

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

In re:

Complaint against

Case No. 2022-002

**Griff Makini Nowicki
Attorney Reg. No. 0071849**

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

Respondent

Disciplinary Counsel

Relator

OVERVIEW

{¶1} This matter was heard on September 13, 2022 before a hearing panel consisting of Aletha M. Carver, Frank R. DeSantis, and Danielle M. Parker, panel chair. No member of the hearing panel resides in the appellate district from which the complaint arose or served on the probable cause panel that certified the case to the Board.¹

{¶2} Respondent was present at the hearing and appeared pro se. Adam P. Bessler appeared on behalf of Relator.

{¶3} The alleged violations in this case result from Respondent's consensual sexual relationship with a client whose spouse was also Respondent's client. The parties entered extensive stipulations of fact, rule violations, aggravating and mitigating factors, and stipulated to a recommended sanction of a one-year suspension, fully stayed.

{¶4} Based upon the parties' stipulations and evidence presented at the hearing, the panel finds, by and clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors, and

¹ The Dayton Bar Association filed the formal complaint as Relator in this matter. On April 8, 2022, Dayton Bar Association withdrew, and the Office of Disciplinary Counsel was substituted as Relator.

case precedent, the panel recommends that Respondent be suspended from the practice of law for one year, with six months stayed on the conditions that he engages in no further misconduct.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in Ohio on May 22, 2000 and is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.

{¶6} Respondent has two prior instances of discipline. In 2005, he was suspended for five days based on his failure to register for the 2005-2007 biennium. *In re Nowicki*, 107 Ohio St.3d 1431, 2005-Ohio-6408; *reinstatement granted*, 107 Ohio St.3d 1705, 2006-Ohio-13. On December 4, 2012, Respondent received a six-month, fully stayed suspension for a single violation of Prof. Cond. R. 1.3. *Dayton Bar Assn. v. Nowicki*, 133 Ohio St.3d 74, 2012-Ohio-3912.

Procedural Background

{¶7} In the June 30, 2022 order rejecting the parties' consent-to-discipline agreement, the panel granted the parties' joint motion to dismiss the violations of Prof. Cond. R. 1.7(b), 1.15(a), 1.15(f), 8.1, 8.3(a), and 8.4(h) alleged in the original complaint. Relator filed an amended complaint on July 26, 2022, and the case proceeded to hearing on the allegations contained in that amended complaint.

Representation of Roger and Sondra Clark

{¶8} In August 2018, Respondent agreed to represent Roger and Sondra Clark on a *pro bono* basis to defend a civil lawsuit filed against the Clarks and others in Montgomery County. *Grimes v. Byrd, et al.*, Montgomery County Common Pleas Case No. 2018-CV-3240. Respondent filed an answer to the complaint on August 11, 2018.

{¶9} In April 2019, Respondent and Sondra Clark commenced a sexual relationship that

did not exist prior to Respondent's representation of Roger and Sondra Clark.

{¶10} In June 2019, Roger Clark learned of the relationship between Respondent and Sondra. Later that month, Roger was charged with two counts of telephone harassment, one in which Sondra was the victim and one in which Respondent was the victim. In July 2019, Roger was charged with violating a protection order.

{¶11} Because Respondent and Sondra were victims of the telephone harassment charges and the protection order violation, Respondent moved to withdraw from representing Roger Clark in the *Grimes* lawsuit on August 6, 2019. Respondent's motion to withdraw made no mention of the sexual relationship with Sondra, and he continued to represent Sondra and her son in the *Grimes* matter. Respondent's motion to withdraw was granted on August 14, 2019. The *Grimes* case was dismissed, without prejudice, on August 23, 2019.

Sondra Clark Divorce

{¶12} On August 7, 2019, while still counsel for the Clarks in the *Grimes* matter, Respondent filed a complaint for divorce on behalf of Sondra and against Roger. Respondent represented Sondra in the divorce action until its conclusion in October 2019.

{¶13} Respondent and Sondra were married in 2020.

{¶14} Based upon the foregoing facts as evidenced by testimony and exhibits presented during the hearing, and the parties' stipulations, the panel finds by clear and convincing evidence that Respondent's conduct violates Prof. Cond. R. 1.8(j) (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.) and 1.7(a)(2) (a lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies: there is a substantial risk that the lawyers ability to consider, recommend, or carry out an appropriate

course of action for the client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interest.)

{¶15} The panel further finds that the record would support a finding that Respondent violated Prof. Cond. R. 1.7(a)(1) (a lawyer's acceptance or continuation of representation of a client creates a conflict of interest if the representation of that client will be directly adverse to another current client). The record is clear that Respondent filed a divorce complaint on behalf of Sondra while simultaneously representing both Roger and Sondra in the *Grimes* matter. However, the Supreme Court's holding in *Disciplinary Counsel v. Reinheimer*, 162 Ohio St.3d 219, 2020-Ohio-3941, precludes the panel from finding this additional violation.

AGGRAVATION, MITIGATION, AND SANCTION

{¶16} When recommending sanctions for attorney misconduct, the panel must consider all relevant factors, including the ethical duties violated by Respondent, precedent established by the Supreme Court, and the existence of aggravating and mitigating factors. Gov. Bar R. V, Section 13(A).

{¶17} The panel concurs in the parties' stipulation as to the aggravating factor of prior discipline. The panel further finds based on the evidence presented that Respondent acted with a dishonest or selfish motive by having an affair with the wife while representing her and her husband. The panel also concurs in the mitigating factor of full and free disclosure to the Board and a cooperative attitude toward these proceedings.

Sanction

{¶18} The parties have proposed the agreed sanction of a one-year suspension, stayed in its entirety. In support of the recommendation, the parties cite several cases in which the Supreme Court has imposed a public reprimand or six-month stayed suspensions for misconduct that included a violation of Prof. Cond. R. 1.8(j). In addition to the cases supplied by the parties, the panel reviewed two additional cases involving facts similar to those that exist in the present case—a consensual sexual relationship with a client whose spouse is also a client and rule violations with regard to clients. The panel believes that the cases discussed below involve facts similar to the present matter and are most instructive in determining a recommended sanction.

{¶19} In *Disciplinary Counsel v. Leon*, 155 Ohio St.3d 582, 2018-Ohio-5090, the Supreme Court imposed a one-year suspension with six months stayed arising from Leon’s misconduct encompassing a sexual relationship with a client who was also the spouse of another client. The Court found Leon’s conduct resulted in multiple rule violations including Prof. Cond. R. 1.8(j). Leon was retained by a husband and wife to file a Chapter 7 bankruptcy petition on their behalf. Leon accepted the couple’s retainer fee and filing fee. Leon began a sexual relationship with the wife after establishing a client-lawyer relationship that was discovered by the husband. Leon immediately terminated the affair and withdrew from further representation of the couple. The Court found that Leon acted with a selfish motive, committed multiple offenses, harmed financially vulnerable clients, and caused additional harm by having an affair with the wife while representing her and her husband. Leon had no prior disciplinary record, made full and free disclosure to the Board and demonstrated a cooperative attitude toward the disciplinary proceeding, and provided evidence of good character and reputation.

{¶20} In *Leon*, the Supreme Court relied upon the precedent established in *Disciplinary*

Counsel v. Owen, 142 Ohio St.3d 323, 2014-Ohio-4597. Owen engaged in a sexual relationship with the spouse of a client charged with aggravated murder, with death-penalty specifications, and other criminal offenses. The Court found that Owen's conduct created an inherent conflict of interest that compromised the relationship of trust and confidence between the attorney and client, prejudiced the administration of justice, and adversely reflected on the attorney's fitness to practice law. The Court found that Owen acted with a selfish motive and harmed a vulnerable client but had no prior disciplinary record. The Court found that Owen's misconduct warranted a two-year suspension from the practice of law with one year stayed.

{¶21} The parties rely upon *Akron Bar Assn. v. Fortado*, 159 Ohio St.3d 487, 2020-Ohio-517, in making a stipulated recommended sanction of a one-year suspension, fully stayed. Fortado engaged in a three-year sexual relationship with a client. After the sexual relationship ended, Fortado and the client remained friends for another two years, and Fortado represented the client in two other civil matters. A majority of the Court rejected the Board's recommended sanction of a one-year suspension, with six months stayed. Instead, the Court imposed a one-year fully stayed suspension, citing Fortado's cooperation, acceptance of responsibility for his misconduct, and strong character evidence. *Fortado* is distinguishable from the present matter because Respondent was engaging in a consensual sexual relationship with a client whose spouse was also Respondent's client. Likewise, Respondent offered no character or reputation evidence.

{¶22} The parties also rely upon *Disciplinary Counsel v. Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935. In *Siewert*, the Court imposed a six-month, stayed suspension on an attorney who engaged in a consensual sexual relationship with a client, despite prior discipline. Siewert represented a client in a divorce, a domestic violence matter, and a protection order proceeding. Siewert had one instance of prior discipline. The Court found that Siewert did not have a dishonest

motive, provided full and free disclosure, demonstrated a cooperative attitude toward the proceedings, and had good character. The panel finds that *Siewert* is likewise distinguishable from the present matter. Respondent was engaging in a consensual sexual relationship with a client whose spouse was also Respondent's client. Respondent offered no character or reputation evidence. Furthermore, *Siewert* had one instance of prior discipline where Respondent has two instances of prior discipline.

Recommended Sanction

{¶23} The panel finds the cases cited above support the imposition of a one-year suspension from the practice of law, with six months stayed on the condition that Respondent engages in no further misconduct. The panel further recommends that Respondent's reinstatement be conditioned on completion of three hours of CLE on professional conduct, those hours in addition to the requirements of Gov. Bar R. X.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on October 7, 2022. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Griff Maniki Nowicki, be suspended from the practice of law in Ohio for a period of one year, with six months stayed on the condition of no further misconduct, and ordered to pay the costs of this proceeding. The Board further recommends that, as a condition of reinstatement, Respondent be ordered to complete three hours of continuing legal education in the area of professional conduct, those hours being in addition to the requirements of Gov. Bar R. X.

Pursuant to the order of the Board of Professional Conduct, I hereby certify the forgoing findings of fact, conclusions of law, and recommendation as that of the Board.



RICHARD A. DOVE, Director