal interests for his own advantage. As we said in Disciplinary Counsel v. Sturgeon, “a lawyer who attempts to engage in a sexual relationship with a client puts the lawyer’s own personal feelings ahead of the objectivity that must be the hallmark of any successful attorney-client relationship.” Respondent thereby violated DR 1-102(A)(5) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), 1-102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law), and 2-110(B)(2) (requiring a lawyer to withdraw from representation when the lawyer knows or it is obvious that his or her continued employment will violate a Disciplinary Rule). Moreover, by lying to conceal the relationship, respondent violated DR 1-102(A)(4) (prohibiting a lawyer from engaging in conduct involving fraud, deceit, dishonesty, or misrepresentation).

Count Two

The client and her husband filed grievances against respondent. In investigating their claims, relator subpoenaed respondent to appear twice, once in November 2005 and again in February 2006. Respondent did not comply with either subpoena. He thereby violated Gov.Bar R. V(4)(G) (requiring a lawyer to cooperate in an investigation of misconduct).

Sanction

“We have consistently disapproved of lawyers engaging in sexual conduct with clients where the sexual relationship arises from and occurs during the attorney-client relationship. A lawyer’s sexual involvement with a client has warranted a range of disciplinary measures depending on the relative impropriety of the situation, including actual suspension from the practice of law.” Moreover, a lawyer's failure to cooperate in a disciplinary investigation, in and of itself, may warrant an actual suspension from practice.

To determine the appropriate sanction, however, we must also weigh the aggravating and mitigating factors of respondent’s case.

We accept the board's findings regarding aggravating factors. Respondent attempted to mislead relator by reporting during the investigation that his client was actually represented by independent counsel. He also changed the date of the letter purporting to terminate his professional relationship with his client so that it appeared to coincide with a date after his last appearance in court on her behalf. Moreover, respondent’s license to practice has been under suspension since December 5, 2005, for his failure to properly register as an attorney. No mitigating evidence dissuades us from imposing the recommended indefinite suspension.

Respondent is therefore indefinitely suspended from the practice of law in Ohio.

**Questions:**

[***Cleveland Metro. Bar Assn. v. Paris*, 148 Ohio St. 3d 55 (Ohio 2016)**](https://scholar.google.com/scholar_case?case=14664582595777911863)

**Summary:** The Bar association alleged that attorney Tasso Paris made unwelcome sexual advance toward a female client and failed to appear at her criminal-sentencing hearing for DUI. At several client meetings he referred to her as his beautiful red haired Irish girl--which he thought relevant given her DUI coincided with St. Patrick’s day. The client’s fiancee was apparently present for all but one of these meetings. He also asked his client to go out with him several times and invited her to his house to join him in his hot tub on more than one occasion. She discussed this with her fiancee, ultimately agreeing she would go out with Paris just to ensure he represented her effectively. But she could not bring herself to do so. After this, Paris failed to appear at her sentencing hearing. His client then reported him. The Court compared his conduct to other similar cases and resultantly would be suspended from the practice of law for six months if he failed to pay restitution to the client’s fiancee.

Respondent, Tasso Paris of Cleveland, Ohio was admitted to the practice of law in Ohio in 1987.

In a January 2015 complaint, relator, Cleveland Metropolitan Bar Association, alleged that Paris violated multiple Rules of Professional Conduct by making unwelcome sexual advances toward a female client and failing to appear at her criminal-sentencing hearing.

The parties entered into stipulations of fact, misconduct, and aggravating and mitigating factors and jointly recommended that Paris be suspended from the practice of law for six months, all stayed on the condition that he engage in no further misconduct. A panel of the Board of Professional Conduct conducted a hearing at which it admitted stipulations submitted by the parties and heard testimony from Paris and the affected client. The panel largely adopted the stipulations but, noting that Paris's testimony contradicted some of those stipulations, also found that he failed to understand and acknowledge the wrongful nature of his conduct. The panel therefore rejected the sanction suggested by the parties and recommended that Paris serve a six-month actual suspension from the practice of law in Ohio. The board adopted the panel's report in its entirety.

Paris objects to the board’s finding of an additional aggravating factor to which the parties had not stipulated. He also argues that given the parties' comprehensive stipulations and the limited nature of the testimony before the panel, this court should reject the sanction recommended by the panel and adopt the stipulated sanction of the parties. We adopt the board's findings of fact and misconduct but sustain Paris’s objections and suspend him from the practice of law in Ohio for six months, all stayed on conditions.

Misconduct

Following an automobile accident that occurred on March 17, 2013, a woman hired Paris to defend her in the Cleveland Municipal Court against charges of driving under the influence and driving under suspension, and her fiancé paid him $1,000. Paris stipulated that he referred to her as his “beautiful Irish girl” but testified that he had referred to her as “a red haired Irish girl, coming out of an Irish bar, in Cleveland, Ohio, on March 17th” only in the context of explaining that no one was going to believe her claim that she had had only one drink before her St. Patrick’s Day automobile accident. Paris also stipulated that during the course of his representation, he asked his client to go out with him several times and invited her to his house to join him in his hot tub on more than one occasion. Although he never denied the truth of that stipulation, he also testified that the client's fiancé was present at all but one of their meetings.

Paris stipulated that his client was afraid to do anything about his conduct out of fear that it would affect his representation. The client testified that his conduct made her uncomfortable but that she never told him that she would not go out with him. Instead, she attempted to avoid the issue by saying, “We’ll see” or “We will talk about it.” The client and her fiancé discussed her concerns on several occasions and agreed that she would just go out with Paris so that he would do a better job representing her, but she could not bring herself to go through with it. She testified that as the case dragged on, however, she would have done “whatever he wanted” to get it resolved.

On August 6, 2013, the client pleaded guilty to driving while under suspension and failure to maintain reasonable control of her vehicle and was ordered to appear at a later date for sentencing. Paris stipulated that he not only failed to attend the sentencing hearing but that he also failed to notify the client of his absence and to request that another attorney attend the hearing on his behalf. At the panel hearing, Paris acknowledged that stipulation and confirmed its truth. He testified, however, that he had asked his father to attend the client's sentencing hearing and that upon returning to the office after the hearing, his father reported that the case had been “sent to another judge.” Paris’s father was not called as a witness, but he represented Paris before the panel. During his closing argument, he stated that he attended the sentencing hearing at Paris’s request. But the parties had stipulated — and the client's testimony confirmed — that when the judge asked her whether she was represented by counsel, she responded that Paris had failed to appear and that she did not expect him to because “he’s been doing nothing but trying to get in my pants.”

Based on the client’s statement, the judge vacated the client’s plea and recused herself from the case. The case was reassigned, and a public defender was appointed to represent the client. The client ultimately pleaded guilty to operating an unsafe vehicle and was fined $200. She later filed a grievance against Paris.

The board adopted the parties’ stipulations and agreed that Paris’s conduct violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client) and 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 lawyer-client relationship).

Recommended Sanction

When imposing sanctions for attorney misconduct, we consider several relevant factors, including the ethical duties that the lawyer violated, relevant aggravating and mitigating circumstances, and the sanctions imposed in similar cases.

The board adopted the parties’ stipulation that Paris has no prior disciplinary record and cooperated with relator’s investigation. It also noted that Paris did not present evidence of any other mitigating factors.

In addition to adopting the parties’ stipulated aggravating factors — that Paris acted with a selfish motive and engaged in multiple offenses — the board found that Paris’s conduct harmed a vulnerable client. The board also found that Paris did not understand or accept the wrongful nature of his conduct based on testimony in which he (1) asked why the client referred a female friend to him after terminating his representation if he was “hitting on” her, (2) stated that the client's fiancé was present during all but one of their meetings, (3) claimed that he merely referred to the client as a “red haired Irish girl” — and only when explaining that no one was going to believe her claim that she had had only one drink before her St. Patrick's Day automobile accident, and (4) claimed that his father had attended the client’s sentencing hearing. While noting that relator offered no evidence that Paris engaged in a pattern of misconduct, the board also commented that “there is likewise no evidence to assure the panel that it was an isolated event that is unlikely to reoccur.”

The parties jointly recommend that Paris be suspended for six months but that the suspension be stayed in its entirety on the condition that he engage in no further misconduct. In support of that sanction, the parties cited *Disciplinary Counsel v. Hubbell* (imposing a conditionally stayed six-month suspension on an attorney who attempted to initiate a romantic relationship with a client whom he represented, pro bono, in a custody dispute), and *Disciplinary Counsel v. Quatman* (imposing a conditionally stayed one-year suspension on an attorney who put his hands on a client's breasts for several seconds and told her that they were “very nice”).

Noting the increasing frequency of cases involving repeated and unwelcome solicitation of clients for sexual activity, the board, however, urges us to hold that in the absence of significant mitigating factors, this court will impose an actual suspension on attorneys who have engaged in such conduct — as we do in cases involving attorneys who have engaged in a material misrepresentation to a court or have engaged in a pattern of dishonesty with a client.

In accordance with this suggested presumption and in light of Paris’s repeated and unwelcome solicitation of his client, his failure to appear for her sentencing hearing after she rebuffed his advances, his failure to acknowledge the wrongful nature of his conduct, and the absence of additional mitigating evidence, the board recommends that we suspend Paris from the practice of law for six months with no stay.

Paris’s Objections

In his objections to the board’s report and recommendation, Paris urges us to reject the board’s finding of the additional aggravating factor that Paris failed to accept the wrongful nature of his conduct. He also challenges the board's recommended sanction and urges us to adopt the parties’ stipulated sanction of a fully stayed six-month suspension.

We agree that Paris did not plainly acknowledge the wrongful nature of his conduct or make a particularly strong showing of remorse at the panel hearing. But we also note that despite the intention of the parties to submit the case entirely upon their stipulations, the panel sought to hear testimony not only from Paris but also from the grievant. This created some confusion regarding the scope of the evidence to be presented at the hearing. It also resulted in the inadvertent admission of testimony that touched upon stipulated issues. Although relator and the panel chairperson expressed that it was their intention to rely on the stipulations rather than the testimony in those instances, there is a possibility that some of Paris’s contradictory testimony was offered to rebut portions of the grievant’s testimony on those stipulated issues. Therefore, in the interest of fairness, we decline to adopt additional aggravating factors based on that testimony. Moreover, in light of Paris's nearly 30 years of practice with no disciplinary record prior to this incident, we are inclined to agree that there is some evidence that his behavior in this matter is an isolated incident.

We have consistently disapproved of the conduct of lawyers who have solicited or engaged in sexual activity with their clients even before the adoption of Prof.Cond.R. 1.8(j), and depending on the relative impropriety of the situation, we have imposed a wide range of disciplinary measures for such conduct. We have publicly reprimanded attorneys who have commenced consensual sexual relationships with their clients that have not compromised the clients' interests. On the other end of the spectrum, we have disbarred an attorney who solicited sex from clients in exchange for a reduced legal fee, made inappropriate sexual comments to clients, touched them in a sexual manner, exposed himself to a client, and lied repeatedly during the disciplinary process.

In between those two extremes, we typically impose term suspensions with all or part of the suspension stayed, depending on the severity of the misconduct and the applicable aggravating and mitigating factors.

We by no means condone Paris’s conduct in this matter, but on the stipulated facts before us, we find that his actions are most comparable to cases in which we have imposed fully stayed suspensions. Therefore, we sustain Paris’s objection to the board's recommended sanction and find that a six-month suspension, stayed on conditions, is the appropriate sanction for his misconduct.

Accordingly, Tasso Paris is suspended from the practice of law for six months, with the entire suspension stayed on the conditions that he make full restitution of $1,000 to the affected client and engage in no further misconduct. If Paris fails to comply with the conditions of the stay, the stay will be lifted and he will serve the full six-month suspension. Costs are taxed to Paris.

KENNEDY, J., concurring.

I agree with the majority that a six-month suspension, stayed on conditions, is the appropriate sanction for the misconduct of respondent, Tasso Paris. The majority opinion tacitly rejects the board’s request that we adopt a new presumption that in the absence of significant mitigating factors, the court will impose an actual suspension for the repeated and unwelcome solicitation of vulnerable clients for sexual activity. The dissenting opinion argues in favor of adopting this presumption. I write separately to squarely address whether it is this court's role to create a new presumption in favor of an actual suspension in lieu of our deeply rooted process of determining the appropriate sanction in each individual case.

Gov. Bar R. V(13) imposes a duty on the Board of Professional Conduct to examine the unique facts and circumstances of each disciplinary case, the aggravating and mitigating factors applicable to the individual attorney, and his or her life circumstances in order to determine the appropriate sanction for that particular attorney. Therefore, the establishment of a presumption of an actual suspension would be antithetical to our rules.

In 1995, this court established a presumption of an actual suspension in cases with misconduct involving dishonesty, fraud, deceit, or misrepresentation, absent mitigating factors justifying a stay. A majority of the court in *Fowerbaugh* reasoned that a presumption was warranted for conduct by an attorney involving deception, falsehood, or fraud because “such conduct strikes at the very core of a lawyer’s relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer.”

In my view, however, deception and fraud are not the only types of misconduct that strike at the core of a lawyer’s relationship with the court and with the client. Instead, every act of misconduct does so and diminishes the honor and nobility of our great profession. But to echo the views expressed in Justice Resnick's separate opinion in *Fowerbaugh*:

It is the responsibility of this court to give guidance as to what conduct constitutes a violation of the Disciplinary Rules. It is not the province of this court to use syllabus law to mandate a particular sanction once a violation has been found. The sanction in each individual's case should be determined based upon the unique facts and circumstances of that case.

Without question, inappropriate sexual conduct by an attorney toward his or her client undermines the attorney-client relationship and diminishes respect for our profession. However, if we were to adopt a presumption of an actual suspension for this category of misconduct based on the reasoning advanced by the majority in *Fowerbaugh*, why not extend this approach and establish a similar presumption for any and all cases involving violations that undermine the attorney-client relationship and diminish respect for our profession? Adoption of the proposed presumption in this case would move us closer to a reality in which the “exception swallows the rule.”

Gov.Bar R. V(2)(A) provides that “except as otherwise expressly provided in rules adopted by the Supreme Court, all grievances involving alleged misconduct by attorneys shall be brought, conducted, and disposed of in accordance with the provisions of this rule.” This provision applies to all of Gov. Bar R. V, including Gov. Bar R. V(13). Presuming an actual suspension would fundamentally transform our well-established individualized process of attorney discipline into a formulaic “one size fits all” system. This philosophical shift should be carried out, if ever, only pursuant to this court's longstanding rulemaking process, not through judicial fiat. It is for the members of the legal community — guided by the principle that the primary purpose of the disciplinary process is not to punish the offender but 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” — to debate whether it would be appropriate to establish a presumption of an actual suspension.

Accordingly, I respectfully concur.

LANZINGER, J., dissenting.

This court has been asked to consider establishing a presumption that in the absence of significant mitigating factors, we will impose an actual suspension on attorneys who engage in the repeated and unwelcome solicitation of vulnerable clients for sexual activity. We already presume that an actual suspension will be the sanction for behavior involving dishonesty, fraud, deceit, or misrepresentation, unless mitigating factors justify a stay. I believe that the same type of sanction should be imposed upon respondents like Tasso Paris, especially because it appears that cases of this type are increasing.

In my view, this court should do more than merely express disapproval of the attorney’s actions by imposing a stayed suspension. The extent of the mitigation is that he has no previous discipline and has cooperated with the investigation. On the other hand, he stipulated that he acted with a selfish motive and engaged in multiple offenses. In addition, the board found that he did not understand or accept the wrongful nature of his actions and so failed to show that his misconduct was unlikely to recur. Most importantly, the client was harmed when Paris did not appear for her sentencing, conduct that she attributed to her rebuffing his sexual advances.

I respectfully dissent from the court's judgment with respect to the sanction in this case. I would adopt the recommendation of both the panel and the board and would suspend Paris from the practice of law for a period of six months.

O'CONNOR, C.J., and O'NEILL, J., concur in the foregoing opinion.

**Questions:**

[***Disciplinary Counsel v. Engler*, 110 Ohio St. 3d 138 (Ohio 2006)**](https://scholar.google.com/scholar_case?case=8235066234962944745)

**Summary:** Attorney Engler had two sexual encounters with a 28-year-old female divorce client. The client relationship began in June 2004 when Engler credited her bill for a $400 painting of hers. In August she and her husband agreed to dissolve their marriage. In September, Engler and his client met at a restaurant to discuss the dissolution process and afterwards they had consensual sexual relations. Seven to ten days later, they did it again at Engler’s home. Engler informed his client that they could no longer have a personal relationship until her case was over and she was no longer his client. Engler did some more work for his client but was dismissed in October. He reimbursed his client for all she had paid and returned her painting. Because of several mitigating factors including he had no prior record, he made restitution, he was cooperative in the disciplinary proceedings, and had a good reputation, the Court imposed nothing more than a public reprimand.

Respondent, David Lee Engler of Boardman, Ohio was admitted to the practice of law in Ohio in 1985.

On October 10, 2005, relator, Disciplinary Counsel, charged respondent with violating the Code of Professional Responsibility by engaging in a sexual relationship with a client. A panel of the Board of Commissioners on Grievances and Discipline heard the cause on the parties’ consent-to-discipline agreement, filed pursuant to Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline. The panel accepted the parties’ agreement and made corresponding findings of misconduct and a recommendation, which the board adopted.

Misconduct

The parties stipulated that respondent had two sexual encounters with a divorce client and had thereby violated DR 1-102(A)(6) (prohibiting conduct that adversely reflects on a lawyer's fitness to practice law) and 5-101(A)(1) (prohibiting a lawyer from accepting employment if the exercise of professional judgment on behalf of a client will be or reasonably may be affected by the lawyer's personal interests). The parties also agreed that respondent’s misconduct warranted a public reprimand.

Respondent has a law practice under the name of Engler & Associates. On June 29, 2004, a 28-year-old female client consulted respondent about ending her marriage. During their discussions, respondent learned that the client was an artist and had sold some of her paintings. He indicated an interest in possibly purchasing her work, and sometime later, the client brought paintings to respondent's office. Respondent offered to buy some of the paintings by crediting the client for $400 toward his $1,000 fee. The client agreed to trade the paintings and paid the balance of respondent's $600 legal fee.

The client expected her husband to agree to dissolve their marriage, and in late August 2004, respondent sent a separation agreement to the husband for review. On September 8, 2004, respondent met his client at a restaurant to discuss the dissolution process. Afterward, respondent and the client went to his house and engaged in consensual sexual relations.

Approximately seven to ten days later, the client visited respondent at home again, and the couple again had consensual sex. Respondent subsequently told his client that he could not continue to have a personal relationship with her until her case had ended and she was no longer his client. About the same time, respondent wrote a memo to the client's file indicating he had told the client he could not have a personal relationship with her and that the client had agreed.

In late September 2004, an attorney representing the husband sent respondent proposed changes to the dissolution agreement. Early in October 2004, respondent met with his client in the presence of his assistant to review the changes and then wrote to the other lawyer regarding those changes.

In a telephone conversation on October 12, 2004, respondent again told his client that he could not continue their personal relationship while he was representing her. The next day, the client sent a letter of dismissal to respondent. Respondent promptly replied with a letter indicating that he had completed his work in her case. Respondent enclosed a final invoice and a check reimbursing the client for the remaining balance of her paid fees. Later, respondent also returned the paintings that he had accepted from his client in partial payment of his fees.

Recommended Sanction

In recommending a sanction for respondent’s misconduct, the board weighed the mitigating and aggravating factors of his case.

The parties stipulated to the mitigating factors that (1) respondent had no prior disciplinary record, (2) he had made timely good-faith efforts at restitution, (3) he made a full and free disclosure of information and was cooperative in the disciplinary proceedings, and (4) he had a good reputation in the legal community apart from the underlying misconduct. According to the parties, respondent on his own initiative had also received instruction on ethics and practice management from a former president of the Mahoning County Bar Association. In addition, the board found that respondent had acknowledged his wrongdoing in this isolated incident of misconduct.

Adopting the panel’s report, the board recommended that respondent receive a public reprimand for his misconduct.

Review

We agree that respondent violated DR 1-102(A)(6) and 5-101(A)(1), as found by the board. Moreover, we generally impose a public reprimand when a sexual relationship develops during an attorney-client relationship if the affair is legal and consensual and has not compromised client interests. Therefore, we find the recommended sanction appropriate.

Respondent is therefore publicly reprimanded for his violations of DR 1-102(A)(6) and 5-101(A)(1).

[***Disciplinary Counsel v. Hines*, 133 Ohio St. 3d 166 (Ohio 2012)**](https://scholar.google.com/scholar_case?case=8169582249051192937)

**Summary:** Attorney Dean Hines agreed to represent a client in an ongoing domestic-relations dispute with her ex-husband. Hines invited her to dinner and assured her a personal relationship would not pose a conflict of interest; after a second dinner the next evening, they had sex. His client testified she was afraid to resist Hines’ advances because she needed his legal assistance. In the months that followed Hines hired her as his bookkeeper, leased her a car, helped with her mortgage and utility payments, and travelled together to Austria, Arizona, and South Carolina, and let her and her children live with him while she recuperated from surgery. Eventually, the relationship fell apart and Hines called 911 for a domestic violence incident. He fired the client the next day--the same time at which she received an adverse ruling she could only object to within 11 days. Considering some aggravating factors, including the client’s sensitivity and Hines downplaying of his wrongdoing, the Court imposed a six month suspension.

Respondent, Dean Edward Hines of Centerville, Ohio was admitted to the practice of law in Ohio in 1994. On October 11, 2010, relator, disciplinary counsel, filed a complaint alleging that Hines had engaged in an inappropriate relationship with a client and violated Prof.Cond.R. 1.8(j) and 8.4(h).

The parties stipulated to Hines’s misconduct. Upon the parties’ stipulations, the Board of Commissioners on Grievances and Discipline accepted the parties’ joint recommendation that we publicly reprimand Hines. However, we did not accept the recommendation and remanded the case for further proceedings.

On October 14, 2011, the Board of Commissioners on Grievances and Discipline issued a second report and recommended a 12-month suspension of Hines’s law license, with six months stayed.

Misconduct

In early 2009, Hines agreed to represent a new client in an ongoing domestic-relations dispute with the client’s ex-husband. On March 16, 2009, after several appointments and a pretrial conference, Hines invited the client to dinner, where he discussed his interest in dating her. Hines assured the client that a personal relationship between the two would not pose a conflict of interest with respect to their attorney-client relationship. After another dinner the next evening, Hines and the client became sexually intimate. Describing her feelings at this time, the client later testified that she was overwhelmed by Hines’s advances and that she was afraid to resist him when she needed his legal assistance.

In the months that followed, Hines continued to represent the client in the domestic dispute while continuing their romantic relationship. Hines hired the client to work as a bookkeeper at his law firm, leased a car for her use, and contributed to her mortgage and utility payments. They traveled together to Austria, Arizona, and South Carolina, and when the client underwent surgery requiring a lengthy recovery period, Hines moved the client and her children into his home.

The relationship fell apart in November 2009. On November 9, 2009, Hines called 9-1-1 to report a domestic dispute with the client. He filed charges of aggravated menacing and domestic violence and obtained a temporary protection order barring any contact with Hines. The charges were eventually dropped.

The day after their altercation, Hines fired the client. A few days later, he mailed a letter simultaneously notifying her of an adverse ruling in the underlying domestic case and of the end of their attorney-client relationship.

When Hines mailed the letter, 11 days remained in which the client could protect her legal rights by objecting to the magistrate’s ruling. Hines must have known about the client's vulnerability; during their relationship, she had faced financial troubles and a serious physical illness requiring surgery, not to mention the legal issues for which she had sought Hines’s help. Yet Hines did not seek leave for an extension of this deadline, refer the client to another attorney, or otherwise assist the client in protecting her rights. Instead, he left a vulnerable client without legal representation or assistance at a critical time in her case, and he did so through an accusatory letter that blamed the client for the adverse decision.

Although he left the client without counsel to protect her rights, Hines continued to make overtures to her. He repeatedly e-mailed her and sent her text messages. As a practical matter, these overtures encouraged the client to violate the temporary protection order. She did not accept that invitation, even after Hines’s promises that he would not report her to police if she responded.

The parties have stipulated that Hines’s conduct violated Prof.Cond.R. 1.8(j), which generally prohibits sexual activity between attorneys and their clients, and Prof.Cond.R. 8.4(h), which bars behavior that reflects adversely on the fitness of a lawyer to practice law. We adopt the board's findings of fact and misconduct.

Sanction

The parties stipulated to the absence of aggravating factors. However, the Board of Commissioners on Grievances and Discipline identified several aggravating factors pertaining to Hines's misconduct: (1) he “knew from the outset that his conduct violated the Ohio Rules of Professional Conduct but he nevertheless acted with a clearly selfish motive,” (2) he “has attempted to excuse or minimize that conduct rather than acknowledge that it was wrong,” and (3) the client “was a vulnerable person and has been harmed as a result of” Hines’s misconduct. Hines objects to these findings. We overrule the objections and adopt the findings of aggravating factors.

The parties stipulated to the following mitigating factors: (1) Hines has no prior disciplinary record, (2) Hines cooperated with the investigation of his misconduct, and (3) as evidenced by several letters of support, Hines enjoys a positive reputation in the legal community.

Disciplinary counsel suggests a six-month suspension, with all six months stayed. Hines suggests a public reprimand or a stayed suspension of no more than six months. The Board of Commissioners on Grievances and Discipline recommends that we suspend Hines from the practice of law for 12 months, with the final six months stayed.

In the past, we have imposed public reprimands on attorneys who engaged in improper consensual relationships with their clients, when the relationships did not compromise the clients’ interests. But this is not a simple case of mutual consent; Hines used his position of power to initiate and pursue an intimate relationship with a vulnerable client who was afraid to resist. Furthermore, Hines’s conduct in leaving the client without legal assistance at a critical juncture in her case threatened her interests. A public reprimand is not enough.

Nor do we find Hines's misdeeds comparable to those of attorneys whom we have suspended. Hines’s conduct involved only one client, he has not engaged in any deception to hide the misconduct, and he has cooperated with the disciplinary process.

The appropriate penalty in cases like these is often a stayed suspension, which reflects the hope that the misconduct is limited to one occurrence and the reality that its recurrence would necessitate serious consequences.

Like Hines, the attorney in *Burkholder* pursued an improper relationship with a vulnerable domestic-relations client. Burkholder made numerous advances to the client until she fired him. However, Burkholder had no prior disciplinary violations, and he cooperated throughout the disciplinary process. We imposed a six-month, stayed suspension of Burkholder's license to practice law.

We imposed the same penalty in *Disciplinary Counsel v. Siewert*. The attorney in *Siewert* engaged in a consensual but improper relationship with a domestic-relations client. Unlike Hines, Siewert had a record of prior discipline; however, we noted as mitigating factors Siewert’s struggles with depression and his efforts to correct his personal problems.

We find *Burkholder* and *Siewert* instructive. Like the attorneys in those cases, Hines made a serious mistake and abused the position of trust conferred upon attorneys, but the limited nature of his misconduct and his cooperative approach to the investigation give us reason to believe that Hines will conduct himself appropriately in the future.

Accordingly, we suspend Hines from the practice of law for six months, and we stay the suspension on the condition that Hines engage in no further misconduct. Costs are taxed to Hines.

1. Woody Guthrie, *Philadelphia Lawyer* (1937). [↑](#footnote-ref-0)
2. Jackson Browne, *Lawyers in Love* (1983) [↑](#footnote-ref-1)
3. Chia Pet, *Hey Baby* (1992). [↑](#footnote-ref-2)
4. Liz Phair, *Divorce Song*, Exile in Guyville (1993). [↑](#footnote-ref-3)