

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

**In re:**

**Complaint against**

**Case No. 2022-034**

**Mark Stewart Bennett  
Attorney Reg. No. 0069823**

**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 February 2, 2023 before a panel consisting of Lori A. Herf, and Thomas M. Green, Elizabeth E. Cary, panel chair. None of the panel members resides in the district from which the complaint arose. Respondent waived a probable cause determination by the Board pursuant to Gov. Bar R. V, Section 11(B).

{¶2} Respondent was present at the hearing and represented by Bryan L. Penvose, who appeared in person, and Richard S. Koblentz, who attended remotely. Matthew A. Kanai appeared on behalf of Relator.

{¶3} This case involves the ongoing sexual harassment by Respondent towards J.S., an intern with his then-employer. While Respondent did not have a supervisory position over J.S., he was a senior attorney in the office whom J.S. felt was vital to her career prospects. The harassment took place inside and outside the office for a period of approximately 16 months.

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

precedents, the panel recommends that Respondent serve a six-month suspension with additional conditions on his reinstatement.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶5} Respondent was admitted to the practice of law in Ohio on November 9, 1998 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio. Stipulations ¶¶1-2.

{¶6} During the period referenced below, Respondent was employed as an Assistant United States Attorney in the U.S. Attorney's Office for the Northern District of Ohio (USAO) in the Cleveland and Akron offices. Stipulations ¶¶3, 21.

#### **J.S.'s Initial Internship**

{¶7} In May 2017, J.S. was 24 years old and started an internship at the Akron office of the USAO, coinciding with her second year of law school. Her internship ended in November 2017. However, she was reinstated as an intern in the Youngstown office in August 2018, and worked at the USAO until June 2019. J.S. worked variously in the Cleveland, Akron, and Youngstown offices. Stipulations ¶4.

{¶8} J.S. became acquainted with Respondent in 2017. Stipulations ¶5.

{¶9} At various times during the internship, J.S. believed that Respondent attempted to look up J.S.'s skirt or would be "looking at [her] butt" on different occasions. Stipulations ¶6.

{¶10} J.S. heard from a male intern that Respondent had made sexually inappropriate comments about her. Stipulations ¶7.

{¶11} During the internship, Respondent had consensual conversations with J.S. about his marital sex life. Stipulations ¶8.

{¶12} Respondent also asked J.S. about her sex life and suggested that he could be J.S.'s sexual partner. Stipulations ¶9, Hearing Tr. 17.

{¶13} According to J.S., Respondent requested that J.S. send him nude photos of herself on Snapchat at some point during the internship. Stipulations ¶10, Hearing Tr. 17.

{¶14} During the internship, Respondent offered to buy J.S. clothing from J. Crew, Victoria's Secret, and Brooks Brothers. Stipulations ¶11.

{¶15} In August or September 2017, Respondent and J.S. were in the Akron office's library. Respondent told J.S. he needed a copy of the 2015 Sentencing Guidelines. He then reached across her body, touching her breasts with the back of his hand. Stipulations ¶12, Hearing Tr. 18.

{¶16} J.S. believed the touching was intentional because Respondent made and held eye contact with her during the touching. Stipulations ¶13, Hearing Tr. 18.

{¶17} According to J.S., Respondent removed the back of his hand at the time another attorney came into the library. Stipulations ¶14.

{¶18} Respondent began communicating with J.S. through various media, including Snapchat, Facebook, and text messaging. Stipulations ¶15.

{¶19} Eventually, J.S. began blocking Respondent's methods of communicating with her, including refusing Snapchat requests, blocking his phone number, and blocking him on Facebook. Stipulations ¶16.

{¶20} When Respondent questioned J.S. about her not being visible on social media, she would feign ignorance, claiming that she did not know it happened. Stipulations ¶17.

### **J.S.'s Second Internship**

{¶21} After her first internship ended in 2017, J.S. left the USAO. - However, J.S. decided to try to return in 2018, and she reached out to Respondent to ask who she should contact. Stipulations ¶18.

{¶22} Respondent replied, asking what she was willing to do to get back into the office. J.S. believed his question had sexual overtones and did not pursue the matter with Respondent. Stipulations ¶19, Hearing Tr. 19.

{¶23} J.S. was reappointed as an intern in late 2018. Stipulations ¶20.

{¶24} J.S. asked to be stationed in the Youngstown office rather than the Akron or Cleveland offices where Respondent was primarily stationed. Stipulations ¶21.

{¶25} However, on January 2, 2019, Respondent texted J.S. about why she was in Youngstown, including inquiring into her sex life:

Respondent: why do you love YNG2 so much??? back with the same guy???

J.S. mayyybeeeee

Respondent: what is wrong with you??? havent you learned yet? I thought you were finally going to just focus on finishing school and getting a real job???

J.S. i am!!!! i have been applying to jobs like crazy

Respondent: but you are driving 2 hours out of ur way??? and it obviously didnt work out the first time...is IT really that good??

J.S. omg im getting back to work.

Respondent: fine... what do i care anyway if u flunk out...

Stipulations ¶22.

{¶26} In or around January or February of 2019, J.S. asked Respondent for a letter of recommendation for a clerkship. Stipulations ¶23.

{¶27} Respondent replied by asking what he would get in exchange for the letter of recommendation. Stipulations ¶24, Hearing Tr. 19.

{¶28} J.S. decided not to pursue the recommendation and, instead, got recommendations from other attorneys. Stipulations ¶25.

{¶29} On a previous occasion, J.S. had requested a letter of recommendation and Respondent freely provided J.S. the recommendation without any innuendo or inappropriate suggestion. Stipulations ¶26.

{¶30} In March 2019, at around 4:00 a.m., Respondent Facebook messaged J.S., “Why do you haunt my dreams?” Stipulations ¶27, Hearing Tr. 19.

{¶31} J.S. also had to report to the Akron office during her second term. During her time in the Akron office, J.S. stated that she disliked interacting with Respondent so much that if she saw him looking for her, she would leave the area. Stipulations ¶28.

{¶32} She also asked a colleague to let her use their workstation so Respondent would not know she was in the office. Stipulations ¶29.

{¶33} Respondent continued to text J.S., which she felt was unwelcome and which she ignored. Stipulations ¶30.

{¶34} In a June 2019 text message exchange, Respondent said, “Nice. Can’t wait to have it,” in reference to J.S.’s butt, which he informed her “was looking wide for a while there” in response to a comment J.S. had made about her own appearance. Stipulations ¶31, Hearing Tr. 20.

{¶35} Respondent also texted her, “Damn u for making me think about it again,” referring to sexual activity. Stipulations ¶32, Hearing Tr. 20.

### **DOJ Internal Investigation**

{¶36} After J.S. informed a colleague about her interactions with Respondent, the Department of Justice, Office of the Inspector General investigated the allegations against Respondent. Stipulations ¶33.

{¶37} During the OIG investigation, J.S. stated that she did not report Respondent's conduct because she was raised in a background where "this is what you deal with and you don't say anything because then you're going to hurt your chances at a career[.]" Stipulations ¶34.

{¶38} J.S. has also stated, "I can't put my foot down because I'm an intern and he would always be like, oh I play poker with judges every Thursday and I'm so well connected[.]" Stipulations ¶35.

{¶39} During the OIG and relator's investigation, J.S. admitted that she has a flirtatious personality and that when J.S. and Respondent began interacting, she probably made flirtatious jokes to Respondent such as jokes about being his mistress. However, J.S. did not believe that she misled Respondent into believing that she wanted a sexual relationship with him or that she was receptive to his sexual comments. Stipulations ¶36.

{¶40} During the investigation, Respondent admitted that he may have asked J.S. for nude photos on Snapchat. Stipulations ¶37.

{¶41} He also stated that he was unaware of J.S.'s discomfort, and he inappropriately believed that his interactions with J.S. were mutually acceptable. Stipulations ¶38.

{¶42} Respondent admits that his actions were inappropriate, and that he did not realize how offensive they were to J.S. Stipulations ¶39, Hearing Tr. 17, 20, 22.

{¶43} The OIG recommended that termination proceedings be commenced as a result of Respondent's violation of the office sexual harassment policy. Respondent believed he would have been terminated even if he contested those proceedings. Hearing Tr. 21, 60.

{¶44} As a result of the investigation, Respondent resigned from the USAO and subsequently reported his actions to Relator. A short time later, the Department of Justice

informed the Office of Disciplinary Counsel of its investigation of Respondent. Stipulations ¶43, Hearing Tr. 60.

### **Respondent's Disciplinary Hearing Testimony**

{¶45} On June 20, 2021, Respondent voluntarily sought treatment, was diagnosed, and commenced treatment for anxiety and depression. Respondent testified that through counseling he has gained awareness of setting appropriate professional boundaries and putting himself in others' shoes. Hearing Tr. 63-70, 82. Respondent's treatment provider has expressed the same and a favorable opinion that Respondent has exhibited positive growth. Stipulations ¶40, Exhibits 5-7. Respondent remains in counseling at this time. Stipulations ¶41, Hearing Tr. 66-67.

{¶46} Respondent has expressed regret and remorse for his actions towards J.S. He would like to apologize but was advised to avoid further communication with J.S. and he has followed that advice. Stipulations ¶42, Hearing Tr. 76-77.

{¶47} Since resigning from USAO, Respondent has opened his own law practice, sharing office space with other solo practitioners, in the Greater Cleveland area. Stipulations ¶44.

{¶48} The parties stipulated to eight exhibits, which included documents from the OIG's investigation (under seal Joint Ex. 1-3), 15 character reference letters (Joint Ex. 4), the deposition transcript and two treatment letters from Respondent's counselor (Joint Ex. 5-7), and an affidavit from Respondent's attorney during the OIG investigation advising that Respondent's resignation was in lieu of termination and was effectively a sanction for his misconduct (Joint Ex. 8). In addition, attorney Kelly Zacharias appeared in person to testify as to Respondent's good character while sharing office space with him after his resignation from the USAO. Hearing Tr. 28-45.

## **Rule Violation**

{¶49} The parties stipulated (Stipulations ¶45, Hearing Tr. 77-78), and the panel finds by clear and convincing evidence, that Respondent's conduct violated Prof. Cond. R. 8.4(h) [a lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law].

## **AGGRAVATION, MITIGATION, AND SANCTION**

{¶50} 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).

### **Aggravating Factors**

{¶51} The parties stipulated and the panel finds by clear and convincing evidence that the following aggravating factors as listed in Gov. Bar R. V, Section 13(B) were present:

- A dishonest or selfish motive; and
- The vulnerability of and resulting harm to victims of the misconduct.

### **Mitigating Factors**

{¶52} The parties stipulated and the panel finds by clear and convincing evidence that the following mitigating factors as listed in Gov. Bar R. V, Section 13(C) were present:

- Absence of a prior disciplinary record;
- Full and free disclosure to the Board or cooperative attitude toward proceedings;
- Evidence of good character or reputation; and
- Imposition of other penalties or sanctions.

{¶53} Although the parties offered evidence of Respondent's diagnosis and treatment, it was not offered as a mitigating factor nor did the panel find any evidence to support it as a mitigating factor.



## Sanction

{¶54} The parties recommended a fully stayed six-month suspension on the condition that Respondent commit no further acts of misconduct and continue with his current course of mental health counseling. The parties submitted a joint hearing brief in support of this sanction that cited cases focused on the offensiveness of unwanted advances and the power imbalance between the parties in determining the sanction. The parties assert this case is most like *Disciplinary Counsel v. Berry*, 166 Ohio St.3d 112, 2021-Ohio-3864 wherein the Court issued a fully stayed, six-month suspension. In that case, Judge Berry sent numerous Facebook messages to a courthouse staff member. Berry invited her to lunch or to have drinks multiple times. *Id.* at ¶¶6, 8. He also sent numerous unwanted messages that were “overtly partisan or vulgar.” *Id.* at ¶10. Berry, like Respondent, acknowledged that his comments were inappropriate but stated he was unaware that they were unwelcome to the recipient at the time. The Court imposed the fully stayed suspension because “[j]udges are held to higher standards of integrity and ethical conduct than attorneys or other persons not invested with the public trust.” *Id.* at ¶19 (internal quotations omitted), quoting *Disciplinary Counsel v. Horton*, 158 Ohio St.3d 76, 2019-Ohio-4139, ¶72.

{¶55} The joint brief also cited *Lake Cty. Bar Assn. v. Mismas*, 139 Ohio St.3d 346, 2014-Ohio-2483 and *Disciplinary Counsel v. Skolnick*, 153 Ohio St.3d 283, 2018-Ohio-2990 but argued that the actions in these cases were more severe than Respondent’s. Mismas hired a third-year law student and immediately began sending her inappropriate, sexually explicit text message, tried to gauge her sexual experience, and suggested that she perform a sexual act for him and that her employment depended on her compliance. He also invited her to travel with him on business and after she declined due to prior commitment, he threatened her employment. The law clerk resigned her employment the next day. Mismas then became hostile and threatened to tell her professors

about the “stupid decision she had made.” The Court found aggravating factors of vulnerability and harm to a victim of the misconduct and a dishonest or selfish motive. Mitigating factors included full and free disclosure and cooperative attitude, good character and reputation, and a substance abuse impairment. The Court issued a one-year suspension with six months stayed.

{¶56} In *Skolnick*, immediately after hiring a paralegal, Skolnick began to criticize and verbally harass her, calling her “stupid, dumb, fat, ‘whorey,’ and bitch.” The verbal insults and harassment continued during her two-and-a-half-year tenure with the firm. At one point he sexually harassed the paralegal by making reference to a sexual act he would like her to perform. Later a clinical psychologist diagnosed the paralegal with PTSD due to Skolnick’s misconduct. Aggravating factors included a pattern of misconduct and harm to a vulnerable employee. Mitigating factors of no prior discipline, evidence of good character, cooperation, acknowledgement of misconduct, and remorse were found. The Court issued a one-year suspension with six months stayed.

{¶57} The joint brief noted that one difference between this case and the cited cases is that this case involves an act of unwelcome physical contact. The parties cite one case of physical contact with a client wherein respondent was issued a fully stayed one-year suspension for putting hands on client’s breasts and saying, “You have very nice breasts.” *Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, ¶¶6, 26.

{¶58} The panel also identified the following cases as relevant.

{¶59} In *Columbus Bar Assn. v. Baker*, 72 Ohio St.3d 21, 1995-Ohio-77, Baker used inappropriate, vulgar, sexually explicit, and suggestive language in the presence of a 17-year-old student who worked in his office. The student employee was embarrassed and disgusted by the language used. The Court issued a six-month stayed suspension and a two-year probation.

{¶60} In *Cincinnati Bar Assn. v. Young*, 89 Ohio St.3d 306, 2000-Ohio-160, three female law students were hired to work for Young as legal assistants. Young asked them questions as to whether they had boyfriends, asked one student if she was a virgin, and suggested to one that she could fill the position of his girlfriend. He also told all three students that he could positively or adversely affect their bar admission. Young told one student that she should be sleeping around, suggested she should be his mistress and have sex with him, and gave her a nickname. Young also would regularly yell at one law student until she became upset and then console her with a hug. The Court concluded that Young's conduct constituted a hostile work environment prohibited by law. The Court determined that the mitigating factors, including no prior discipline, were not sufficient to reduce the sanction. The Court issued a two-year suspension with one year stayed and probation.

{¶61} In *Disciplinary Counsel v. Campbell*, 68 Ohio St.3d 7, 1993-Ohio-8, Campbell was both a private lawyer and judge engaged in several instances of misconduct that included unwelcome and offensive sexual remarks and/or physical contact with young lawyers. In all but one of the incidents, the target was someone over whom Campbell exercised authority. The Court issued an indefinite suspension for violations of former DR 1-102(A)(6) [now Prof. Cond. R. 8.4(h)], DR 1-102(A)(5) [now Prof. Cond. 8.4(d)], and Canons 1, 2(A), 3(A)(3) of the former Code of Judicial Conduct.

{¶62} The panel also found it informative to consider the following cases of Prof. Cond. R. 8.4(h) violations involving relationships with clients and third parties.

{¶63} In *Akron Bar Assn. v. Miller*, 130 Ohio St.3d 1, 2011-Ohio-4412, during a telephone conversation, Miller asked a client about her breast size, stated that he should show her her breasts as a reward, and made a suggestion that she perform a sexual act on him. Aggravating factors of

selfish motive and harm to a vulnerable client were found. Mitigating factors included no prior disciplinary record, cooperation, evidence of good character and reputation, and the existence of a mental impairment. The Court issued a six-month stayed suspension with one year of probation.

{¶64} In *Cleveland Metro. Bar Assn. v. Lockshin*, 125 Ohio St.3d 529, 2010-Ohio-2207, Lockshin engaged in inappropriate sexual communications with clients, a potential witness, and a law enforcement officer. Lockshin engaged in unwanted physical contact with some of the individuals. One mitigating factor of no prior discipline was found. Aggravating factors included multiple offenses, submission of false evidence, harm to vulnerable young women, a pattern of misconduct, and a dishonest or selfish motive. The Court issued an indefinite suspension.

{¶65} The panel is persuaded that while offensive and unacceptable, Respondent's actions did not rise to the level of those in *Mismas*, *Skolnick*, *Young*, *Campbell*, or *Lockshin*, each of whom received a suspension of greater than six months. Nevertheless, the panel finds that Respondent's actions are more severe than those in *Berry*, wherein the respondent-judge had no authority over the victim whatsoever and did not engage in any physical contact. Although *Quatman*, which resulted in a fully stayed one-year suspension and involved a single incident of physical touch is similar to this case, the ongoing harassment present here poses a different dynamic. *Miller*, which resulted in a six-month stayed suspension with one year of probation, is also on point, but contains an additional mitigating factor of mental impairment and single instance of improper conduct that is not present in this case.

{¶66} Although Respondent did not have the power to hire or fire J.S, his authority was not inconsequential. As an experienced attorney in the prestigious position of an AUSA, Respondent had the potential to sway the future of J.S.'s career by introducing her to other lawyers and judges with whom he was "so well connected" (Stipulations ¶35), expressing favorability of

her work product, and giving her professional recommendations. These are not trivial accolades for a law clerk to acquire from someone of Respondent's position, and they could potentially "set the course for a new attorney's entire legal career." *Mismas* at ¶22. Respondent's presence and authority was sufficient for J.S. to inconvenience herself by working in a different geographical location and essentially hiding out when she was in Respondent's home office. Stipulations ¶¶21, 22, 28, 29. The panel is also troubled by the fact that Respondent's behavior was open and notorious and witnessed by at least one of J.S.'s colleagues (Stipulations ¶7), and there was evidence that other colleagues had similar experiences. See Joint Ex. 1 at 10-11, 20-21 and 50; Joint Ex. 2 at 5-7.

{¶67} A quote from *Campbell, supra* rises to the forefront:

[Campbell] was either directly or indirectly in a position of influence over the complainant. Similarly, his actions were almost exclusively directed at those most likely to be intimidated by his position \* \* \* inexperienced attorneys engaged in a new job early in their legal career.

*Campbell*, 68 Ohio St.3d at 11.

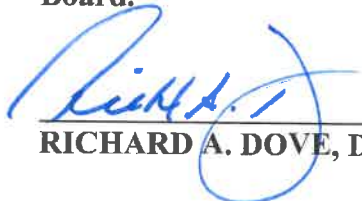
{¶68} Based upon the foregoing, the panel finds that an actual suspension is appropriate and recommends that Respondent receive a six-month suspension, with no time stayed. The panel further recommends that, as a condition of reinstatement, Respondent be required to provide proof that he has continued with his current course of mental health counseling.

### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on April 7, 2023. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Mark Stewart Bennett, be suspended from the practice of law in Ohio for six months and ordered to pay the costs of these proceedings. The Board further recommends that, as a condition of reinstatement in addition to

the requirements of Gov. Bar R V, Section 24, Respondent be required to provide proof that he has continued with his current course of mental health counseling for the duration of his suspension or as otherwise recommended by a qualified healthcare professional.

**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.**



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**RICHARD A. DOVE, Director**