



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

DISCIPLINARY COUNSEL, :

Relator :

v. : Case No. 2022-034

MARK STEWART BENNETT, ESQ. :

Respondent :

ANSWER OF RESPONDENT TO RELATOR'S COMPLAINT

Now comes Respondent Mark S. Bennett, Esq., by and through the undersigned counsel, and states the following as his Answer to Relator's Complaint:

1. Respondent admits the averments contained in paragraph no. 1 of Relator's Complaint.
2. Respondent admits the averments contained in paragraph no. 2 of Relator's Complaint.
3. Respondent admits the averments contained in paragraph no. 3 of Relator's Complaint.
4. Respondent admits the averments contained in paragraph no. 4 of Relator's Complaint that JS was a law student and also an intern with the Akron Office of the USAO in 2017, that she later left that office was, was subsequently an intern with the Youngstown in 2018, and worked at the USAO in 2019 variously in the Cleveland, Akron, and Youngstown offices, but, by way of further answer, Respondent denies, for want of knowledge, the averments contained in paragraph no. 4 of Relator's

Complaint not specifically admitted herein including, but not limited to, JS' age in 2017 and the specific dates of JS' employment listed in that paragraph, but admits that JS has provided that information.

5. Respondent admits the averments contained in paragraph no. 5 of Relator's Complaint.
6. Respondent denies for want of knowledge the averments contained in paragraph no. 6 of Relator's Complaint as to what JS "believed" but, by way of further answer, admits that JS made the statements set forth in Relator's Complaint.
7. Respondent denies for want of knowledge the averments contained in paragraph no. 7 of Relator's Complaint as to what JS "heard" from a third party but, by way of further answer, admits that JS made the statements set forth in Relator's Complaint.
8. Respondent admits the averments contained in paragraph no. 8 of Relator's Complaint and further states that Respondent, during the relevant period of time of the averments contained in that paragraph, believed that he and JS were engaging in flirtation that was mutually acceptable, but Respondent now understands he was mistaken in that regard and accepts responsibility that his conduct as described in paragraph no. 8 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.
9. Respondent admits the averments contained in paragraph no. 9 of Relator's Complaint and further states that Respondent, during the relevant period of time of the averments contained in that paragraph, believed that he and JS were engaging in flirtation that was mutually acceptable, but Respondent now understands and accepts responsibility that his conduct as described in paragraph no. 9 was inappropriate and

unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.

10. Respondent admits the averments contained in paragraph no. 10 of Relator's

Complaint and further states that Respondent, during the relevant period of time of the averments contained in that paragraph, believed that he and JS were engaging in flirtation that was mutually acceptable, but that Respondent now understands and accepts responsibility that his conduct as described in paragraph no. 10 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.

11. Respondent admits the averments contained in paragraph no. 11 of Relator's

Complaint and further states that Respondent, during the relevant period of time of the averments contained in that paragraph, believed that he was offering or attempting to do something as a nice gesture for JS, but that Respondent now understands and accepts responsibility that his conduct as described in paragraph no. 11 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.

12. Respondent admits the averments contained in paragraph no. 12 of Relator's

Complaint and further states that, although he does not recall the exact dates of when the described conduct occurred, Respondent now understands and accepts responsibility that his conduct as described in paragraph no. 12 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.

13. Respondent denies for want of knowledge the averments contained in paragraph no. 13 of Relator's Complaint as to what JS "believed" but admits that he engaged in the conduct as admitted in his response to paragraph 12 of Relator's Complaint and, by way of further answer, admits that JS made the statements set forth in Relator's Complaint.
14. Respondent denies for want of knowledge the averments contained in paragraph no. 14 of Relator's Complaint as to whether another attorney entering the library at that time caused him to remove his hand, but admits that he engaged in the conduct as admitted in paragraph no.12 of Relator's Complaint, but, by way of further answer, admits that JS made the statements set forth in Relator's Complaint.
15. Respondent admits the averments contained in paragraph no. 15 of Relator's Complaint.
16. Respondent denies for want of knowledge the averments contained in paragraph no. 16 of Relator's Complaint as to whether JS "blocked" him from the various social media sites listed in that paragraph and that JS "blocked" Respondent's phone number, but admits that Respondent was at certain relevant times as set forth by Relator's Complaint unable to communicate with JS through those social media sites but, by way of further answer, admits that JS made the statements set forth in Relator's Complaint.
17. Respondent admits the averments contained in paragraph no. 17 of Relator's Complaint.
18. Respondent admits the averments contained in paragraph no. 18 of Relator's Complaint.

19. Respondent admits the averments contained in paragraph no. 19 of Relator's Complaint and further states that, although Respondent does not recall the specifics of the conversation described in that paragraph and that Respondent believed that he and JS were engaging in flirtation that was mutually acceptable, Respondent now understands he was mistaken in this regard and accepts responsibility that his conduct as described in paragraph no. 19 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.
20. Respondent admits the averments contained in paragraph no. 20 of Relator's Complaint.
21. Respondent admits that JS was reappointed as an intern to the USAO in Youngstown in 2018 but denies for want of knowledge the remaining averments contained in paragraph no. 21 of Relator's Complaint, but, by way of further answer, admits JS's statements set forth in Relator's Complaint.
22. Respondent admits the averments contained in paragraph no. 22 of Relator's Complaint and further states that Respondent believed that he and JS were engaging in conversation that was mutually acceptable and which Respondent intended to be helpful towards JS based upon prior conversations between them about issues that JS had shared with him regarding her relationship with her boyfriend, but that Respondent now understands that he was mistaken in his aforementioned belief and accepts responsibility that his conduct as described in paragraph no. 22 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.

23. Respondent admits the averments contained in paragraph no. 23 of Relator's Complaint.

24. Respondent admits the averments contained in paragraph no. 24 of Relator's Complaint and further states that, although Respondent does not recall the specifics of the conversation described in that paragraph and believed that he and JS were engaging in flirtation that was mutually acceptable, Respondent now understands he was mistaken in that regard and accepts responsibility that his conduct as described in paragraph no. 24 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.

Respondent further states that he did, in fact provide, a favorable reference letter for JS and that no sort of *quid pro quo* was actually intended by him nor was anything provided.

25. Respondent denies for want of knowledge the averments contained in paragraph no. 25 of Relator's Complaint as to whether or not JS utilized the recommendation he provided however, Respondent further states that he did, in fact provide, a favorable reference letter for JS and that no sort of *quid pro quo* was intended or provided. However, Respondent admits that JS made the statement set forth in Relator's Complaint.

26. Respondent admits the averments contained in paragraph no. 26 of Relator's Complaint and further states that Respondent believed that he and JS were engaging in flirtation that was mutually acceptable, Respondent now understands that he was mistaken in that regard and accepts responsibility that his conduct as described in

- paragraph no. 26 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.
27. Respondent admits the averment contained in paragraph no. 27 of Relator's Complaint that JS did report at times to the Akron office during her second term as an intern with the USAO, but Respondent further denies all other averments contained in paragraph no. 27 of Relator's Complaint for want of knowledge.
28. Respondent denies the averments contained in paragraph no. 28 of Relator's Complaint for want of knowledge but, by way of further answer, admits that JS made the statement contained in Relator's Complaint.
29. Respondent admits the averment contained in paragraph no. 29 of Relator's Complaint that he did text JS at various times during her internship with the USAO, but further denies all other averments contained in paragraph no. 29 of Relator's Complaint for want of knowledge but, by way of further answer, admits that JS made the statement contained in Relator's Complaint.
30. Respondent admits the averments contained in paragraph no. 30 of Relator's Complaint and further states that Respondent believed that he and JS were engaging in flirtation that was mutually acceptable, Respondent now understands he was mistaken in that regard and accepts responsibility that his conduct as described in paragraph no. 30 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.
31. Respondent admits the averments contained in paragraph no. 31 of Relator's Complaint and further states that Respondent believed that he and JS were engaging in flirtation that was mutually acceptable, Respondent now understands he was

- mistaken in that regard and accepts responsibility that his conduct as described in paragraph no. 31 was inappropriate and unprofessional, and Respondent is remorseful for his conduct as well as for any offense or harm that he visited upon JS.
32. Respondent admits the averments contained in paragraph no. 32 of Relator's Complaint.
33. Respondent admits the averments contained in paragraph no. 33 of Relator's Complaint.
34. Respondent admits the averments contained in paragraph no. 34 of Relator's Complaint.
35. Respondent denies any averments contained in Relator's Complaint not specifically admitted herein.

WHEREFORE, having fully responded to Relator's Complaint, Respondent prays that the Honorable Board of Professional Conduct duly review all facts, stipulations and mitigation as evidence presented, pursuant to Gov. Bar Rule V as well as applicable precedent in formulating its Report and Recommendation in the instant matter.

Respectfully submitted,

/s/ Bryan L. Penrose

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Counsel for Respondent Mark Stewart Bennett, Esq.

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via e-mail on this **6th** day of September, 2022

upon:

Joseph M. Caligiuri, Disciplinary Counsel

joseph.caligiuri@sc.ohio.gov

Matthew A. Kanai, Asst. Disciplinary Counsel

matthew.kanai@sc.ohio.gov

Office of Disciplinary Counsel

65 East State Street, Suite 1510

Columbus, OH 43215-4215

Counsel for Relator

/s/ Bryan L. Penvose

Bryan L. Penvose #0074134

KOBLENTZ, PENVOSE, & FRONING, LLC

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

Disciplinary Counsel
65 East State Street, Suite 1510
Columbus, Ohio 43215-4215

FILED

AUG 18 2022

BOARD OF PROFESSIONAL CONDUCT

Relator,

v.

Case No. 2022-034

Mark Stewart Bennett, Esq.
Attorney Registration No. 0069823
1991 Crocker Road, Suite 600
Westlake, Ohio 44145

Respondent.

Complaint and Certificate

Relator alleges that Mark Bennett, an attorney admitted to the practice of law in the state of Ohio, has committed the following misconduct:

1. Respondent was admitted to the practice of law in the state of Ohio on November 9, 1998.
2. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
3. During the period referenced below, respondent was employed as an Assistant United States Attorney (“AUSA”) in the U.S. Attorney’s Office for the Northern District of Ohio (“USAO”).
4. 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.

5. J.S. became acquainted with respondent in 2017, while working as an intern in the USAO.
6. At times during her internship, J.S. believed that respondent attempted to look up J.S.'s skirt or would be "looking at [her] butt."
7. J.S. heard from a male intern that respondent had made sexually inappropriate comments about her.
8. During the internship, respondent had conversations with J.S. about his marital sex life.
9. Respondent also asked J.S. about her sex life and suggested that he could be J.S.'s sexual partner.
10. At some point during the internship, respondent requested that J.S. send him nude photos of herself on Snapchat.
11. During the internship, respondent offered to buy J.S. clothing from J. Crew, Victoria's Secret, and Brooks Brothers.
12. In August or September 2017, respondent and J.S. were in the Akron office's library. Respondent told J.S. she needed a copy of the 2015 Sentencing Guidelines. He then reached across her body, touching her breasts with the back of his hand.
13. J.S. believed the touching was intentional because respondent made and held eye contact with her during the touching.
14. Respondent removed the back of his hand when another attorney came into the library.
15. During the internship, respondent began communicating with J.S. through various media, including Snapchat, Facebook, and text messaging.

16. 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.
17. 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.
18. 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.
19. 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.
20. J.S. was reappointed as an intern in late 2018.
21. J.S. asked to be stationed in the Youngstown office rather than the Akron or Cleveland offices where respondent was primarily stationed.
22. However, on January 2, 2019, respondent texted J.S. about why she was in Youngstown, including inquiring into her sex life:

R: why do you love YNG¹ so much??? back with the same guy???

J.S. mayyybeeeee

R: 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

R: but you are driving 2 hours out of ur way??? and it obviously didnt work out the first time...is IT² really that good??

J.S. omg im getting back to work.

R: fine...what do i care anyway if u flunk out...³

¹ "YNG" refers to the Youngstown office of the USAO.

² J.S. explained that in the context of the texts, "IT" referred to sex with her then-partner.

³ All text and social media messages throughout have been reproduced verbatim, errata sic.

23. In or around January or February of 2019, J.S. asked respondent for a letter of recommendation for a clerkship.
24. Respondent replied by asking what he would get in exchange for the letter of recommendation.
25. J.S. decided not to pursue the recommendation and, instead, obtained recommendations from other attorneys.
26. In March 2019, at around 4:00 a.m., respondent Facebook messaged J.S., “Why do you haunt my dreams?”
27. 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.
28. She also asked a colleague to let her use their workstation so respondent would not know she was in the office.
29. Respondent continued to text J.S., which contacts J.S. felt were unwelcome and which she ignored.
30. In a June 2019 text message exchange, respondent said, “Nice. Cant wait to have it,” in reference to J.S.’s butt, which he informed her “was looking wide for a while there..”
31. Respondent also texted her, “Damn u for making me think about it again,” referring to sexual activity.
32. 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.
33. As a result of the investigation, respondent resigned from the USAO and subsequently reported his actions to the Office of Disciplinary Counsel. A short time later, the

Department of Justice, likewise, informed the Office of Disciplinary Counsel of its investigation and concern regarding respondent's actions.

34. Respondent's conduct, as alleged above, violates 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].

Conclusion

Relator requests that respondent be found in violation of the Ohio Rules of Professional Conduct and be sanctioned accordingly.

Respectfully submitted,

/s Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
65 East State Street, Suite 1510
Columbus, Ohio 43215-4215
Telephone: (614) 387-9700
matthew.kanai@sc.ohio.gov
Counsel for Relator

Certificate

The undersigned, Joseph M. Caligiuri, Disciplinary Counsel, hereby certifies that Matthew A. Kanai is authorized to represent relator in the action and have accepted the responsibility of prosecuting the complaint to its conclusion.

Dated: August 18, 2022

/s Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel

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

FILED

AUG 18 2022

Disciplinary Counsel

Relator,

BOARD OF PROFESSIONAL CONDUCT

v.

Case No. 2022-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Waiver of Probable Cause

Under Gov.Bar R. V(11)(B), respondent stipulates that there is probable cause for the filing of a complaint and waives the determination of probable cause by a Probable Cause Panel of the Board of Professional Conduct.

Dated:

7-21-22

Richard Koblentz / by NEF
Richard Koblentz, Esq.
Counsel for Respondent



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

Disciplinary Counsel

Relator,

v.

Case No. 22-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Agreement for Consent to Discipline

Relator and respondent submit this Agreement for Consent to Discipline, which contains stipulations of facts, rule violations, aggravation, mitigation, exhibits, and recommended sanction.

Facts

1. Respondent was admitted to the practice of law in the state of Ohio on November 9, 1998.
2. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
3. During the period referenced below, respondent was employed as an Assistant United States Attorney (“AUSA”) in the U.S. Attorney’s Office for the Northern District of Ohio (“USAO”).
4. 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.

5. J.S. became acquainted with respondent in 2017.
6. 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.
7. According to J.S., she heard from a male intern that respondent had made sexually inappropriate comments about her.
8. During the internship, respondent had consensual conversations with J.S. about his marital sex life.
9. Respondent also asked J.S. about her sex life and suggested that he could be J.S.'s sexual partner.
10. According to J.S., respondent requested that J.S. send him nude photos of herself on Snapchat¹ at some point during the internship.
11. During the internship, respondent offered to buy J.S. clothing from J. Crew, Victoria's Secret, and Brooks Brothers.
12. 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.
13. J.S. believed the touching was intentional because respondent made and held eye contact with her during the touching.
14. According to J.S., respondent removed the back of his hand at the time another attorney came into the library.

¹ Snapchat is a messaging platform that automatically deletes messages shortly after they are received.

15. Respondent began communicating with J.S. through various media, including Snapchat, Facebook, and text messaging.
16. 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.
17. 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.
18. 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.
19. 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.
20. J.S. was reappointed as an intern in late 2018.
21. J.S. asked to be stationed in the Youngstown office rather than the Akron or Cleveland offices where respondent was primarily stationed.
22. However, on January 2, 2019, respondent texted J.S. about why she was in Youngstown, including inquiring into her sex life:

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

J.S. mayyybeeeee

R: 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

R: but you are driving 2 hours out of ur way??? and it obviously didnt work out the first time...is IT³ really that good??

² "YNG" refers to the Youngstown office of the USAO.

³ J.S. explained that in the context of the texts, "IT" referred to sex with her then-partner.

J.S. omg im getting back to work.

R: fine...what do i care anyway if u flunk out...⁴

23. In or around January or February of 2019, J.S. asked respondent for a letter of recommendation for a clerkship.
24. Respondent replied by asking what he would get in exchange for the letter of recommendation.
25. J.S. decided not to pursue the recommendation and, instead, got recommendations from other attorneys.
26. 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.
27. In March 2019, at around 4:00 a.m., respondent Facebook messaged J.S., “Why do you haunt my dreams?”
28. 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.
29. She also asked a colleague to let her use their workstation so respondent would not know she was in the office.
30. Respondent continued to text J.S., which she felt was unwelcome and which she ignored.
31. In a June 2019 text message exchange, respondent said, “Nice. Cant 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.

⁴ All text and social media messages throughout have been reproduced verbatim, errata sic.

32. Respondent also texted her, “Damn u for making me think about it again,” referring to sexual activity.
33. 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.
34. 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[.]”
35. 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[.]”
36. 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.
37. During the investigation, respondent admitted that he may have asked J.S. for nude photos on Snapchat.
38. 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.
39. Respondent admits that his actions were inappropriate, and that he did not realize how offensive they were to J.S.
40. On June 20, 2021, respondent voluntarily sought treatment, was diagnosed, and commenced treatment for anxiety and depression. Respondent’s treatment provider has

expressed a favorable opinion that respondent has gained awareness of setting appropriate professional boundaries and has exhibited positive growth.

41. Respondent remains in counseling at this time.
42. Respondent has expressed regret and remorse for his actions towards J.S.
43. As a result of the investigation, respondent resigned from the USAO and subsequently reported his actions to the Office of Disciplinary Counsel. A short time later, the Department of Justice informed the Office of Disciplinary Counsel of its investigation of respondent.
44. Since resigning from USAO, respondent has opened his own law practice, sharing office space with other solo practitioners, in the Greater Cleveland Area.

Rule Violations

45. Respondent's conduct violates 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 and Mitigation

1. Relator and respondent stipulate to the following aggravating factors as listed in Gov.Bar R. V(13)(B):
 - a. A dishonest or selfish motive; and
 - b. The vulnerability of and resulting harm to victims of the misconduct.
2. Relator and respondent stipulate to the following mitigating factors as listed in Gov.Bar R. V(13)(C):
 - a. The absence of a prior disciplinary record;
 - b. Full and free disclosure to the board or cooperative attitude toward proceedings;
and
 - c. Character or reputation.

Exhibits

- Joint Ex. 1 June 26, 2019 transcript of J.S. interview
- Joint Ex. 2 April 3, 2020 transcript of J.S. interview
- Joint Ex. 3 November 20, 2019 transcript of Mark Bennett's interview
- Joint Ex. 4 Character reference letters and testimonial request letters
- Joint Ex. 5 May 18, 2022 summary of treatment from Christy Sugarman
- Joint Ex. 6 November 30, 2022 summary of treatment from Christy Sugarman

Sanction

The parties recommend a fully stayed six month suspension, on the condition that respondent commit no further acts of misconduct. Respondent engaged in inappropriate flirtation with a subordinate law clerk. Respondent's banter included sexual innuendo, criticism of J.S.'s romantic choices, an unwanted touching, and sexually suggestive quid pro quo. However, the parties also agree that respondent did not realize how offensive his conduct was as respondent mistakenly believed that the flirtation was mutually acceptable, and that, while inappropriate, it does not rise to the same level as conduct where the court imposed actual suspensions. Further, the aggravating and mitigating factors do not warrant a greater sanction than a fully stayed suspension.

- I. The court's precedents support a fully stayed suspension.

The court has previously recognized that attorneys must guard against inappropriate conduct with law clerks employed in their office, and failing to do so can result in an actual suspension. *Lake County Bar Assn v. Mismas*, 139 Ohio St.3d 346, 2014-Ohio-2483, 11 N.E.3d 1180, ¶ 22 (suspended for one year, with six months stayed). It is axiomatic that "[u]nwelcomed sexual advances are unacceptable in the context of any employment," *Id.* at ¶ 23. The court has previously focused on the nature of unwanted advances and the power imbalance between the

parties in determining the sanction. The parties agree that respondent's conduct was less egregious and that the power imbalance less wide than in the court's prior cases. Accordingly, a more lenient sanction is appropriate.

A. The offensiveness of the unwanted sexual comments.

The offensiveness of an unwanted sexual advance or comment is, necessarily, a subjective question. However, there are some objective factors that are worth considering. The court has taken a particularly dim view of attorney conduct when it is aggressive, demanding, or threatening. As the court noted in *Mismas*:

Mismas advised Ms. C. that she would "need to take a few beatings" before she could learn to give one. He rephrased this statement in sexual terms and then asked Ms. C. if she had ever engaged in the type of sex act he had referred to. Ms. C. told him to stop, stating that they were only speaking metaphorically, but Mismas insisted that he was serious. Ms. C. advised him that his question was inappropriate and that she would not answer it. Mismas then told her that there needed to be some level of trust between them saying, "[I]f you can't trust me with personal issues then that's a problem." * * *

Mismas at ¶ 9. Thus, Mismas aggressively steered the conversation to sex. Even after Ms. C. expressly told him the question was inappropriate, he continued to imply that Ms. C. needed to be more accommodating. Later that night, Mismas again pushed the conversation towards sex:

A little before midnight, Mismas began to quiz Ms. C. about an arbitration agreement that he had given her to review. The conversation then turned to how Mismas could ensure that Ms. C. would be loyal to him. He told her, "I have an idea but your [sic] not going to like it," and stated that she would "bolt" if he said it. After she responded that he had already taken the conversation pretty far and that she had not bolted, he suggested that she perform a sex act for him. Ms. C. flatly rejected Mismas's suggestion, but he continued to press the issue. When she told him to stop and urged him to admit that he was joking, he repeatedly refused and insisted that her employment depended on her compliance, telling her, "If you show up at 11 you know what's expected." He further stated, "So its your choice. Ok. I'll be there at 11. If you show up great. You know what you gptt. GoTta do [sic]. If not Good luck to you." * * *

Id. at ¶ 10 (errors in original). A week later, Mismas attempted to get Ms. C. to take an out-of-town trip with him. A week after, he asked her to join him on an overnight trip to Washington, D.C. *Id.* at ¶ 12. When she refused, Mismas “belittled her for her rejection and pressured her to go by suggesting that her refusal would have adverse consequences for her employment, texting her, ‘That’s strike 1 for you. 3 strikes and you are out.’ The following day, Ms. C. resigned her employment.” *Id.* The court suspended Mismas for one year, with six months stayed.

The court imposed a similar sanction in *Disciplinary Counsel v. Skolnick*, 153 Ohio St.3d 283, 2018-Ohio-2990, 104 N.E.3d 775. Skolnick engaged in two-and-a-half years of verbal abuse and sexual harassment against his paralegal. He “berated her for her physical appearance, dress, education, and parenting skills. He called her a bitch, a ‘hoe,’ a dirtbag, and a piece of shit, and he told her that he hoped she would die.” *Id.* at ¶ 12. Skolnick also sexually harassed his victim: “While Skolnick drove L.D. and another female employee to lunch, he remarked that the two women should give him ‘road head’ so that he could rate their performances on a scale from one to ten.” *Id.* at ¶ 5. The court noted that Skolnick’s “extreme, obnoxious, and humiliating attack,” *id.* at ¶ 13, on the victim was “longstanding and pervasive,” *id.* at ¶ 14, warranting a one-year suspension with six months stayed.

While inappropriate and offensive to J.S., respondent’s comments were not nearly as egregious as Mismas’s or Skolnick’s. For example, there is no evidence that respondent directly requested that J.S. perform oral sex or any other sexual act on him. Respondent believed, mistakenly, that J.S. was not offended by his comments, but considered them mutually acceptable banter. His mistake was fueled by hubris. He has admitted that he found the idea of

J.S. flirting with him stroked his ego, Exhibit 3, pg. 50, and although J.S. described herself as a “flirtatious” person, respondent now recognizes that his actions crossed into unwanted sexual comments towards J.S. By contrast, Mismas knew that Ms. C. found his comments offensive and inappropriate because she repeatedly told him so, yet he continued to try to force her to have sex with him.

Respondent also admitted that he improperly conditioned professional favors with sexual innuendo when he asked what he would get in exchange for a letter of recommendation. However, Mismas repeatedly threatened Ms. C. that her job depended on her compliance with his sexual demands. While neither act is acceptable, Mismas’s threats to terminate Ms. C. are objectively worse than respondent’s desire to know what he could get in exchange for a letter of recommendation.

Respondent also made inappropriate critical comments about some of J.S.’s personal and romantic choices, but his comments were not as demeaning as the ones in *Skolnick*. Respondent made isolated comments about J.S.’s appearance (joking about her putting on weight in response to J.S. making a comment about her own appearance), her decision to work in a distant office, and her relationship with her then-boyfriend. By contrast, Skolnick berated L.D. for her “appearance, dress, education, and parenting skills” and called her “a bitch, a ‘hoe,’ a dirtbag, and a piece of shit, and he told her that he hoped she would die.” *Skolnick* at ¶ 12.

On the balance, respondent’s comments were certainly unwelcome, but not to the same extent as in *Mismas* or *Skolnick*. Rather, this case is more like *Disciplinary Counsel v. Berry*, 166 Ohio St.3d 112, 2021-Ohio-3864, 182 N.E.3d 1184 (six-month suspension, fully stayed). In that case, Judge Berry sent numerous Facebook messages to a courthouse staff member. Berry invited her to lunch or 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, 140 N.E.3d 561, ¶ 72.

The parties acknowledge that one difference between this case and the cited cases is that this case only involves one act of unwelcome physical contact. In August or September 2017, respondent and J.S. were in the Akron office’s library when respondent moved his arm across her body in reaching for a book, and in so doing, touched her breasts with the back of his hand. J.S. indicated that she believed the contact was intentional as respondent held eye contact with her during the incident. While respondent admits that the act took place and was inappropriate, he did not intend to offend or hurt J.S. The touch was an isolated incident, and respondent never attempted to touch J.S. again over the next two years. The parties are, in no way, seeking to minimize respondent’s actions. Respondent abused a position of authority over a law clerk by subjecting her to unwanted sexual comments and an unwelcome physical touch. This conduct caused J.S. anxiety and fear over her future job prospects. However, the court has previously imposed a fully stayed suspension where an attorney has touched a client’s breast. *See Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, 843 N.E. 2d 1205, ¶¶ 6, 26 (fully stayed one-year suspension for putting hands on client’s breasts and saying “You have very nice breasts.”). The parties note that when compared to relevant case law, respondent’s conduct is less egregious than those where the court imposed actual suspensions.

B. The relationships between the parties.

The board should consider the power imbalance between the two parties to determine the harm the unwanted sexual comments could have caused. The greater the imbalance, the more likely a victim is to feel powerless and coerced, leading to stress, anxiety, and potential capitulation. Law clerks are at a particularly vulnerable point in their careers; they are building nascent professional networks and are acutely aware of their supervising attorneys' power over their immediate future and long-term career prospects. *Mismas* at ¶ 22. Thus, sexual advances are “particularly egregious when they are made by attorneys with the power to hire, supervise, and fire the recipient of those advances.” *Id.* at ¶ 26.

Respondent did not have the power to hire or fire J.S., and his authority over her was transitory, based on individual projects that he and J.S. worked on. Exhibit 2, pg. 4-5 (although respondent directed and evaluated J.S.'s work on certain tasks, she did not consider him a supervisor). This is not to say that respondent's authority was 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, 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. However, compared to *Mismas*, *Skolnick*, and *Berry*, there is far less of an inherent power imbalance.

For example, in *Mismas*, it appears that Mismas had unfettered authority to hire, supervise, and fire Ms. C. Therefore, Mismas had the power to wreck Ms. C.'s immediate employment opportunities and her legal reputation within the profession. He also threatened to inform her law school professors “what a stupid decision she had made” when she resigned, *id.*

at ¶ 25, potentially affecting her legal education and her ability to seek recommendations from her professors.

The victim in *Skolnick* was also powerless. The court noted that L.D. quickly began looking for a new job, but despite responding to over 100 employment advertisements, she was unable to obtain one, *Skolnick* at ¶ 4, and she had to suffer Skolnick's abuse for two-and-half years. Even after L.D. eventually found another job, a clinical psychologist later diagnosed her with symptoms that met some of the criteria for posttraumatic stress disorder. *Id.* at ¶ 6.

Finally, while the recipient of Judge Berry's unwelcome messages did not work in Berry's courtroom, she was in the untenable position of receiving messages from an elected Judge. Judges are not subject to normal Human Resources proceedings because they can be investigated internally but cannot be disciplined. Although Berry had no direct authority over the staff member, the staff member also had no meaningful process to address Berry's behavior. The existence of an internal disciplinary process at the USAO does not excuse respondent's misconduct, but it is one of the factors that point to greater power imbalances in *Mismas*, *Skolnick*, and *Berry*.

Given the nature of respondent's conduct, the parties believe that a fully-stayed six month suspension, on condition that respondent commit no further misconduct, is appropriate. This sanction would help to ensure that respondent continues to set appropriate professional boundaries while acknowledging that respondent voluntarily sought and continues to receive mental health treatment.

II. Aggravating and mitigating factors.

In *Mismas*, the court ultimately found two aggravating factors of (a) dishonest or selfish motive and (b) the vulnerability of and resulting harm to the victim. It found four mitigating

factors: (a) the absence of a prior disciplinary record, (b) his full and free disclosure to the board and cooperative attitude toward the proceedings, (c) his good character and reputation, (d) his alcohol dependency.

The parties have stipulated that respondent's case involves two aggravating factors of (a) dishonest or selfish motive and (b) the vulnerability of and resulting harm to the victim. It also involves three mitigating factors: (a) the absence of a prior disciplinary record, (b) his full and free disclosure to the board and cooperative attitude toward the proceedings, and (c) his good character and reputation. Moreover, while respondent is not asking the board to find a mitigating mental health disorder under Gov.Bar.R. V(13)(C)(7), the parties have stipulated that respondent sought mental health treatment shortly before self-reporting his misconduct. Respondent was diagnosed with Adjustment Disorder with anxiety and depression, and, as part of his ongoing treatment, respondent has shown positive growth on awareness of and setting appropriate professional boundaries.

While the parties agree that the same aggravating factors exist, they believe that respondent has less culpability for J.S.'s vulnerability because he did not have the same unfettered authority to hire, supervise, and fire J.S. as *Mismas*. Respondent did not act against J.S. after he became aware of her allegations while he was employed at the U.S. Attorney's Office. Respondent cooperated with the Office of the Inspector General Investigation conducted by the U.S. Department of Justice. As a result of the investigation, he voluntarily resigned his position as an Assistant United States Attorney. He has also reported his misconduct to relator and has cooperated during relator's investigation. Also, similar to the mitigation factors found in *Mismas*, respondent has no prior disciplinary record and his good character and reputation are

exemplified through the letters testimonial submitted as exhibits to this Agreement for Consent to Discipline.

Based on the foregoing, the parties stipulate that a fully stayed six-month suspension is appropriate.

Conclusion

The undersigned parties enter into the above stipulations this 5th of December 2022.

Respectfully submitted,

s/ Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
65 East State Street, Suite 1510
Columbus, Ohio 43215-4215
Telephone: (614) 387-9700
matthew.kanai@sc.ohio.gov
Counsel for Relator

See Attached
Mark Bennett (0069823)
Respondent

/s Richard Koblentz
Richard Koblentz (0002677)
3 Summit Park Dr.
Suite 440
Independence, OH 44131
(216) 621-3012
rich@koblentzlaw.com
Counsel for Respondent

exemplified through the letters testimonial submitted as exhibits to this Agreement for Consent to Discipline.

Based on the foregoing, the parties stipulate that a fully stayed six-month suspension is appropriate.

Conclusion

The undersigned parties enter into the above stipulations this 2nd of December 2022.

Respectfully submitted,

s/ Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
65 East State Street, Suite 1510
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matthew.kanai@sc.ohio.gov
Counsel for Relator


Mark Bennett (0069823)
Respondent

/s Richard Koblentz
Richard Koblentz (0002677)
3 Summit Park Dr.
Suite 440
Independence, OH 44131
(216) 621-3012
rich@koblentzlaw.com
Counsel for Respondent

State of Ohio,
CUYAHOGA County, ss:

Affidavit of Mark Bennett

I, Mark Bennett, swear or affirm that:

1. I admit that I committed the misconduct listed in the Agreement for Consent to Discipline, that grounds exist for imposition of a sanction against me for the misconduct, and that the agreement sets forth all grounds for discipline currently pending before the Board of Professional Conduct.
2. I admit to the truth of the material facts relevant to the misconduct listed in the agreement.
3. I agree to the sanction recommended in the agreement to the board.
4. My admissions and agreement are freely and voluntarily given, without coercion or duress, and I am fully aware of the implications of the admissions and agreement on my ability to practice law in Ohio.
5. I understand that the Supreme Court of Ohio has the final authority to determine the appropriate sanction for the misconduct admitted by me.

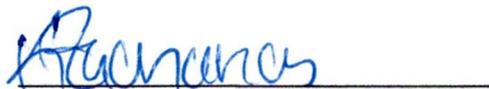


Mark Bennett, Esq.

Sworn to or affirmed before me and subscribed in my presence this ^{2nd} day December 2022.



KELLY M. ZACHARIAS
Attorney at Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.


Signature of Notary Public

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Agreement for Consent to Discipline was served on respondent's counsel, Richard Koblentz, by electronic mail at rich@koblentzlaw.com on this 5th day of December 2022.

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Counsel for Relator

**Stipulated Exhibits 1-3 are sealed per
December 7, 2022 order.**

KOBLENTZ, PENYOSE & FRONING, LLC

ATTORNEYS AND COUNSELORS AT LAW

RICHARD S. KOBLENTZ
BRYAN L. PENYOSE
NICHOLAS E. FRONING

MARVIN A. KOBLENTZ
1922 - 1995
OF COUNSEL
STEPHEN W. GARD

*

*

Re: Our Client: Mark S. Bennett, Esq.

Dear *:

As I believe Mark Bennett, our above-referenced client, has informed you, this office and the undersigned are acting as his professional responsibility counsel relative to a matter which he self-reported to the Office of Disciplinary Counsel of the Ohio Supreme Court.

Mark has indicated to us that you are a person who has had the opportunity, through your relationship with him, to voice an opinion as to his character and are in a position to offer a testimonial letter regarding his character which we will be able to present and utilize in our representation of Mark regarding his actions.

As lawyers who have had the privilege and honor of representing a vast number of our colleagues in the professional responsibility area, we have found that testimonials regarding our client's good general character and positive works in both the general and legal communities carry great weight within the Ohio Attorney Disciplinary System. As our Supreme Court has observed on countless occasions, the purpose of the Ohio Attorney Disciplinary System is not to discipline the attorney but to protect the public of the State of Ohio. As I am sure you can appreciate, testimonials of the type that you can furnish on Mark's behalf are extremely important in allowing the Ohio Attorney Disciplinary System to appropriately measure whether or not Mark's service to his clients is a benefit or detriment to the public of the State of Ohio. Because of our utmost respect for you and the Ohio Attorney Disciplinary System, this correspondence will painstakingly set forth the actions Mark took which caused him to self-report his conduct to the Office of Disciplinary Counsel and the many steps he has taken to rectify his past conduct which occasioned this self-report.

Between May 2017 and November 2017 and then from August 2018 through June 2019, a law student who was identified as "J.S." (to protect her privacy, this is the way that she is being identified) served as an intern with the United States Attorney's office for the Northern District of Ohio, during which entire period Mark was an Assistant United States Attorney. Shortly after "J.S." began her internship, she and Mark became acquainted and he and "J.S." began to engage in, what Mark believed to be, playful sexual banter. While Mark believed that "J.S." welcomed these interactions, he became aware of "J.S.'s" discomfort when a report was made to the Office of the Inspector General of the United States Justice Department, complaining about Mark's interactions with her and an investigation was initiated.

Mark has acknowledged and sincerely regrets engaging in actions with "J.S." which he recognizes were wholly inappropriate especially in view of the roles that he and "J.S." held at the

United States Attorney's Office, which placed him in a superior position to "J.S.", as well as being sorry for the extreme discomfort "J.S." reported to the investigators.

Through the investigation Mark and, later, we as his counsel, learned that "J.S." believed that Mark was inappropriately attempting to look up her skirt or look at her "butt" on some occasions and that she heard from another employee that Mark had made inappropriate comments about her. While Mark acknowledges "J.S.'s" belief, he has denied engaging in those actions.

Mark has acknowledged and admitted to engaging in the following actions:

- 1) Having conversations with "J.S." about his marital sex life.
- 2) Inquiring of "J.S." about her sex life and suggesting that he and "J.S." could be sexual partners.
- 3) Requesting that "J.S." send him nude photos of herself via Snapchat.
- 4) Offering to purchase "J.S." clothing.
- 5) In the fall of 2017, in the library of the United States Attorney's Akron Offices, while "J.S." was looking for a law book, reaching out and inadvertently touching her breasts with the back of his hand. While "J.S." believes that the touching was intentional, Mark, while embarrassed that the action took place, denies that the touching was intentional.
- 6) Mark attempted to communicate with "J.S." through text messaging and various social media platforms which, eventually, "J.S." began blocking and when Mark asked "J.S." about her not being visible on social media, she claimed that she was unaware of that lack of visibility and told Mark she did not know how that could have happened.
- 7) After "J.S." left her position as an intern, she later sought to return to the U.S. Attorney's office as an intern and contacted Mark. Mark asked "J.S." what she was willing to do to get back into the U.S. Attorney's office and "J.S.", believing that Mark's conversation had sexual overtones, did not pursue the issue with him any further. "J.S." resumed her internship, asking to be sited in the Youngstown office looking to, as she told the Office of the Inspector General, avoid contact with Mark. Mark, shortly thereafter, texted "J.S." asking why she requested to be sited in Youngstown and if it was because of her relationship with her boyfriend. "J.S." took that text to mean that Mark was inquiring into her sex life. Shortly after that text exchange, "J.S." asked Mark to provide her a letter of recommendation and, when Mark replied asking what he would get in exchange for such a letter, "J.S." chose not to pursue the issue any further with Mark.
- 8) Approximately one month later, Mark sent "J.S." a message asking, "Why do you haunt my dreams?"
- 9) On occasion, during her internship, "J.S." was detailed to an office where Mark was present and she later reported to the Office of the Inspector General that she disliked interacting with Mark to the extent that she would avoid contact with him, using another employee's work station so that Mark would not know she was in the office.
- 10) In June 2019, in a text message exchange with "J.S.", Mark made inappropriate sexual observations to "J.S."

- 11) "J.S." informed another employee in the office about her interactions with Mark and the fact that he made her uncomfortable. That conversation was reported to the Office of the Inspector General, which initiated an investigation regarding Mark's interactions with "J.S."
- 12) During the investigation by the Office of the Inspector General, "J.S." stated that she had not reported her discomfort because she had been raised in a background where you deal with things yourself and further said that Mark's position and his friendships within both the U.S. Attorney's office and the local legal community made her reticent to file a complaint.

The Office of the Inspector General instituted a wide-ranging and exhaustive investigation into Mark's actions, to which investigation Mark gave his full cooperation.

Recognizing that his actions were not only inappropriate, especially in view of the disparity in their respective positions, Mark resigned from his "dream job" as an Assistant United States Attorney, taking responsibility for his actions with the United States Department of Justice. Mark further recognized that his actions reflected adversely on his duties as a lawyer, which carried implications regarding his license to practice law in Ohio.

It was at this point that Mark sought our advice and counsel and, after listening to all of the facts, we told him that it was our advice that he self-report his conduct to the Office of Disciplinary Counsel, which self-report was later followed by a report made by Office of the Inspector General to the Office of Disciplinary Counsel.

As part and parcel of our investigation into this matter and our representation of Mark's interests, we have spent hours speaking with him regarding the circumstances which led him to engage in the behavior which has resulted in the investigation of that conduct. We can assure you that Mark fully recognizes the wrongfulness of his actions, is deeply remorseful, and has changed the way in which he interacts with all persons in all settings, but, particularly, with women in the work place and in the context of our profession. Mark has taken the steps to explore, through counseling, what led him to behave in the manner in which he did and, more importantly, has become equipped with the knowledge and tools to be certain that such a lapse in judgment and behavior never occurs again. Despite this lapse, we are of the opinion that Mark is a person of good character, who is honest and decent, and are fully supportive of the reparative actions which he has and continues to undertake and hope you will agree with our opinion.

Mark instructed us, as his counsel, to be open and fully cooperate with any and all aspects of the investigation conducted by the Office of Disciplinary Counsel of the Ohio Supreme Court. Through that cooperative process, Mark fully and freely admitted to all of the actions that were set forth in this letter and has entered into a Consent to Discipline with the Office of Disciplinary Counsel, admitting that his actions reflected adversely upon his role as a lawyer licensed to practice law in the State of Ohio. In reaching this Consent to Discipline, the Office of Disciplinary Counsel has recognized the steps that Mark has taken to not only recognize the wrongfulness of his actions but, more importantly, become equipped with the knowledge and tools to avoid inappropriate action in the future.

Re: Our Client: Mark S. Bennett, Esq.

*

Page 4 of 4

While we recognize that this exhaustive recitation of the facts present in Mark's matter has required quite a bit of your time to review, it is important to Mark, we as his counsel and the Ohio Attorney Disciplinary System that you be fully apprised of all of the facts and circumstances involved in Mark's matter before being asked to give a testimonial as to his character.

We would appreciate it very much if you would author a testimonial letter setting forth your view of Mark, in the role in which you know him, which will exemplify Mark's value to, as the case may be, his clients, the legal community and/or the general community. In your letter, we would appreciate if you would indicate that prior to authoring your testimonial, you reviewed this correspondence. We would further appreciate if it you would opine as to Mark's value as a lawyer and should you agree that even upon being made fully aware of his wrongful actions, that Mark, in his role as a lawyer, provides value to the public of the State of Ohio and does not pose a threat to the public of the State of Ohio which would require the public to be protected by the Ohio Attorney Disciplinary System. If, after being apprised of all of these facts, you believe that Mark would provide appropriate representation in the event that you, a friend, relative or one of your clients had a matter falling into his area of practice, that opinion would certainly be welcomed.

While we recognize that you have many obligations which require your attention, time is of the essence as, since Mark has taken full responsibility for his actions, his matter is moving forward on an accelerated basis. We would appreciate you forwarding your testimonial letter on Mark's behalf to our office in as timely a manner as possible, hopefully by September 9, 2022.

Should you desire, I would be pleased to discuss this request and answer any and all questions which you may have and invite you to call me and discuss Mark's matter and our request at any time.

On behalf of Mark, as well as our office, I wish to thank you for the time and attention you have taken to review this matter and look forward to your response.

Very truly yours,

/s/ Richard S. Koblentz

Richard S. Koblentz

cc: Mark S. Bennett, Esq.
File

Rebecca J. Bennett
30611 Mallard Cove
Westlake, Ohio 44145

July 18, 2022

Richard S. Koblentz
Koblentz & Penvose, LLC
rich@koblentzlaw.com
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

RE: Testimonial Letter for Mark S. Bennett, Esq.

Dear Mr. Koblentz:

I am writing this testimonial letter to offer my opinion as to character of Mark Bennett and his ability to practice law in a manner consistent with Ohio's professional conduct rules in connection with his matter before the Office of Disciplinary Counsel of the Ohio Supreme Court ("ODC").

Mark and I have been married for 22 years. I met Mark in law school in 1997 and served with him on the Moot Court Board of Governors. As a practicing lawyer married to Mark, I have had the opportunity to observe his professional practice throughout the years and have collaborated with him on many professional and community activities. I wish to bring to the ODC's attention the following observations that I believe demonstrate the core goodness of his character, his professionalism as a lawyer, and the value he adds to the practice of law.

- **Commitment to Justice.** Both in his civil practice and as a federal prosecutor, Mark has always taken the approach of empathetic justice. He was never one to celebrate convictions, because he understood the impact of convictions on all of the people affected. Mark is the type of lawyer who is willing to take on complicated matters where there is no roadmap. At the U.S. Attorney's office, he prosecuted Northeast Ohio mortgage fraud at the height of the global financial crisis, where the waters were uncharted, and he did so successfully. Mark would take on cases that others might turn down, because he felt strongly about the case and serving justice. On the flip side, Mark would not seek indictment of matters when he came to believe there were mitigating circumstances that warranted compassion. He was never worried about a personal score card; he was committed to justice and his role in the system. Mark has worked hard and intentionally to develop and maintain good, civil, positive, professional relationships with lawyers who represent opposing parties, as well as with the judges and court staff.
- **Commitment to Colleagues.** Mark has always gone out of his way to support the professional careers of others, regardless of age, gender, race, or other status. He has

served as a mentor to many new lawyers through the Ohio State Bar mentoring program and has made great efforts to assist his mentees in finding meaningful career opportunities. He has served as an informal mentor to other lawyers and friends, and has similarly welcomed the mentorship of those lawyers that have assisted Mark.

- **Commitment to the Legal Profession.** Since the beginning of our legal careers, Mark has always believed in volunteering to support the profession, and his dedication has inspired me to participate too. He has served on the Board of the Cleveland Metropolitan Bar Association and Foundation, he has actively participated in Bar events, he was named Volunteer of the Year on multiple occasions for various organizations. He served on the Board of Directors for Legal Aid Society of Cleveland, where he assisted in lobbying and refocusing the organization on using data to measure the mission's effectiveness. He regularly supports bar events organized by friends and colleagues, and considers this involvement a duty of the profession.
- **Commitment to the Community.** Mark has regularly donated his time to support our community. He has participated on the Board of numerous non-profit organizations and given countless volunteer hours. He has always supported me in my community and philanthropic endeavors. He is a volunteer coach. He is a good and kind neighbor. He is the type of person that clears the snow from the driveway of a neighbor without being asked.
- **Commitment to Friends and Family.** Mark is a loyal and caring friend, husband, father, son, son-in-law, and uncle. He wakes up each morning thinking about what he can do to help the people he loves and those he considers friends. He seeks to make connections between people when he sees that a friend in need may benefit from a contact that he has. When my friends and family are in the need of legal advice, they almost always go to Mark first, not me. That includes my own family. In situations of great personal trauma or stress—like job loss, financial distress, divorce, loss of a loved one—they go to Mark. I attribute that to Mark's approachability, his candor, his ability to put others at ease, and his commitment to justice. Mark is a loving father with natural, nurturing instincts. Together, we strive every day to teach and to raise our daughter, who we took custody of when she was an infant and then adopted. Our daughter's birth father is Mark's first cousin's son. Her birth parents were unable to care for her due to drug addiction and other issues. When we were asked by family if we would take custody of this baby, Mark did not hesitate. He was all-in from day one. To witness his loving kindness to his daughter is to confirm his humanity and core goodness.

Mark is a valuable asset to Ohio's legal community, and I am confident that he can serve the community as a lawyer with trust, value, and commitment to adhering to the principles of the Lawyer's Creed.

I am a daily witness to Mark's character. Mark is worthy of forgiveness, and he has my full support as he moves forward. Because of my knowledge and experience of Mark's character and professionalism, I would not hesitate to recommend or refer him to a potential client.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Bennett". The signature is written in a cursive, flowing style with some loops and flourishes.

Rebecca J. Bennett, Esq.
Shareholder, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Richard S. Koblentz
Koblentz & Penrose, I.L.C.
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

Re: Mark S. Bennett, Esq.

Dear Mr. Koblentz:

I am writing this testimonial letter to express my opinion of Mr. Bennett and the immense value he brings not only to the legal community, but to the public.

Please note that prior to authoring this testimonial letter, I fully and completely reviewed the above correspondence and have appraised myself of all the facts.

I have known Mr. Bennett for over three years now. When I began my legal education at Cleveland Marshall College of Law, Mr. Bennett was assigned to me as my Alumni Mentor. Upon first meeting Mr. Bennett at my law school orientation, I immediately perceived his immense passion for the legal profession. Mr. Bennett is highly dedicated and passionate towards providing the utmost representation for his clients. If I were to ever find myself, a friend or relative in need of representation in a matter falling within his area of practice, I believe and know, Mr. Bennett would go above and beyond to provide the appropriate representation.

Since meeting Mr. Bennett, he has guided me through my legal career, given priceless advice and opened countless doors for me. On several occasions throughout my legal education, I have sought advice from Mr. Bennett. In each and every occasion I sought such advice, Mr. Bennett took the time and helped me through any situation whether it was as simple as preparing for a final exam or navigating my future employment. Through every interaction I have had with him, I have never once felt uncomfortable around him; In fact, I have found Mr. Bennett to be particularly approachable in such an intimidating environment as the legal profession can be. Mr. Bennett has always shown me nothing but respect and professionalism in our interactions.

After appraising myself of all the facts of Mr. Bennett's behavior, I know they do not represent the person I have known and been mentored by over these past three years. Although this was a clear lapse in judgement on Mr. Bennett's part, this in no way represents the person he is. Mr. Bennett, through my interactions, has shown me that he is honest, diligent, respectful, and of truly impeccable character.

With Mr. Bennett's dedication, diligence and good character, he provides great value to his clients, the legal community and the public in general. As such, Mr. Bennett in my opinion, in no way presents any kind of threat to the public of the State of Ohio that would require the protection by the Ohio Attorney Disciplinary System.

I appreciate the opportunity to express my opinion of Mr. Bennett. Please feel free to contact me if I can be of any further assistance. Thank you.

Sincerely,



MaKenna Daus



DEPIERO LAW
Attorney Dean DePiero

August 2, 2022

Richard S. Koblentz
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

RE: Testimonial Letter for Mark S. Bennett, ESQ.

Dear Mr. Koblentz,

Thank you for the opportunity to write a letter on behalf of Mark Bennett. I have had an opportunity to review the July 8, 2022 correspondence that you sent to me that contained the information regarding Mark's conduct in the past. Although the information is unfortunate, I enthusiastically authorize this letter on his behalf.

I have practiced law as an Attorney for almost twenty-eight years. I am Of Counsel for McDonald Hopkins and operate my own firm now as DePiero Law. I am also currently the Law Director of the City of Aurora, Ohio and the Assistant Law Director for Broadview Heights, Ohio.

I have known Mark for approximately twenty years. He and his wife, Rebecca have been both friends and colleagues in the legal community.

Mark has shared office space with myself and two other Attorneys in my office building in Parma, Ohio since January of 2021. I have always known Mark as a smart, hardworking lawyer who did great work at the Department of Justice. Now I see his work ethic first hand on a daily basis. I have referred legal matters to him often and have been very impressed with his competent handling of his work. The clients are always satisfied. I am also impressed about how fast he has built a successful private practice of law as a solo practitioner. I would never hesitate to recommend Mark to any friend or family member. I know he would work hard for their interests.

Furthermore, Mark's work with Legal Aid over the years is admirable. He has advocated for me to be more involved in this endeavor and has urged me to attend the many events that he is involved with.

I also know Mark as a good husband and a loving father. My late wife, Kathleen and his wife were friends and Kathleen would always comment on the strength of their relationship. In fact, when Mark

and Rebecca started the process to adopt their daughter, Maya, my wife helped to prepare their home for her arrival.

In summary, despite Mark's past shortcomings that are the substance of the pending matter, I know that he will continue to be a great advocate for his clients, a solid community contributor and most of all a great husband and father.

Yours Truly,

A handwritten signature in blue ink, appearing to read 'D. DePiero', with a stylized flourish at the end.

Dean DePiero

September 8, 2022

To Whom It May Concern:

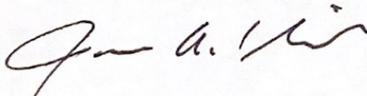
Thank you for the opportunity to provide the Disciplinary Counsel with the below letter in support of Mark S. Bennett. I am aware of the behavior Mr. Bennett disclosed to the Disciplinary Counsel as set forth in a correspondence provided by his legal counsel and submit the below for your due consideration.

I have known Mr. Bennett for nearly twenty years, having first met as members of the 2005 cohort of Cleveland Bridgebuilders, a leadership program whose mission is to advance a pipeline of civically-minded emerging leaders within Northeast Ohio. Two things struck me within the first few hours of meeting Mr. Bennett: he advocated (successfully) for one of three female minorities to assume a leadership position within our cohort and he shared with a small group of us his profound love for the practice of law and its potential to positively impact society. It was evident that Mr. Bennett held himself to a high standard rooted in fairness and honesty. Since that time, Mr. Bennett and I have remained friends and he has served as a legal advisor on several personal matters.

Mr. Bennett is generous and sincere. When the opportunity arose to help an at-risk newborn, he and his wife did not hesitate to foster and, eventually, adopt their daughter. And when my wife and I had an urgent personal matter, Mr. Bennett helped us navigate a complex circumstance purely as a favor to a friend. He has supported others in advancing their civic interests and careers through a simple introduction (as he did for me for a civic volunteer opportunity) or going so far as to advocate for an individual to get involved in furthering regional development (as he did for a mutual friend). Mr. Bennett is an asset to Ohio's legal community and a force for positive change as evidenced throughout his career.

I hope this provides you with a more comprehensive, balanced perspective of Mr. Bennett. I would be happy to provide further context, as necessary.

Sincerely,



Joseph A. Glick
37114 Hunters Trail
Avon, Ohio 44011
(440) 452-0797

Richard S. Koblentz
Koblentz, Penrose & Froning LLC
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

July 26, 2022

Dear Mr Koblentz,

I am writing this letter in support of Mark Bennett. I have known Mark since 2005, having met him when we both participated in Cleveland Bridge Builders, a development program for mid-career professional that prepares professionals for a greater role in the community by fostering teamwork, growth and learning. I am writing this letter after reviewing the detailed correspondence you provided that outlined the incident that Mark self reported to the Office of Disciplinary Counsel of the Ohio Supreme Court.

The lapse in judgement outlined in the correspondence is disappointing, but it is not the Mark that I have known and respected for over fifteen years. I have stayed connected to Mark over the years for many reasons: he is intelligent, a devoted family man, a huge supporter of women lawyers and passionate about the law and using it to do good.

Professionally Mark and I would meet several times a year. Mark and I would meet to discuss Medical Mutual's fraud investigations, new legal developments and Mark would question me about the *insurance/pharmacy/medical industry because of my role as an executive at Medical Mutual. He was always passionate about his work and insightful about his questions. His role working for the US Attorney General was a dream job for him and I was impressed by his passion for the role and public service.*

Personally Mark has always been incredibly supportive of my career as a female attorney who has taken on some very non-traditional roles like Chief Information Officer and General Auditor while raising a family of four. He has always been a sounding board and cheerleader as I have navigated my career and balanced work and home. I have also heard him talk about his wife and her legal career on numerous occasions. His pride in Rebecca is a wonderful thing to witness. Mark has also acted as a mentor for many people close to me. He allowed my niece, currently serving in the Judge Advocate General's Corps, to shadow him while she was in college. She credits the time spent with Mark as helping her define the career path she has chosen to follow. Mark has also mentored one of my sons who is currently studying for the LSAT. He helped arrange an internship with a political campaign to allow my son to explore this use of a legal degree. I know Mark has successfully mentored many other aspiring lawyers.

I do not condone Mark's behavior as outlined in the letter but I also think this incident does not define who Mark is. The legal profession and the community would suffer a loss without Mark's continued dedication to the practice of law.

Please feel free to reach out to me if you have any questions or need any additional information. I can be reached at kathygolovan@gmail.com or 216-470-5481.



Kathleen Golovan
EVP, Chief Health Officer
Medical Mutual of Ohio

Law Offices
MICHAEL P. HARVEY CO., L.P.A.
311 Northcliff Drive
Rocky River, Ohio 44116-1344
(440) 356-9108

Cellular: (440) 570-2812

Email: MPharveyCo@aol.com

September 6, 2022

Confidential
Sent via Electronic Mail

Richard S. Koblentz, Esq.
Koblentz, Penrose & Froning, LLC
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131
Email: rich@koblentzlaw.com

RE: *Mark Bennett, Esq.*

Dear Richard:

I write this letter in support of Mark Bennett, Esq. Mr. Koblentz and his law firm have made me aware of the allegations. I do know the man because I have worked with him and have been associated with him for over twenty-five years. Mark chaired the Rocky River Planning Commission before I became Chair approximately eight years ago. So, I served with Mark before his term ended.

I also know him from his work in the community including as a Partner at Weston Hurd and his work in the U.S. Attorney's Office because the areas he worked in often overlapped with what I was doing in the mortgage/forbearance area.

I can say with great assurance that Mark likely feels very badly about what occurred. Knowing him, he is taking full responsibility. But, I do believe that his contributions to the legal community over the past decades and most assuredly his future contributions will be sorely missed if his license to practice law is taken away.

I also know that he has contributed many hours to both legal and non-legal organizations and people without payment and I believe he has always been a truthful, stand-up guy with respect to what I have been working with him on.

So, I do think that Mark will likely have learned his lesson. I most assuredly would look forward to working with him again in the legal community.

Sincerely,

MICHAEL P. HARVEY, CO., L.P.A.

/s/Michael P. Harvey
Michael P. Harvey, Esq.

MPH/rrg

VIA EMAIL: rich@koblenzlaw.com

July 21, 2022

Richard S. Koblenz

3 Summit Park Drive, Suite 440

Cleveland OH 44130

Mr. Koblenz,

My name is Kimberly Kepling, and I am a retired United States Postal Inspector. I am in receipt of your email dated July 11, 2022 "Re: Our Client: Mark S. Bennett, Esq." I have reviewed the letter thoroughly. As far as writing a character letter in support of Mark S. Bennett, I do so without hesitation.

After 30 years federal service, and almost 25 years as a U. S. Postal Inspector, I retired in June 2015. I spent most of my career investigating fraud. I led many investigations, assisted other agents and officers with investigations, and participated in numerous working groups and task forces. The number of cases I investigated was in the hundreds, and the number of victims I advocated for was in the thousands. My cases were prosecuted at the federal and state level. I retired with a 100% conviction rate.

Between 2005-2018, my career path crossed Mark Bennett's on many occasions. My first interaction with Mark Bennett occurred between 2005-2007. Mark oversaw the Cleveland Office of the Ohio Attorney General (OAG). The OAG received fraud complaints, including elderly fraud, and we were meeting to determine the best course of action. During the interaction, I recall Mark Bennett being professional, well prepared, very organized, and cordial.

In 2003, I started working mortgage fraud investigations. Although the mortgage fraud problem in Cleveland in 2003 was just becoming known, the criminal conduct continued to grow and was becoming more egregious. The individuals involved in the schemes to defraud included mortgage lenders, mortgage brokers, appraisers, realtors, title company employees, buyers, sellers, and others. The cases were intertwined, paper intensive, and time consuming. Although law enforcement resources at the time were focused on 9/11 and domestic terrorism, there were agencies dedicating resources to combatting mortgage fraud. There were many overlapping cases between the federal prosecutors, including Mark Bennett as an Assistant United States Attorney, and the Cuyahoga County Mortgage Fraud Task Force. The agencies involved with these overlapping investigations included the Postal Inspection Service, FBI, IRS-CID, HUD-OIG, SSA-OIG, Secret Service, Ohio Attorney General, the Sheriff's Department, and affected local police departments.

I was the Affiant and lead investigator for a multi-location search warrant involving a document maker. The individual, Jerold Levert, created fictitious paystubs, W2s, tax returns, proof of insurance, proof of employment, and identifications. He created fictitious businesses and offered a binder for review so that individuals could view the format of the fake documents they were ordering. Levert created fake businesses to falsely verify employment. He set up phone lines for each of the businesses

to verbally verify employment when lenders would call. Next to the phone line there was a sign as a reminder of the fictitious representative name used for the bogus business. Levert created a wallet size price list for fake documents including \$25 for a pay stub up to \$500 for verification of employment. Unscrupulous mortgage brokers would send via facsimile orders for fake documents listing the name of the buyer, social security number, fake business name, and the amount of income to be shown on the fake income document. When the fake documents were picked up, Levert maintained a copy of the original faxed order form, fake document, and in red wrote the date the document was picked up, how much was paid, and who paid for the documents. The search warrant resulted in obtaining two 2-ton trucks worth of evidence. Levert's fraudulent documents resulted in more than \$60 million dollars in mortgage loans in the Cleveland Ohio area being funded by mortgage lenders. I'm explaining the complexity of just this one case to set the stage for the amount of time I spent working with Mark Bennett. I witnessed his interactions with his co-workers, defense counsel, law enforcement officers, court personnel, and others and I'm also aware of how they spoke of him when he was not around.

I first met with Mark Bennett regarding mortgage fraud investigations in approximately July 2008. Mark was presented with an exceptionally large, tangled web of individuals involved in mortgage fraud. Mark very capably began to unravel the complex case to determine the best prosecutorial avenues. As the cases were paper intensive and as there were many cooperating individuals, Mark arranged for me to have my own workspace at the US Attorney's Office in Cleveland just down from his office so that I could scan and prepare cases for interviews, indictment, and potentially trial. I interacted with Mark almost daily. Mark literally spent hundreds and hundreds of hours reviewing, preparing for, and coordinating prosecution of cases. His memory, diligence, and presentation are extremely impressive. We presented many cases in front of the grand jury and I was present in the courtroom to hear Mark during various courtroom proceedings including sentencings. Mark knew the cases inside and out. He was prepared and articulate. Mark's interaction with co-workers, staff, and other agents was always cordial and professional. His meetings with defendant's and counsel were firm but fair. Mark's work ethic and dedication were amazing, and he was held in high regard by those who interacted with him. Although Mark usually worked out at lunch time, we occasionally went to lunch together. Other than attending a few of the same retirement parties, we did not socialize outside of work. He spoke very highly of his wife and of his homelife.

After we finished our large mortgage fraud cases and I moved out of my office at the U. S. Attorney's Office, I continued to work with Mark Bennett as I was assigned to investigate Money Laundering and Mark Bennett was the head of our working group. Again, Mark continued to be well prepared, professional, and organized. We met in a conference room at the Cleveland FBI. Again, Mark was held in extremely high regard.

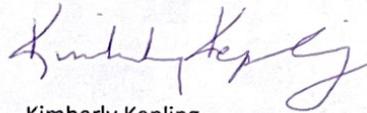
As I approached retirement age, I was recruited to work at the Ohio Attorney General's Office. Between 2015-2018, I worked with many of the same people Mark previously worked with, and Mark continued to enjoy an excellent reputation at the Cleveland OAG. I remember meeting Mark Bennett for lunch shortly after I was hired and learning that he and his wife were adopting an infant daughter and that the mother was addicted to drugs. The baby had gone through withdrawal. Mark was so proud to become a dad. He was protective, concerned for his daughter, and he seemed so happy that he and his wife had started a family.

Over a year ago, I learned that Mark Bennett was the subject of an internal investigation. At the time, he was still employed by the U. S. Attorney's Office. I reached out to Mark, and he outlined a few details of the investigation. I offered to assist him if there was anything I could do to help. I later learned that Mark left the U. S. Attorney's Office and that he had started a private practice. A few months ago, I had good friends in need of legal advice. My friend's family member had been murdered and the investigation had turned into a cold case. I referred them to Mark to help them in coordinating communication with the police, BCI, and the town's mayor.

About a month ago, after I made the referral to Mark, I met with him for lunch. He verbally detailed why he was no longer at the U. S. Attorney's Office. (The information was subsequently outlined in the July 11, 2022, letter I received from his attorney.) When Mark described what happened, he was extremely remorseful. There is a difference between someone being remorseful for their conduct and someone being remorseful because they were caught. I've known Mark a very long time, and I know he is genuinely remorseful for his conduct. I know that Mark is a person of good character. I know that he is decent, and I know that he is honest. I would hire him or continue to refer him for legal services to close family and friends without hesitation.

Please feel free to contact me regarding this character reference letter. I am also more than happy to provide verbal testimony in support of Mark Bennett. I can be reached at: 330-441-2980 or via email: KimKep4796@gmail.com.

Thank you for your consideration,

A handwritten signature in blue ink that reads "Kimberly Kepling". The signature is fluid and cursive, with the first name being more prominent.

Kimberly Kepling

Hugh McKay
hmckay@porterwright.com

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CHICAGO
CINCINNATI
CLEVELAND
COLUMBUS
DAYTON
NAPLES
PITTSBURGH
WASHINGTON, DC

July 21, 2022

Via Electronic Mail

Richard S. Koblentz
Attorney at Law
Koblentz, Penvose & Froning, LLC
3 Summit Park Drive, Suite 440
Cleveland, OH 44131

PERSONAL AND CONFIDENTIAL

RE: Mark S. Bennett

Dear Mr. Koblentz:

I am in receipt of your letter of July 11, 2022 which details the specifics of Mark Bennett's actions, which he has acknowledged and admitted to. This letter is to state my view on Mr. Bennett, who I will refer to here as Mark.

I have known Mark personally and professionally for more than 25 years. I have worked closely with him on Cleveland Bar Association programs and initiatives, and I have had litigation matters with him (and against him) and I know him as a friend. The bottom line is that, while regrettable and inappropriate, Mark's actions that are being considered by the Office of Disciplinary Counsel are an aberration and do not reflect who Mark is as a person and as a lawyer. Over his career, Mark has demonstrated to me a steadfast commitment to the legal system, the highest standards of ethics and professionalism, and all that attorneys of Ohio do or should aspire to. In one memorable case that was hotly contested in court, Mark's co-counsel was engaging in sharp practices that stretched the limits of propriety. Mark stood up to his co-counsel, who was much his senior and an intimidating force, and held his ground to make sure the sharp practices ended. This is typical of who Mark is.

In his dealings with people, I have always known Mark to be respectful towards others and sensitive to their feelings. Again, this situation is an unfortunate aberration.

In his zealous commitment to pro bono and community work (for which he received well deserved commendation from the Cleveland Bar Association), Mark has put the public good ahead of personal profit. I have always found Mark to embody the Lawyers Creed of Professionalism that Marv Karp formulated 35 years ago. Going forward, Mark unquestionably has great value to offer the citizens of Ohio, including clients and opposing parties, and the public in general. I have no concern that Mark poses any threat of any sort to the public of Ohio. If I, or any member of my family, including my wife or daughter, needed legal counsel, I would be delighted if Mark were to represent me or them, because I know the kind of person, and lawyer, Mark is.

Mark's actions in question are obviously inappropriate but are totally inconsistent with who Mark has shown himself to be over his long and very positive career-except for this unfortunate situation. I know he is utterly

Richard S. Koblentz
July 21, 2022
Page 2

chastened, contrite and remorseful. I do not make any excuses for what Mark did here, but I do vouch for the fact that, going forward, punitive action against Mark, or limiting his law license in some manner, would actually work against the best interests of Ohio citizens and our legal system. Mark has a tremendous amount to offer the citizens of Ohio and clients moving forward, and I know he will zealously make sure he scrupulously lives out the highest standards of personal and professional conduct.

Feel free to let me know if you would like further input or detail as to Mark.

Very truly yours,

A handwritten signature in blue ink that reads "Hugh McKay". The signature is written in a cursive, slightly slanted style.

Hugh McKay

HEM:bh

Daniel J. Riedl
U.S. Attorney's Office for the Northern District of Ohio
801 W. Superior Avenue, Suite 400
Cleveland, Ohio 44113

July 9, 2022

The Supreme Court of Ohio
Office of Disciplinary Counsel
65 E. State Street, Suite 1510
Columbus, OH 43215

Re: Character and fitness of Mark S. Bennett, Esq.

To Whom it May Concern:

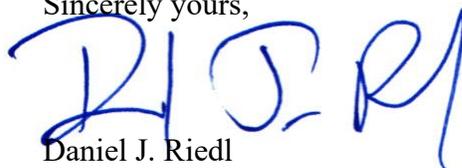
Please accept this letter in support of the character and fitness of Mark S. Bennett, Esq. Mr. Bennett and I served together as Assistant United States Attorneys starting in 2009 and I was his direct supervisor between September of 2019 and December of 2020. During the more than ten years I have known Mr. Bennett, he proved himself to be a talented, intelligent, highly conscientious, and effective attorney.

Through the course of my career alongside Mr. Bennett, he demonstrated good legal judgment, strong research and writing skills, and an outstanding work ethic. Mr. Bennett and I regularly discussed complex legal matters and he proved himself an invaluable resource on a wide variety of legal topics. Mr. Bennett does not miss a deadline, show up late for a court hearing or attend a meeting unprepared.

Before writing this letter, I reviewed a July 8, 2022, letter from Mr. Bennett's attorney detailing the conduct that led to this disciplinary action. Over the past three years, Mr. Bennett repeatedly told me of his deep regret for this conduct. He is acutely aware of the harm he caused J.S., his family and himself by his actions and I believe he is truly remorseful and committed to not repeating this behavior.

Mr. Bennett is one of the finest lawyers I know, and I would not hesitate to refer a friend or family member to him for legal services. Please don't hesitate to contact me if there is any further information I can provide.

Sincerely yours,



Daniel J. Riedl
Chief, National Security Unit
U.S. Attorney's Office for the Northern District of Ohio



Law Offices of
CARA L. SANTOSUOSSO, LLC

July 29, 2022

Office of the Disciplinary Counsel
Ohio Supreme Court
65 S. Front Street
Cleveland, Ohio 43215

Re: *Mark S. Bennett*

Dear Sir/Madam:

I write today in support of attorney Mark S. Bennett. I have known Mark both personally and professionally since 1997, and have been close friends with Mark's wife since 1978. Our families are close friends, and often celebrate holidays and special occasions together. I am godmother to Mark's daughter; his wife is godmother to my oldest daughter. My children refer to him as "Uncle Mark," and I have never had any qualms about leaving my two girls in Mark's charge.

Notwithstanding my longstanding relationship with Mark, I am relieved and grateful that Disciplinary Counsel is taking the allegations against him seriously. No member of the bar (nor any woman in the workplace) should be subject to the sort of treatment described by the accuser in this case. Mark's alleged involvement in such behavior is heartbreaking.

That said, I know that Mark is acutely aware of and repentant for any wrongdoing in this case. He understands the disappointment and pain this chapter has caused not only the accuser, but his family, friends, and colleagues. I believe this episode has been a turning point in Mark's life, both personally and professionally. His resignation from the U.S. Attorney's office – from the position he had striven for during his entire career – was extraordinarily difficult for him. Mark is a talented and dedicated attorney, who is typically committed to upholding his ethical responsibilities, without fail. He achieved many positive results for the victims of the crimes he prosecuted as an AUSA. I am confident, should he be allowed to continue to practice in Ohio, that he will bring that same dedication and skill to representing clients in the private sector.

Not long after Mark resigned from the U.S. Attorney's office, I reached out to him for assistance in my own practice. I asked him to research and draft an appeal in *In Re K.L. 2022-Ohio-992*. Mark's work on the case was impeccable, and we were successful in having the underlying judgement affirmed by the 9th District Court of Appeals. Mark was professional, capable, efficient,

and a pleasure to work with on this case. Again, I believe Mark's continued practice will be of benefit to the people of Cleveland and Ohio.

If you have any questions or if I can provide any further information, please do not hesitate to contact me.

Kind regards,

A handwritten signature in black ink, appearing to read 'Cara L. Santostosso', with a long horizontal flourish extending to the right.

Cara L. Santostosso

CLS/af

cc: Brian Penvose (via email)

August 8, 2022

Matthew W. Shepherd
743 Brookside Circle
Avon Lake, Ohio 44012

Richard S. Koblentz
Koblentz, Penvose & Froning, LLC
Attorneys and Counselors at Law
3 Summit Park Drive
Suite 440
Cleveland, Ohio 44131

Dear Mr. Koblentz,

I have received and reviewed your letter dated July 22, 2022, regarding Attorney Mark S. Bennett. As requested, I am providing this letter regarding my opinion regarding his character and fitness as an attorney for you to use in your representation of him before the Ohio Attorney Disciplinary System.

I have been a licensed Attorney in the State of Ohio since November 2001. I am currently employed as an Assistant United States Attorney in the Northern District of Ohio in Cleveland, Ohio. I have been employed as an Assistant United States Attorney since February 2007, first in the Middle District of Alabama, and since June 2010 in the Northern District of Ohio.¹

From the time I started in the Northern District of Ohio until he resigned, I knew Mark as a co-worker. We did not frequently socialize outside of office functions. I worked directly with him as co-counsel on several cases. From approximately 2018 until approximately October 31, 2019, I was his immediate supervisor. During that time, I directly observed and supervised his legal work.²

I have reviewed the detailed description of Mark's inappropriate conduct that you furnished in your letter. I had no prior knowledge of these details of Mark's inappropriate actions with and towards J.S. I did not witness any of his interactions with J.S. I do not condone Mark's conduct in any way. The purpose of this letter is limited to providing information on my personal observations and interactions with Mark as an attorney.

¹ This letter is provided in my personal capacity only. The opinions expressed in it should not be attributed to the Department of Justice or to the U.S. Attorney's Office for the Northern District of Ohio.

² Although I was his immediate supervisor during this period, I was not personally involved in or interviewed as part of any investigations of the conduct referred to in your letter.

Based on my experience supervising, observing, and working with Mark, I believe he is an outstanding attorney. Mark always displayed a firm grasp of the law and legal issues. He was always fully prepared for court hearings and trial. He always acted ethically and professionally in his dealings with victims, witnesses, attorneys, defendants, and court personnel. I never received any reports that he had behaved unprofessionally or unethically in any of his cases. Mark always worked diligently on each matter. He was also very organized. In trial, he was an excellent litigator and advocate for the government. For every matter assigned to him, he could be counted on to provide his very best efforts. In summary, as an attorney and prosecutor, I always found him to be reliable, ethical, and professional.

Beyond his legal work, I have always known Mark to be caring and compassionate to his co-workers and very considerate of their personal circumstances. I also know from talking to Mark that he was very committed to supporting the legal profession outside of his job through work with the local bar association and volunteering for legal aid programs. It was always clear from talking to Mark that he cared deeply for the local Cleveland community and those who were less fortunate than him.

Although I find Mark's conduct to be very concerning, it is very positive that Mark has taken steps to address his behavior. Based on the assurances in your letter that Mark is continuing to take the steps you described to address his conduct, I would not hesitate to consult with or retain Mark to represent me if I needed an attorney with Mark's experience and expertise. I believe Mark still has much to offer the community and legal profession as an attorney.

Please contact me if you need any further information.

Sincerely,



Matthew W. Shepherd

July 27, 2022

Via email to rich@koblenzlaw.com

Mr. Richard S. Koblentz
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

Re: Mark S. Bennett, Esq.

Dear Mr. Koblentz:

This correspondence shall serve as my reply to your letter dated July 8, 2022 and is my testimonial letter on behalf of Mark S. Bennett in regard to his pending matter before the Office of Disciplinary Counsel of the Ohio Supreme Court.

Prior to writing this correspondence I did review your letter dated July 8, 2022. It is my strong opinion that even after being made aware of Mark's wrongful actions, that Mark provides value to the public of the State of Ohio and does not pose a threat to the public of the State of Ohio which would require the public to be protected by the Ohio Attorney Disciplinary System.

I have known Mark for around ten years. I consider him to be a mentor and a friend. I met Mark through the Cleveland legal and political communities and we have stayed in touch since. He is likable, friendly, and always willing to take a phone call or a text message seeking advice or to answer a legal question. Mark is very bright and knowledgeable, and I always enjoy our conversations.

It was not until recently, however, that I had the privilege to work with Mark in a professional setting. It was an incredible experience and one for which I will forever be grateful to Mark. To summarize, in March of 2022 the Beachwood High School indoor track and field team was disqualified from competing in the Ohio Association of Track and Cross-Country Coaches indoor state championship. As a Beachwood City Councilman and concerned community member, I explored legal options to try to prevent the team from being disqualified over a clerical error not caused by any of the student-athletes. Admittedly, I could not have successfully represented these student-athletes under the circumstances because of the amount of work that needed to be performed in a short period.

I turned to Mark and another colleague for help and advice. Without hesitation, Mark dropped everything else he was working on to assist these student-athletes to file an Injunction on a pro bono basis. This turned into an all-day matter, culminating in a 5:00 pm hearing in Cuyahoga County Common Pleas Court on a Friday. Mark did the bulk of the legal work and, despite this being a stressful situation, Mark remained calm, diligent, and professional.

Mark was a pleasure to work with and I hope to be able to co-counsel another matter with him in the future.

Mark obviously made a mistake and was wrong. I think it speaks volumes to Mark's character that he admitted his wrongdoing and decided to self-report his conduct to the Office of Disciplinary Counsel.

Thank you for allowing me the opportunity to write on behalf of Mark S. Bennett. It is my sincere hope that he may resolve this matter and continue to practice law and contribute to the legal and general community of greater Cleveland and the State Ohio.

Very truly yours,



Eric Synenberg

August 4, 2022

VIA ELECTRONIC MAIL

rich@koblentzlaw.com

Mr. Richard S. Koblentz
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

Re: Mark S. Bennett, Esq.

Dear Mr. Koblentz:

I write on behalf of Mark Bennett, who I understand to be under investigation by the Office of Disciplinary Counsel of the Ohio Supreme Court.

Mark has told me about the details of the allegations and has been very forthcoming. I have no personal knowledge about any of the claims. But I do know that Mark understands the seriousness of the allegations and the process, respects the process, and understands the importance of being cooperative, truthful and complete.

I have known Mark for over twenty years. At first, our relationship was based upon a mutual interest in local politics. I remember him to be levelheaded and open to another's opinion. After he went to work at the United States Attorney's Office, we had occasion to work on opposite sides of several cases and investigations. Again, I found Mark to be open, reasonable, approachable and willing to consider another's words. All these attributes helped make Mark a worthy but respected opponent in many difficult situations.

We tried a federal criminal case where I was representing one of two attorneys on trial. The trial was very contentious as Marc's co-counsel propounded misrepresentations and hid evidence. Eventually, defense counsel would only communicate with the government through Marc. At a time when a cool head was needed, Marc stepped up. In a very trying situation, everyone was glad to have Marc representing the United States.

Marc and I have stayed in touch over the years as we have sought advice from each other. I have always respected his opinions and trusted him to be a man of his word. I am troubled by the

claims in this case, but they do not change my opinion of Marc as a principled, trustworthy and honest man. I hope this letter will be considered as you review this matter. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Synenberg", with a long horizontal flourish extending to the right.

Roger M. Synenberg

RMS/kss

5546 Pearl Road
Parma, Ohio 44129
Phone: 216.505.0310
Fax: 216.232.9482
Email: Kelly@ZachariasLaw.com



LAW OFFICE OF
KELLY M.
ZACHARIAS

Ohio Supreme Court
Office of Disciplinary Counsel
65 E. State Street, Suite 1510
Columbus, Ohio 43215

August 4, 2022

To the Committee:

Thank you for the opportunity to present my support for Mark Bennet, Esq. I have known Mark Bennett for over 18 months when he joined our office as a suitemate. From my experience, Mark is a superior lawyer, exhibiting and engaging in the traits of diligence, preparedness, and knowledgeable for his clients. Mark puts forth 110% on all his client matters. I've witnessed Mark prepare more for a criminal arraignment than some people might prepare for a criminal trial. I have had the opportunity to see Mark engage with clients both, in the office and in the courtroom. Mark is a well-respected member of our profession. Mark is honest, trustworthy and an advocate for his clients and the legal system.

Mark was forthcoming with me about the reason he left the US Attorney's office. Mark has been honest throughout our relationship and in my opinion, Mark exhibits great remorse for his conduct. Mark approached me relative to writing a support letter on his behalf, he did not insist, or influence my decision to write this instant letter. I was provided a Testimonial Support Request from Mark's Attorney, Richard Koblentz, which laid out the misconduct engaged in by Mark. Everything contained in the Testimonial Support Letter was already disclosed to me by Mark. Since this investigation, Mark has and continues to openly discuss this matter, including, but not limited to the growth he has made through his counseling sessions. Mark and I have had numerous conversations about his counseling, and in my opinion, he has and continues to take his counseling very seriously.

Mark, engaging in his counseling and therapeutic regimen continues to put in the time and effort required, and, because of that, Mark has gained insight into himself and his past actions.

I strongly believe that Mark acknowledges and is greatly remorseful for his conduct and how his conduct has affected JS. In my experience, Mark is perceptive and considerate of other people, and I don't think he would ever want anyone to feel uncomfortable or violated because of his words or actions.

I would trust and engage Mark to represent myself, my family, or friends if the need arose. In fact, Mark has assisted my family and other referrals that I have sent to him. Mark assisted my mother with an employment contract matter she was in need of legal services for, and I referred a close friend, a local business owner, who received a demand letter over an employment issue to Mark. I also referred to Mark one of my personal long-time clients whose son is an attorney and based upon Mark's performance, he is now assisting in contract negotiations for physicians in Northeast Ohio.

Mark is a committed, caring and faithful father to his 5-year-old daughter, Maya, that he and his wife adopted as an infant when the parents (who are family members) were not able to care for her. When Mark comes into the office on Monday mornings, I hear all about Maya, their two dogs, and what the family did over the weekend. Maya is an active child, and the family is always on the go whether to her baseball games, her friends' birthday parties, going up to Kelley's Island, the zoo and other activities that Maya enjoys.

I believe that Mark is an asset to both the general public of the State of Ohio, as well as the legal profession. Mark is an advocate for his clients, a true gentleman with opposing counsel, and a pillar of professionalism within our Courts. This conduct, engaged in by Mark, in my opinion was a temporary loss of his moral compass, Mark, as I know him, is an exceptional advocate, attorney, counselor and legal professional.

Thank you for your time and consideration of this matter.

Truly yours,

A handwritten signature in black ink, appearing to read "K. Zacharias". The signature is written in a cursive, flowing style.

Kelly M. Zacharias



Stephen S. Zashin
OSBA Certified Specialist in
Labor and Employment Law
ssz@zrlaw.com

October 5, 2022

Richard S. Koblentz
Koblentz & Penvose, LLC
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

RE: Mark S. Bennett (69823)

Dear Richard:

I have known Mark Bennett professionally for over 30 years. I also know Mark's wife, Rebecca Bennett. I first met Mark in law school and worked with him when he practiced law at Walter Haverfield. We crossed paths when he worked as an Assistant U.S. Attorney. Since his departure from the U.S. Attorney's Office, I hired Mark on several occasions on behalf of my clients. Mark has done a nice job and all of my interactions with him were completely professional.

While I understand and agree the circumstances at the U.S. Attorney's office were significant and troubling to me (and I have read a letter from his counsel outlining his behavior), such behavior appears out of character and I have never seen Mark act in such a manner in all of our professional dealings.

Very truly yours,

ZASHIN & RICH CO., L.P.A.

/s/ Stephen S. Zashin

Stephen S. Zashin

SSZ/cmh

Comprehensive Behavioral Specialists, LLC
30400 Detroit Rd., Ste. 301
Westlake, Ohio 44145
(440)250-8868
Fax: (440)250-8864

May 18, 2022

Re: Mark Bennett (DOB: 7/10/69)

Treatment Summary

Mark Bennett began treatment for anxiety and depression following the loss of his job due to inappropriate behavior with a co-worker. He has been an active participant in treatment since the onset on July 20, 2021. Dates of treatment include: 7/29/21, 8/31/21, 10/19/21, 11/30/21, 2/10/22, 3/24/22, 4/28/22. His next appointment is scheduled for May 26, 2022.

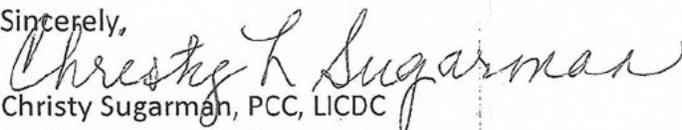
Mr. Bennett meets diagnostic criteria for Adjustment Disorder with anxiety and depressed mood. He is exhibiting remorse and regret over his conduct in the professional setting. He has also shown heightened awareness of maintaining professional boundaries outside of the work setting.

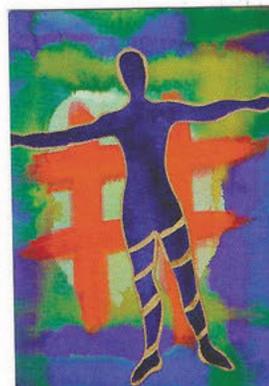
Treatment goals include:

1. Understanding inappropriate behavior and developing healthier professional boundaries.
2. Processing grief and loss of employment, infertility, health issues, changes in relationship with wife.
3. Developing coping skills to help manage anxiety and depressed mood.

Mr. Bennett has exhibited more awareness of inappropriate professional boundaries, as evidenced by his ability to relate recent incidents where he did not respond to females (both in or out of the work setting) in an inappropriate manner. He is developing greater sensitivities about how a co-worker may feel uncomfortable about his comments even while that peer may continue to engage in the banter. We continue to address and work on the development of tools to help cope with anxiety, grief and loss issues.

Please let me know if there is any additional information you may need.

Sincerely,

Christy Sugarman, PCC, LICDC
Professional Clinical Counselor



Comprehensive Behavioral
Specialists, LLC
Christy Sugarman, PCC, LICDC
Professional Clinical Counselor-S
Licensed Chemical Dependency Counselor-S

30400 Detroit Road, Suite 301
Westlake, OH 44145

Phone: (440) 250-8868
Fax: (440) 250-8864

JOINT
EXHIBIT

Comprehensive Behavioral Specialists, LLC
30400 Detroit Rd., Ste. 301
Westlake, Ohio 44145
(440) 250-8868
Fax: (440) 250-8864

November 30, 2022

Re: Mark Bennett (DOB: 7/10/69)

Treatment Summary

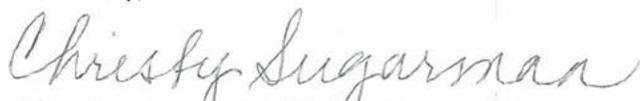
Mark Bennett began treatment on July 20, 2021. Since the last treatment update of May 18, 2022, Mr. Bennett has attended scheduled sessions on 5/26/22, 6/28/22, 7/28/22, 9/1/22 and 10/27/22. His next appointment is scheduled for tomorrow, December 1, 2022.

Mr. Bennett has continued to participate in treatment. Mr. Bennett has continued to gain insight and heightened awareness of situations and conversations as evidenced by his ability to observe and refrain from responding in ways that may be perceived as inappropriate. He is exhibiting increased awareness and sensitivity in both personal and professional settings.

Mr. Bennett is maintaining his engagement in the treatment process. Continued work will focus on continued awareness of his conversation in both work and social settings, as well as continuing to process grief, loss, and anxiety.

Please let me know if there is any additional information you may need.

Sincerely,



Christy Sugarman, PCC, LICDC
Professional Clinical Counselor
Licensed Chemical Dependency Counselor

JOINT
EXHIBIT

6



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

Disciplinary Counsel

Relator,

v.

Case No. 22-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Joint Hearing Brief on Sanction

The parties jointly submit this hearing brief on sanction for the panel's consideration. The parties have recommend a fully stayed six month suspension, on the conditions that respondent continue with his current mental health counseling and commit no further acts of misconduct. Respondent has stipulated that he engaged in inappropriate flirtation with a subordinate law clerk, J.S. Respondent's banter included sexual innuendo, criticism of J.S.'s romantic choices, an unwanted touching, and sexually suggestive quid pro quo. However, the parties also agree that respondent did not realize how offensive his conduct was as respondent mistakenly believed that the flirtation was mutually acceptable, and that, while inappropriate, it does not rise to the same level as conduct where the court imposed actual suspensions. Further, the aggravating and mitigating factors do not warrant a greater sanction than a fully stayed suspension.

I. The court's precedents support a fully stayed suspension.

The court has previously recognized that attorneys must guard against inappropriate conduct with law clerks employed in their office and failing to do so can result in an actual

suspension. *Lake County Bar Assn v. Mismas*, 139 Ohio St.3d 346, 2014-Ohio-2483, 11 N.E.3d 1180, ¶ 22 (suspended for one year, with six months stayed). It is axiomatic that “[u]nwelcome sexual advances are unacceptable in the context of any employment,” *Id.* at ¶ 23. The court has previously focused on the offensiveness of unwanted advances and the power imbalance between the parties in determining the sanction.

A. The offensiveness of the unwanted sexual comments.

The offensiveness of an unwanted sexual advance or comment is, necessarily, a subjective question. However, there are some objective factors that are worth considering. The court has taken a particularly dim view of attorney conduct when it is aggressive, demanding, or threatening. As the court noted in *Mismas*:

Mismas advised Ms. C. that she would “need to take a few beatings” before she could learn to give one. He rephrased this statement in sexual terms and then asked Ms. C. if she had ever engaged in the type of sex act he had referred to. Ms. C. told him to stop, stating that they were only speaking metaphorically, but Mismas insisted that he was serious. Ms. C. advised him that his question was inappropriate and that she would not answer it. Mismas then told her that there needed to be some level of trust between them saying, “[I]f you can’t trust me with personal issues then that’s a problem.” * * *

Mismas at ¶ 9. Thus, Mismas aggressively steered the conversation to sex. Even after Ms. C. expressly told him the question was inappropriate, he continued to imply that Ms. C. needed to be more accommodating. Later that night, Mismas again pushed the conversation towards sex:

A little before midnight, Mismas began to quiz Ms. C. about an arbitration agreement that he had given her to review. The conversation then turned to how Mismas could ensure that Ms. C. would be loyal to him. He told her, “I have an idea but your [sic] not going to like it,” and stated that she would “bolt” if he said it. After she responded that he had already taken the conversation pretty far and that she had not bolted, he suggested that she perform a sex act for him. Ms. C. flatly rejected Mismas’s suggestion, but he continued to press the issue. When she told him to stop and urged him to admit that he was joking, he repeatedly refused and insisted that her employment depended on her compliance, telling her, “If you

show up at 11 you know what's expected." He further stated, "So its your choice. Ok. I'll be there at 11. If you show up great. You know what you gptt. GoTta do [sic]. If not Good luck to you." * * *

Id. at ¶ 10 (errors in original). A week later, Mismas attempted to get Ms. C. to take an out-of-town trip with him. He also asked her to join him on an overnight trip to Washington, D.C. *Id.* at ¶ 12. When she refused, Mismas "belittled her for her rejection and pressured her to go by suggesting that her refusal would have adverse consequences for her employment, texting her, 'That's strike 1 for you. 3 strikes and you are out.' The following day, Ms. C. resigned her employment." *Id.* The court suspended Mismas for one year, with six months stayed.

The court imposed a similar sanction in *Disciplinary Counsel v. Skolnick*, 153 Ohio St.3d 283, 2018-Ohio-2990, 104 N.E.3d 775. Skolnick engaged in two-and-a-half years of verbal abuse and sexual harassment against his paralegal. He "berated her for her physical appearance, dress, education, and parenting skills. He called her a bitch, a 'hoe,' a dirtbag, and a piece of shit, and he told her that he hoped she would die." *Id.* at ¶ 12. Skolnick also sexually harassed his victim: "While Skolnick drove L.D. and another female employee to lunch, he remarked that the two women should give him 'road head' so that he could rate their performances on a scale from one to ten." *Id.* at ¶ 5. The court noted that Skolnick's "extreme, obnoxious, and humiliating attack," *id.* at ¶ 13, on the victim was "longstanding and pervasive," *id.* at ¶ 14, warranting a one-year suspension with six months stayed.

While inappropriate and offensive to J.S., respondent's comments were not nearly as egregious as Mismas's or Skolnick's. For example, there is no evidence that respondent directly requested that J.S. perform oral sex or any other sexual act on him. Respondent believed,

mistakenly, that J.S. was not offended by his comments, but considered them mutually acceptable banter. His mistake was fueled by hubris. He has admitted that he found the idea of J.S. flirting with him stroked his ego, Exhibit 3, pg. 50, and although J.S. described herself as a “flirtatious” person, respondent now recognizes that his actions crossed into unwanted sexual comments towards J.S. By contrast, Mismas knew that Ms. C. found his comments offensive and inappropriate because she repeatedly told him so, yet he continued to try to force her to have sex with him.

Respondent also admitted that he improperly conditioned professional favors with sexual innuendo when he asked what he would get in exchange for a letter of recommendation. However, Mismas repeatedly threatened Ms. C. that her job depended on her compliance with his sexual demands. While neither act is acceptable, Mismas’s threats to terminate Ms. C. are objectively worse than respondent’s desire to know what he could get in exchange for a letter of recommendation.

Respondent also made inappropriate critical comments about some of J.S.’s personal and romantic choices, but his comments were not as demeaning as the ones in *Skolnick*. Respondent made isolated comments about J.S.’s appearance (joking about her putting on weight in response to J.S. making a comment about her own appearance), her decision to work in a distant office, and her relationship with her then-boyfriend. By contrast, Skolnick berated L.D. for her “appearance, dress, education, and parenting skills” and called her “a bitch, a ‘hoe,’ a dirtbag, and a piece of shit, and he told her that he hoped she would die.” *Skolnick* at ¶ 12.

On the balance, respondent’s comments were certainly unwelcome, but not to the same extent as in *Mismas* or *Skolnick*. Rather, this case is more like *Disciplinary Counsel v. Berry*, 166 Ohio St.3d 112, 2021-Ohio-3864, 182 N.E.3d 1184 (six-month suspension, fully stayed). 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, 140 N.E.3d 561, ¶ 72.

The parties acknowledge that one difference between this case and the cited cases is that this case involves an act of unwelcome physical contact. In August or September 2017, respondent and J.S. were in the Akron office’s library when respondent moved his arm across her body in reaching for a book, and in so doing, touched her breasts with the back of his hand. J.S. indicated that she believed the contact was intentional as respondent held eye contact with her during the incident. While respondent admits that the act took place and was inappropriate, he did not intend to offend or hurt J.S. The touch was an isolated incident, and respondent never attempted to touch J.S. again over the next two years. The parties are, in no way, seeking to minimize respondent’s actions. Respondent abused a position of authority over a law clerk by subjecting her to unwanted sexual comments and an unwelcome physical touch. This conduct caused J.S. anxiety and fear over her future job prospects. However, the court has previously imposed a fully stayed suspension where an attorney has touched a client’s breast. *See Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, 843 N.E. 2d 1205, ¶¶ 6, 26 (fully stayed one-year suspension for putting hands on client’s breasts and saying “You have

very nice breasts.”). The parties note that when compared to relevant case law, respondent’s conduct is less egregious than those where the court imposed actual suspensions.

B. The relationships between the parties.

The board should consider the power imbalance between the two parties to determine the harm the unwanted sexual comments could have caused. The greater the imbalance, the more likely a victim is to feel powerless and coerced, leading to stress, anxiety, and potential capitulation. Law clerks are at a particularly vulnerable point in their careers; they are building nascent professional networks and are acutely aware of their supervising attorneys’ power over their immediate future and long-term career prospects. *Mismas* at ¶ 22. Thus, sexual advances are “particularly egregious when they are made by attorneys with the power to hire, supervise, and fire the recipient of those advances.” *Id.* at ¶ 26.

Respondent did not have the power to hire or fire J.S, and his authority over her was transitory, based on individual projects that he and J.S. worked on. Exhibit 2, pg. 4-5 (although respondent directed and evaluated J.S.’s work on certain tasks, she did not consider him a supervisor). This is not to say that respondent’s authority was 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, 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. However, compared to *Mismas*, *Skolnick*, and *Berry*, there is far less of an inherent power imbalance.

For example, in *Mismas*, it appears that Mismas had unfettered authority to hire, supervise, and fire Ms. C. Therefore, Mismas had the power to wreck Ms. C.’s immediate

employment opportunities and her legal reputation within the profession. He also threatened to inform her law school professors “what a stupid decision she had made” when she resigned, *id.* at ¶ 25, potentially affecting her legal education and her ability to seek recommendations from her professors.

The victim in *Skolnick* was also powerless. The court noted that L.D. quickly began looking for a new job, but despite responding to over 100 employment advertisements, she was unable to obtain one, *Skolnick* at ¶ 4, and she had to suffer Skolnick’s abuse for two-and-half years. Even after L.D. eventually found another job, a clinical psychologist later diagnosed her with symptoms that met some of the criteria for posttraumatic stress disorder. *Id.* at ¶ 6.

Finally, while the recipient of Judge Berry’s unwelcome messages did not work in Berry’s courtroom, she was in the untenable position of receiving messages from an elected judge. Judges are not subject to normal Human Resources proceedings because they can be investigated internally but cannot be disciplined. Although Berry had no direct authority over the staff member, the staff member also had no meaningful process to address Berry’s behavior. The existence of an internal disciplinary process at the USAO does not excuse respondent’s misconduct, but it is one of the factors that point to greater power imbalances in *Mismas*, *Skolnick*, and *Berry*.

Given the nature of respondent’s conduct, the parties believe that a fully-stayed six month suspension, on condition that respondent continue with his current mental health counseling and commit no further misconduct, is appropriate. This sanction would help to ensure that respondent continues to set appropriate professional boundaries while acknowledging that respondent voluntarily sought and continues to receive mental health treatment.

II. Aggravating and mitigating factors.

In *Mismas*, the court ultimately found two aggravating factors of (a) dishonest or selfish motive and (b) the vulnerability of and resulting harm to the victim. It found four mitigating factors: (a) the absence of a prior disciplinary record, (b) his full and free disclosure to the board and cooperative attitude toward the proceedings, (c) his good character and reputation, (d) his alcohol dependency.

The parties have stipulated that respondent's case involves two aggravating factors of (a) dishonest or selfish motive and (b) the vulnerability of and resulting harm to the victim. It also involves four mitigating factors: (a) the absence of a prior disciplinary record, (b) his full and free disclosure to the board and cooperative attitude toward the proceedings, (c) his good character and reputation, and (d) the imposition of other sanctions. Moreover, while respondent is not asking the board to find a mitigating mental health disorder under Gov.Bar.R. V(13)(C)(7), the parties have stipulated that respondent sought mental health treatment shortly before self-reporting his misconduct. Respondent was diagnosed with Adjustment Disorder with anxiety and depression, and, as part of his ongoing treatment, respondent has shown positive growth on awareness of and setting appropriate professional boundaries.

While the parties agree that the same aggravating factors exist, they believe that respondent has less culpability for J.S.'s vulnerability because he did not have the same unfettered authority to hire, supervise, and fire J.S. as *Mismas*. Respondent did not act against J.S. after he became aware of her allegations while he was employed at the U.S. Attorney's Office. Respondent cooperated with the Office of the Inspector General Investigation conducted by the U.S. Department of Justice. As a result of the investigation, he He has also reported his misconduct to relator and has cooperated during relator's investigation. Finally, similar to the

mitigation factors found in *Mismas*, respondent has no prior disciplinary record and his good character and reputation are exemplified through the letters testimonial submitted as exhibits.

Based on the foregoing, the parties stipulate that a fully stayed six-month suspension is appropriate.

Respectfully submitted,

/s Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator


Mark Bennett (0069823)
Respondent

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
65 East State Street, Suite 1510
Columbus, Ohio 43215-4215
Telephone: (614) 387-9700
matthew.kanai@sc.ohio.gov
Counsel for Relator

/s Richard Koblentz
Richard S. Koblentz (0002677)
Bryan L. Penvose (0074134)
3 Summit Park Dr., Suite 440
Independence, OH 44131

(216) 621-3012
rich@koblentzlaw.com
bryan@koblentzlaw.com
Counsel for Respondent

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Joint Hearing Brief on Sanction was served on respondent's counsel, Richard Koblentz, by electronic mail at rich@koblentzlaw.com on this 1st day of February, 2023.

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Counsel for Relator



Ohio Board of Professional Conduct

65 SOUTH FRONT STREET, 5TH FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

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PATRICIA A. WISE
CHAIR
HON. D. CHRIS COOK
VICE-CHAIR

RICHARD A. DOVE
DIRECTOR
D. ALLAN ASBURY
SENIOR COUNSEL
KRISTI R. MCANAU
COUNSEL

TO: Relator, Respondent, and Counsel of Record

FROM: Richard A. Dove 

DATE: August 18, 2022

SUBJECT: *Disciplinary Counsel v. Mark Stewart Bennett*, Case No. 2022-034

On this date, a formal complaint was certified to the Board of Professional Conduct. Enclosed is the notice of certification of the complaint.

Enclosure

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

In re:

Complaint against

Case No. 2022-034

Mark Stewart Bennett (0069823)
1991 Crocker Road
Suite 600
Westlake, OH 44145

NOTICE OF FILING AND
CERTIFICATION OF COMPLAINT

RESPONDENT

FILED

Disciplinary Counsel
65 East State Street
Suite 1510
Columbus, OH 43215-4215

AUG 18 2022

BOARD OF PROFESSIONAL CONDUCT

RELATOR

Respondent is hereby notified that the director of the Board of Professional Conduct, having received a formal complaint from Relator that alleges misconduct on the part of Respondent and further having received a waiver of probable cause from Respondent, orders that the complaint be certified to the Board of Professional Conduct.

Respondent will take notice that:

1. Attached is a copy of the complaint filed against you by Relator and certified to the Board of Professional Conduct upon your waiver of review of the complaint by a probable cause panel.
2. You are required to e-File your written answer to this complaint with the Board of Professional Conduct on or before **September 7, 2022**. Copies of the answer must be served upon counsel of record named in the complaint.

FAILURE TO FILE A TIMELY ANSWER TO THIS COMPLAINT MAY RESULT IN YOUR IMMEDIATE SUSPENSION FROM THE PRACTICE OF LAW BY THE SUPREME COURT OF OHIO PURSUANT TO GOV. BAR R. V, SECTION 14.

Richard A. Dove

Director

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

In re:

Complaint against

Case No. 2022-034

**Mark Stewart Bennett (0069823)
1991 Crocker Road
Suite 600
Westlake, OH 44145**

NOTICE OF FORMAL HEARING

Respondent

**Disciplinary Counsel
65 East State Street
Suite 1510
Columbus, OH 43215-4215**

FILED

SEP 13 2022

BOARD OF PROFESSIONAL CONDUCT

Relator

A formal hearing in the above-captioned matter shall be held at the Moyer Judicial Center Hearing Room 106, 65 South Front Street, Columbus, OH 43215 on February 2, 2023 at 10:00 a.m.

The hearing shall be conducted by a three-member panel of this Board consisting of Elizabeth E. Cary, Chair, George Brinkman, and Thomas M. Green, or such other commissioners as may be appointed.

The parties shall review and comply with the Prehearing Instructions posted on the Board's web page.

Richard A. Dove

Director

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

In re:

Complaint against

Case No. 2022-034

Mark Stewart Bennett

Respondent

Disciplinary Counsel

Relator

FILED

DEC 07 2022

BOARD OF PROFESSIONAL CONDUCT

ORDER

This matter was submitted to the hearing panel upon the filing of a consent-to-discipline agreement pursuant to Gov. Bar R. V, Section 16 on December 5, 2022. Upon consideration of the agreement, the panel does not accept the agreement and it is hereby rejected.

This matter shall proceed to hearing on February 2, 2023 at the Moyer Judicial Center in Columbus, as previously scheduled. All prehearing deadlines contained in the September 13, 2022 scheduling order remain in effect.

In preparing any exhibits, stipulations, or other pleadings for consideration in this matter, the parties shall take steps to protect the identity of the individual identified as "J.S." in the formal complaint. These steps shall include replacing the full name of J.S. with her initials in all proffered exhibits and referring to J.S. as such at the formal hearing.

Elizabeth E. Cary

Panel Chair

PD

per authorization

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

In re:

Complaint against

Case No. 2022-034

Mark Stewart Bennett

Respondent

Disciplinary Counsel

Relator

FILED

JAN 26 2023

BOARD OF PROFESSIONAL CONDUCT

ORDER

This matter comes before the panel chair upon consideration of Relator's unopposed motion to open the hearing to remote participation. Relator's motion is granted to the following extent:

1. Relator is granted permission to present the testimony via video teleconference of the sole witness, other than the respondent, identified in its January 26, 2023 witness list. All other witnesses identified by the parties shall testify in person.
2. Respondent's counsel is granted permission to appear via video teleconference, although the panel chair understands that co-counsel, who will be appearing in person, will serve as lead counsel on behalf of the respondent at the hearing.

The parties shall be responsible for (a) making the necessary hardware and software arrangements to facilitate the appearance of the witness and counsel via video teleconference and (b) ensuring the witness has copies of any exhibits that may be reference by the parties during her examination.

Elizabeth E. Cary

Panel Chair



per authorization

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

In re:

Complaint against

Case No. 2022-034

Mark Stewart Bennett

Respondent

Disciplinary Counsel

Relator

FILED

FEB 01 2023

BOARD OF PROFESSIONAL CONDUCT

ORDER

This matter comes before the Board chair upon consideration of Relator's unopposed motion to restrict public access to Joint Ex. 1-3. For the reasons cited in the Board chair's December 12, 2022 order, Relator's motion to restrict public access to Joint Exhibits 1-3 is granted. The director shall remove Joint Ex. 1-3 from both public and online access.

Hon. D. Chris Cook

Board Chair

 per authorization

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

In re:

Complaint against

Case No. 2022-034

Mark Stewart Bennett

Respondent

Disciplinary Counsel

Relator

FILED
DEC 07 2022
BOARD OF PROFESSIONAL CONDUCT

ORDER

This matter comes before the Board chair upon consideration of Relator's motion to restrict public access to three transcripts (Stip. Ex. 1-3) that support stipulated facts contained in the parties' December 5, 2022 consent-to-discipline agreement. The transcripts are part of a federal investigation conducted by the Department of Justice Office of Inspector General and are not otherwise publicly available.

Pursuant to Sup. R. 45(E)(2), the Board chair finds the presumption of public access is outweighed by the higher interests of maintaining confidentiality of the transcripts as required under federal law and the privacy interests of Respondent and a complaining party.

Therefore, the Board chair grants the motion to restrict public access to Stip. Ex. 1-3 and orders the director to remove the exhibits from both public and online access.

Patricia A. Wise

Board Chair

RD per authorization

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

In re:

Complaint against

Case No. 2022-034

Mark Stewart Bennett

Respondent

Disciplinary Counsel

Relator

FILED

SEP 06 2022

BOARD OF PROFESSIONAL CONDUCT

ENTRY

In accordance with Gov. Bar R. V, Section 12(C), George Brinkman, Thomas M. Green, and Elizabeth E. Cary, duly qualified members of the Board of Professional Conduct of the Supreme Court of Ohio, none of whom resides in the district from which the complaint originated, are hereby appointed as members of the panel to hear this cause.

Commissioner Cary is designated as chair of the panel.

Richard A. Dove

Director

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

In re:

Complaint against

Case No. 2022-034

Mark Stewart Bennett

Respondent

Disciplinary Counsel

Relator

FILED

DEC 08 2022

BOARD OF PROFESSIONAL CONDUCT

ENTRY

Pursuant to Gov. Bar R. V, Section 12, Lori A. Herf, a duly qualified member of the Board of Professional Conduct of the Supreme Court of Ohio who does not reside in the district from which the complaint originated, is hereby appointed to replace George Brinkman as a member of the panel to hear this cause.

Commissioner Cary shall remain chair of the panel.

Richard A. Dove

Director



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

Disciplinary Counsel

Relator,

v.

Case No. 22-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Relator's Motion to Open the Hearing to Remote Participation

This case is scheduled for a hearing before a panel of the Board of Professional Conduct on February 2, 2023. One of the relator's witnesses lives outside the state of Ohio. Relator may not call the witness in its case in chief, it would prefer to have them on standby as a possible rebuttal witness. Accordingly, relator asks that the panel allow the witness to be given the opportunity to testify remotely if their testimony is needed.

In addition, one of respondent's counsel is unable to attend in-person and will need to participate remotely.

Respondent has indicated he does not object to this motion.

Respectfully submitted,

/s Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator

/s Matthew A. Kanai

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matthew.kanai@sc.ohio.gov
Counsel for Relator

Certificate of Service

I hereby certify that a true and correct copy of the foregoing *Relator's Motion to Open the Hearing to Remote Participation* was served on respondent's counsel, Richard Koblentz, by electronic mail at rich@koblentzlaw.com on this 26th day of January 2023.

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Counsel for Relator



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

Disciplinary Counsel

Relator,

v.

Case No. 22-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Relator's Motion to Restrict Public Access to Joint Exhibits 1, 2, and 3

On December 5, 2022, relator filed a Motion to Restrict Public Access to three exhibits that were filed with the Consent to Discipline. The panel granted the motion on December 7, 2022. Relator anticipates the parties will file the same three exhibits as part of stipulations in this case. Joint Exhibits 1-3 are records from the United States Department of Justice Office of Professional Responsibility ("OPR"). OPR indicated that it would provide the documents under the "routine use" exception found in 5 U.S.C. § 552a(b)(3). However, OPR requested that relator take steps to maintain the confidentiality of the documents to the extent possible during relator's investigation and in any subsequent disciplinary proceedings.

These documents are part of the federal investigation conducted by OPR and are not otherwise publicly available. Under Sup.R. 45(E)(2)(c), "A court shall restrict public access to information in a case document, or, if necessary, the entire document, if it finds by clear and convincing evidence that "the presumption of allowing public access is outweighed by a higher interest after considering * * * [w]hether any state, federal, or common law exempts the document or information from public access; [or w]hether factors that support restriction of

public access exist, including * * * individual privacy rights and interests.” Relator believes that the dual interests of OPR’s desire to maintain the confidentiality of its investigatory material and the individual privacy rights of J.S. and respondent outweigh any public interest in access to Joint Exhibits 1-3.

Respondent does not object to relator’s motion.

Respectfully submitted,

/s Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
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Counsel for Relator

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Relator's *Motion to Restrict Public Access to Joint Exhibits 1, 2, and 3* was served on respondent's counsel, Richard Koblentz, by electronic mail at rich@koblentzlaw.com on this 26th day of January 2023.

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Counsel for Relator



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

Disciplinary Counsel

Relator,

v.

Case No. 22-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Relator's Motion to Restrict Public Access

As part of the investigation of this case, relator requested records from the United States Department of Justice Office of Professional Responsibility ("OPR"). OPR indicated that it would provide the documents under the "routine use" exception found in 5 U.S.C. § 552a(b)(3). However, OPR requested that relator take steps to maintain the confidentiality of the documents to the extent possible during relator's investigation and in any subsequent disciplinary proceedings.

Relator has identified three transcripts (two involving the person identified as "J.S." in the Complaint and one involving respondent) that it seeks to restrict public access to. These documents are part of the federal investigation conducted by OPR and are not otherwise publicly available. They support the stipulated facts in the Consent to Discipline that follows this filing. Under Sup.R. 45(E)(2)(c), "A court shall restrict public access to information in a case document, or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering *

* * [w]hether any state, federal, or common law exempts the document or information from public access; [or w]hether factors that support restriction of public access exist, including * * * individual privacy rights and interests.” Relator believes that the dual interests of OPR’s desire to maintain the confidentiality of its investigatory material and the individual privacy rights of J.S. and respondent outweigh any public interest in access to the transcripts. Therefore, Gov.Bar R.V(8)(C), relator asks the panel to restrict public access to the exhibits filed as part of the Consent to Discipline.

Respondent does not object to relator’s motion.

Respectfully submitted,

/s Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Assistant Disciplinary Counsel
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Counsel for Relator

Certificate of Service

I hereby certify that a true and correct copy of the foregoing *Relator's Motion to File Exhibits Under Seal* was served on respondent's counsel, Richard Koblentz, by electronic mail at rich@koblentzlaw.com on this 5th day of December 2022.

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Counsel for Relator



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

Disciplinary Counsel

Relator,

v.

Case No. 22-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Relator's Witness List

Relator may call the following individuals to testify at the hearing scheduled for February 2, 2023, in this matter. Relator reserves the right to supplement this list.

1. Mark Bennett, as if on cross; and
2. J.S.

Respectfully submitted,

/s Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator

/s Matthew A. Kanai
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Counsel for Relator

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Relator's Witness List was served on respondent's counsel, Richard Koblentz, by electronic mail at rich@koblentzlaw.com on this 26th day of January 2023.

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Counsel for Relator



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

Disciplinary Counsel,	:	
	:	
Relator,	:	Case No. 22-034
	:	
v.	:	
	:	
Mark Bennett, Esq.	:	
Attorney Reg. No. 0069823	:	
	:	
Respondent.	:	

RESPONDENT'S WITNESS LIST

Now comes Respondent Mark Bennett, by and through the undersigned counsel, and respectfully submits the following list of witnesses who may be called to testify at the hearing held in the instant matter before this Honorable Panel on Thursday, February 2, 2023:

1. **Respondent Mark S. Bennett, Esq.;**
2. **JS** – on cross-examination, only in the event Relator should decide to call her in their case in chief;
3. **Kelly Zacharias, Esq.** – character & reputation witness who authored one of the testimonial letters submitted jointly with the Stipulations entered into by the parties and included in the character reference letters and testimonial request letters marked as Joint Exhibit 4. Ms. Zacharias is an attorney who has shared office space with the respondent for the past approximate eighteen (18) months and who is anticipated to testify as to her observations of Mr. Bennett's professionalism.

Testifying through deposition or affidavit testimony:

4. **Christine Sugarman, PCC, LICDC** - As respondent's qualified, treating mental health care professional; Ms. Sugarman is unable to travel to and attend the hearing in Columbus on February 2, 2023. Therefore, the parties jointly agreed to conduct her deposition and are submitting the transcript of that deposition as Joint Exhibit 7 in lieu of appearing to testify pursuant to Ohio Civ.R. 32(A)(3)(e). Ms. Sugarman's testimony is offered in support of the May 18, 2022 and November 30, 2022 summary of treatment letters submitted as Joint Exhibits 5 and 6, respectively, with the Stipulations entered into by the parties. While there is no stipulation and the respondent is not asking the board to find a mitigating mental health disorder under Gov.Bar.R. V(13)(C)(7), the parties have stipulated that respondent sought mental health treatment shortly before self-reporting his misconduct. Respondent was diagnosed with Adjustment Disorder with anxiety and depression, and, as part of his ongoing treatment with Ms. Sugarman, respondent has shown positive growth on awareness of and setting appropriate professional boundaries.

5. **Christopher R. Landrigan, Esq.** – Mr. Landrigan represented the respondent during the course of the investigation conducted by the Department of Justice (DOJ) Office of the Inspector General (OIG) which investigated respondent's misconduct giving rise to the Complaint brought forth by the relator in the instant matter. The parties are submitting Mr. Landrigan's sworn affidavit as Joint Exhibit 8 together with the Stipulations entered into by the parties in support and corroboration of mitigation evidence of other penalty under Gov.Bar.R. V(13)(C)(6) resulting from respondent's resignation of employment.

Respectfully submitted,

/s/ Bryan L. Penvose
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Counsel for Respondent Mark S. Bennett

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on this 26th day of January, 2023 upon:

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/s/ Bryan L. Penvose _____

Bryan L. Penvose (0074134)

KOBLENTZ, PENVOSE, & FRONING, LLC

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel

Case No. 2023-0471

Relator,

v.

Mark Stewart Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

**RESPONDENT'S OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION OF THE BOARD OF PROFESSIONAL CONDUCT**

(REQUEST FOR ORAL ARGUMENT)

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I. INTRODUCTION

Now comes Respondent, Mark Stewart Bennett, by and through counsel, and hereby respectfully submits his Objections to the Findings of Fact, Conclusions of Law and Recommendation (“Report”) of the Board of Professional Conduct (“Board”).

This matter came before the Hearing Panel and Board having been fully stipulated to by the Relator, Office of Disciplinary Counsel of the Supreme Court of Ohio, and by Mr. Bennett which comprehensively included:

1. The entire set of facts regarding Mr. Bennett’s misconduct and inappropriate interactions with J.S.¹, a legal intern employed by the U.S. Attorney’s Office for the Northern District of Ohio (“USAO”) while Mr. Bennett was employed as an Assistant United States Attorney (“AUSA”) with that same office. [Stipulations, ¶¶ 1-44; Board Report at ¶¶ 5-47];
2. All eight (8) Joint Exhibits admitted into evidence at the hearing; [Stipulations, p. 7; ¶Board Report at ¶ 48; Joint Ex. 1-8];
3. Mr. Bennett’s violation of 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]; [Stipulations, ¶ 45; Board Report at ¶ 49];
4. The two (2) aggravating factors, as listed in Gov.Bar R. V(13)(B), of: (i) a dishonest or selfish motive and (ii) the vulnerability of and resulting harm to victims of the misconduct; [Stipulations, p. 6 ¶ 1,(a)-(b); Board Report at ¶ 51];
5. The four (4) mitigating factors, as listed in Gov.Bar R. V(13)(C), of: (i) the absence of

¹ The Initials “J.S.” are being used in this brief, as they were in the record of the proceedings before the Panel and Board, to protect the identity of the person affected by Mr. Bennett’s misconduct.

a prior disciplinary record, (ii) full and free disclosure to the board or cooperative attitude toward proceedings, (iii) character or reputation; and (iv) the imposition of other penalties or sanctions as it relates to the loss of Mr. Bennett's employment as an AUSA; [Stipulations, pp. 6-7, ¶ 2,(a)-(d); Board Report at ¶ 52; Joint Ex. 4 & 8];

6. The acknowledgement that Mr. Bennett voluntarily sought and continues to engage in mental health treatment, has been diagnosed, and had commenced and continues to engage in treatment for Adjustment Disorder with anxiety and depressed mood, and for which above-stated diagnosis his treatment provider has expressed a favorable opinion that Mr. Bennett has gained awareness, is capable of setting appropriate professional boundaries, and has exhibited positive growth; [Stipulations, ¶ 40; Board Report at ¶ 45; Joint Ex. 5, 6 & 7]; and
7. A joint recommended sanction of a fully stayed six (6) month suspension, with the condition that Mr. Bennett commits no further acts of misconduct and continues with his current course of mental health counseling. [Stipulations, p. 7; Board Report at ¶ 54].

After the hearing held in the instant matter, the Panel and Board found and accepted, by clear and convincing evidence, all of the above stipulations of Mr. Bennett and Relator, save and except the joint recommended sanction of a six (6) month stayed suspension with conditions, but rather recommended an actual six (6) month suspension with those same conditions.

In view of all the stipulated facts, the stipulated misconduct, the stipulated aggravating and mitigating factors, which are all supported and were accepted by the clear and convincing evidence standard set forth in this Honorable Court's Rules for Government of the Bar² as well as all relevant

² Gov.Bar R. V(12)(I)

case law, and upon the consideration of pertinent precedent, Mr. Bennett objects to the sanction recommended by the Panel and Board of an actual six (6) month suspension from the practice of law with conditions and, respectfully and humbly, states that the appropriate sanction to be issued align with this Honorable Court's applicable prior precedent which has been jointly recommended by Relator and Mr. Bennett – a fully stayed six (6) month suspension from the practice of law, on the condition that he commit no further acts of misconduct and continue with his current course of mental health counseling.

II. STATEMENT OF THE FACTS

A. Mr. Bennett's Legal Career

Mark Bennett was admitted to the practice of law in 1998. Thirteen (13) of the over twenty-four (24) years since his admission were in federal service as an AUSA with the USAO. [Board Report ¶¶ 5, 6]. Following his admission, Mr. Bennett spent the first seven (7) years of his career in private practice and subsequently, beginning in 2005, Mr. Bennett began his many years of public service – first, with the Ohio Attorney General, where he served as the Senior Deputy Attorney General in the Cleveland Office, [Tr. 49] and later, from 2007 until 2020, as an AUSA with the USAO. [Tr. 50, 51].

Mr. Bennett began his tenure with the USAO in the general crimes unit prosecuting various crimes including, but not limited to, felony drug possession cases, bank robberies, and other cases that include an element of assault. Then, from 2008 until 2013, Mr. Bennett served in the economic crimes unit prosecuting mortgage fraud, securities fraud, health care fraud, tax fraud, and bank fraud cases. [Tr. 58, 59]. In recognition of his service as a prosecutor in the economic crimes unit, Mr. Bennett was presented with an award by the U.S. Department of Housing and Urban Development in 2015. [Tr. 59].

Later, Mr. Bennett transferred from the USAO Cleveland office to the Akron office where he prosecuted various types of cases including drug cases involving large drug organizations as well as white-collar crimes. Mr. Bennett's final assignment while employed as an AUSA was serving in the national security unit which prosecutes international and domestic terrorism crimes. [Tr. 59]

Serving as an AUSA was Mr. Bennett's dream job. He aspired to serve in that position with the hope of doing his part of making the world a better place and desired to stay in that position his entire career serving our country and its citizenry. As a result of his misconduct which gave rise to this attorney discipline matter, the Department of Justice Office of the Inspector General ("OIG") conducted an investigation and recommended that Mr. Bennett be terminated from his employment with the USAO. [Board Report ¶ 43]. Rather than prolonging the process, Mr. Bennett resigned from his employment knowing that he was ultimately going to be removed. [Board Report ¶ 43; Tr. 21, 60].

Following his resignation from the USAO in December, 2020, Mr. Bennett re-entered the private practice of law as a solo practitioner in January of 2021, maintaining an office in Parma, Ohio. [Tr. 50] His current practice of law includes, but is not limited to, the following areas: business litigation, business counseling, criminal defense, and probate. [Tr. 52].

B. Mr. Bennett's Professional Affiliations, Activities, Awards, and Community Service

In addition to his practice of law, Mr. Bennett is, and throughout his career has, dedicated himself to serving the community. In the past Mr. Bennett served on various committees of the Cleveland Bar Association, now the Cleveland Metropolitan Bar Association. As a member of that organization, Mr. Bennett led the Justice for All Committee, the volunteer and pro bono arm

of the Bar Association and, as part of that service, established opportunities for attorneys to engage in *pro bono* work. [Tr. 53] For his work with Justice for All Committee, Mr. Bennett was honored by being named the volunteer of the year [Tr. 54].

In addition to that volunteer service, Mr. Bennett has exemplified his strong dedication to our society by volunteering his time, knowledge, and skills in a variety of endeavors. He has served as a board member for the Cleveland Bar Foundation, as a trustee for the Cleveland Bar Association, and as a board member of the Legal Aid Society. During his time serving on the board of the Legal Aid Society, Mr. Bennett contributed to starting the Brief Advice Clinics for *pro se* litigants. For that work, Mr. Bennett was awarded the Ohio State Bar Association's volunteer of the year for attorneys under the age of 40. [Tr. 53, 54].

Mr. Bennett is also a member of the Federal Bar Association and, since becoming a solo practitioner in 2021, Mr. Bennett has joined the Parma Bar Association and the West Shore Bar Association in the greater Cleveland area. [Tr. 52].

Toward the community at large, Mr. Bennett has volunteered with Business Volunteers Unlimited and has also served on the board of Cleveland Reads, a nonprofit that helps people with literacy challenges. Additionally, he has served on the board of Cleveland Public Theatre for several years and participated in the Bridge Builder program, a precursor program for younger lawyers for an organization known as Leadership Cleveland. [Tr. 55].

In addition to both his legal and non-legal community service, Mr. Bennett has served on various committees within the Republican Party of Cuyahoga County. For his service to that organization, Mr. Bennett was honored as its volunteer of the year in 2006. [Tr. 54, 55].

Committed to helping aspiring lawyers, Mr. Bennett has previously served as an adjunct professor at Cleveland State University College of Law³ where he taught advanced brief writing, focusing on appellate practice, appellate brief writing, and conducting an oral argument. For many years, Mr. Bennett served as a mentor through the Supreme Court of Ohio's "Lawyer to Lawyer Mentoring Program" and as a mentor for law students through the alumni mentoring program offered by the CSU College of Law. [Tr. 51, 80; See also Joint Exhibit 4, character testimonial letter written by MacKenna Daus]. Mr. Bennett has also assisted coaching the moot court teams at the CSU College of Law. [Tr. 50-51].

C. Mr. Bennett, devoted husband and father

Moot court is near and dear to his heart since, as a student in law school, Mr. Bennett met his wife, Rebecca, to whom he has been married 23 years. [Tr. 50; Tr. 71]. Together, Mr. and Mrs. Bennett have a young daughter who they adore. As a dedicated and loving father, Mr. Bennett has enjoyed coaching his daughter's T-ball team and frequently leaves his law office in time to greet his daughter as she arrives home off the bus to care for her after school. [Tr. 55; 23].

D. Mr. Bennett's Stipulated Misconduct Involving J.S.

Mr. Bennett and Relator have fully stipulated to the facts involved which gave rise to his misconduct involving J.S. - a legal intern with the USAO from May, 2017 until November, 2017 in the Akron office and then again later, in the Youngstown office, where her boyfriend at the time lived⁴, from August, 2018 until June 2019. . See *Stipulations*; see also Board Report ¶¶ 5-44.

While J.S. was a legal intern with the USAO, Mr. Bennett engaged in unprofessional behavior by making inappropriate remarks intended as joking and banter, which encompassed

³ At the time, known as Cleveland-Marshall College of Law, Cleveland State University.

⁴ As is inferred by the text exchange described in Stipulation ¶ 22; See also Joint Ex. 1, p. 102.

sexual inuendo. While he worked with J.S. on a project-to-project basis, Mr. Bennett did not have supervisory authority over J.S. as part of her internship, nor did he have the ability to hire or terminate her internship. [Board Report ¶ 66; Ex. 2., p.5 at 2-5].

At the time Mr. Bennett and J.S. worked together, Mr. Bennett mistakenly believed that his interactions with J.S. were mutual (which he now realizes and has admitted was not the case) and he did not realize that his actions were offensive towards J.S. or unwelcome. [Board Report ¶¶ 41. 42]. J.S.' sworn statements to OIG⁵ are helpful in shedding some light and explanation (but not an excuse) as to why Mr. Bennett thought the intended joking and banter to be mutual:

- J.S. is a flirtatious person [Joint Exhibit 2, p. 10, at 13-16; p. 18, at 22-23; p. 18, at 22-23, p. 19, at 3-5];
- J.S. probably, at one point, told Mr. Bennett he was attractive for an older guy [Joint Exhibit 2, p. 10, at 17-20];
- J.S. also probably, at some point in time, made a joking comment to Mr. Bennett about being his mistress [Joint Exhibit 2, p. 14, at 11-16];
- J.S. joked with Mr. Bennett which may have, at first, led him to believe that he could flirt back with her. [Joint Exhibit 2, p. 19, at 8-12]. See Board Report at ¶ 39.

⁵ Joint Exhibits 1-3 were sealed by the panel pursuant to an unopposed motion stating that:

“[OPR] requested that relator take steps to maintain the confidentiality of the documents to the extent possible during relator’s investigation and in any subsequent disciplinary proceedings. These documents are part of the federal investigation conducted by OPR and are not otherwise publicly available. Under Sup.R. 45(E)(2)(c), “A court shall restrict public access to information in a case document, or, if necessary, the entire document, if it finds by clear and convincing evidence that “the presumption of allowing public access is outweighed by a higher interest after considering * * * [w]hether any state, federal, or common law exempts the document or information from public access; [or w]hether factors that support restriction of public access exist, including * * * individual privacy rights and interests.” Motion to Restrict Public Access, 1/26/2023.

Not recognizing during the time when Mr. Bennett worked with J.S., that his behavior and interactions were unwelcomed, offensive, and inappropriate [Board Report ¶¶ 41, 42], Mr. Bennett continued his inappropriate conduct throughout J.S.' two stints of internship. Whether or not intended as consensual sexual inuendo, joking, or banter, Mr. Bennett now recognizes and has freely admitted that his conduct was unprofessional and inappropriate.

Mr. Bennett's conduct giving rise to this matter, as is contained and further described in the parties' Stipulations, include, but is not limited to, making sexually inappropriate comments about her, having consensual conversations with J.S. about his marital sex life, commenting on her appearance, asking about J.S.' sex life and suggesting that they might be sexual partners, requesting nude photos of J.S. on social media, offering to buy J.S. clothing, having inappropriate social media and texting conversations with J.S. (which caused her to block his number and block him on those platforms), reaching across J.S.' body for a book in the law library causing the touching of her breasts with the back of his hand and arm as he reached (which touching J.S. has said she believed to be intentional but which belief, not action, Mr. Bennett contests), and asking what he would get in return when J.S. requested a letter of recommendation (on a separate occasion, Mr. Bennett provided a letter of recommendation requested by J.S. without making any inuendo). [Board Report ¶¶ 5-35].

Though Mr. Bennett now realizes that his conduct as described in the preceding paragraph crossed appropriate and professional boundaries during their time working together at the USAO, Mr. Bennett always liked J.S. as a person, thought she was going to be a good lawyer, and wanted to help her in her career. [Tr. 76 - 77]. He not only provided J.S. with the requested letters of recommendation, but also by providing her with information regarding a recruiting event that included employment prospects with federal law enforcement agencies which J.S. was interested

in [Joint Exhibit 1, p. 102 at 9-12], and Mr. Bennett set up several meetings for J.S. with agents with various federal agencies.

E. Mr. Bennett's Separation from Employment

In March of 2019, during J.S.' second internship with the USAO, Mr. Bennett inappropriately sent a message on Facebook Private Messenger to J.S. that was seen by J.S.' then boyfriend which caused a "huge fight" between J.S. and her boyfriend. Her boyfriend questioned J.S. as to why she would not report Mr. Bennett's conduct, since J.S. did not want to report Mr. Bennett and preferred to simply finish out the few months remaining of her internship. [Joint Exhibit 1, pp. 44-45]. After her interaction with her boyfriend, J.S. informed a colleague about her interactions with Mr. Bennett and, subsequently, OIG conducted an investigation. [Board Report ¶ 36]. During the OIG investigation, J.S. stated that she did not report Mr. Bennett's conduct because she was raised thinking it was just something that she would have to deal with and she did not want to do anything that might hurt her career. [Board Report ¶ 37].

Following the investigation, OIG recommended that Mr. Bennett be removed from his employment as an AUSA with the USAO. Mr. Bennett believed that he would ultimately be terminated regardless of whether he further contested those administrative proceedings and resigned his employment rather than prolonging the inevitable outcome of the process. [Board Report ¶ 43; Tr. 21, 60; See also Board Report ¶ 48, Joint Ex. 8; Affidavit of Christopher Landrigan, Esq. who represented Mr. Bennett in that administrative employment process.]

F. Mr. Bennett Accepts Responsibility and Seeks Mental Health Treatment.

After experiencing the loss of his employment, Mr. Bennett self-reported his misconduct to the Office of Disciplinary Counsel and, shortly thereafter, the Department of Justice also informed Relator of its investigation. [Board Report ¶ 44; Tr. 56].

Mr. Bennett also voluntarily sought mental health treatment, was diagnosed, and commenced treatment for Adjustment Disorder with anxiety and depressed mood. [Board Report ¶ 44; Tr. 56; Joint Ex. 5, 6 & 7]. Since June of 2021, Mr. Bennett has attended monthly counseling sessions with his mental health provider through the date of the hearing⁶ which he intends to continue regardless of whether or not it is imposed as a condition of any sanction resulting from this attorney discipline matter. [Tr. 65-66]. Mr. Bennett's treatment provider has expressed a favorable opinion that he has gained awareness of setting appropriate professional boundaries and has exhibited positive growth.

At the hearing, Mr. Bennett testified that he sought and engaged in his counseling because he wanted to be certain that he would not repeat the same behavior toward others in any and all future instances [Tr. 64-65]. Mr. Bennett realizes that his counseling has helped him to be able to take a step back from the situation and recognize, to his chagrin, that his conduct towards J.S. was inappropriate. With the help of his counseling, Mr. Bennett now further understands that regardless of whether his comments were welcomed (which he now clearly understands that they were not), those types of comments and conduct are inappropriate, not only in the in the workplace but also in social settings. [Tr. 68]. Mr. Bennett has learned to place himself in another person's shoes and to be sensitive to how any comment that he might make could possibly cause that person offense or harm, even if not intended. Additionally, Mr. Bennett's counseling has helped him to fully understand the imbalance in the power dynamic which existed between him, as an AUSA, and J.S., as a legal intern. [Tr. 69-70].

⁶ Mr. Bennett has continued his counseling in the months since the hearing was held, but that fact is obviously not part of the record in these proceedings.

Without intending to submit his mental health diagnosis and treatment into evidence as mitigation as set forth by Gov.Bar R. V(13)(C),(7), and certainly not in an effort to utilize his mental health disorder as an excuse or justification for his conduct towards J.S., Mr. Bennett shared with the Panel at the hearing held that – through his counseling – he now realizes and understands that his behavior towards J.S. was inappropriate and harmful. Until he received that insight through his counseling, Mr. Bennett believed that his sexually over-toned interactions with J.S. were mutual. [Tr. 81].

The Board found that Mr. Bennett expressed regret and remorse for his misconduct, testifying at the hearing that, “... looking back and reading the conduct, it's -- in some ways, you know, I don't recognize the person. It's -- it's completely offensive and inappropriate. But I did it.” [Tr. 61, at 14-19; see also Board Report ¶¶ 42, 46]. When asked now how he felt when reading the comments that he made to J.S., he affirmed that, “It's embarrassing. They're offensive. I am heartbroken if -- that they caused J.S. harm. I feel poorly for disrespecting my wife in any way. And I also think about my daughter and think I would hate to think she would have to ever go through something like this. So, I'm extremely disappointed in myself and sorry that I've caused her or anyone else harm.” [Tr. 70 at 21-25, 71, 1-5].

Mr. Bennett continued by explaining, “ ... the fact that I used my position to cause harm to somebody who -- again, I liked J.S.. I thought she was a good person. I thought she was going to be a good lawyer. And I -- I, given the opportunity, would have apologized profusely if I had found out during the time that what I said had caused her harm.” [Tr. 76 - 77].

In expressing that he would like to be able to apologize to J.S., Mr. Bennett further explained that he was advised to avoid further communication with her out of an abundance of caution for her feelings and he has followed that advice. [Board Report ¶ 46; Tr. 76-77].

G. Mr. Bennett's current ability to engage in the competent and ethical practice of law.

Mr. Bennett's mental health treatment provider, Christy Sugarman, PCC, LIDC, in discussing his diagnosis and treatment, opined under oath that Mr. Bennett currently possesses the ability to engage in the ethical and competent practice of law and that he is unlikely to repeat his misconduct. [Joint Ex. 7, Christy Sugarman Depo. Tr., pp. 28-29].

Likewise, Attorney Kelly Zacharias, a solo practitioner who has and continues to share office space with Mr. Bennett since he opened his solo private practice in January, 2021, testified at the hearing as a character witness on his behalf. [Board Report ¶ 48; Tr. 25-45]. Ms. Zacharias testified as to Mr. Bennett's good reputation and his character traits for honesty, ethical practice, serving the community, and respect within the legal profession. [Tr. 41-43].

Ms. Zacharias further testified that, by and through her experience sharing office space with Mr. Bennett, that she has interacted with him regularly (on average several times a week) and has also seen him interact with other members of the legal profession and his clients. Ms. Zacharias shared that she has never experienced or observed Mr. Bennett act inappropriately towards her or anyone else, and that she has always found him to be polite, professional, and to maintain appropriate boundaries. [Tr. 36-38]. Critically important, in counsel's view to this Honorable Court's determination of appropriate sanction in this case, Ms. Zacharias opined that Mr. Bennett has the current ability to engage in the competent and ethical practice of law, and that he is a valuable asset to the public as a member of the legal profession. [Tr. 41-43].

III. RESPONDENT'S OBJECTIONS TO THE BOARD'S RECOMMENDED SANCTION

"The purpose of the disciplinary proceedings is to investigate the conduct and fitness of the attorney to practice law in order "to safeguard the courts and to protect the public from the

misconduct of those who are licensed to practice law." *Akron Bar Ass'n v. Groner*, 2012-Ohio-222, 131 Ohio St. 3d 194, 963 N.E.2d 149 quoting *Ohio State Bar Assn. v. Weaver*, 41 Ohio St.2d 97, 100, 70 O.O.2d 175, 322 N.E.2d 665. Thus, this Honorable Court's oft stated purpose underlying a disciplinary sanction is not to punish the offender but to protect the public. *Id.* citing *Disciplinary Counsel v. O'Neill*, 103 Ohio St. 3d 204, 2004 Ohio 4704, 815 N.E.2d 286, ¶ 53.

In determining a sanction designed to protect the public, this Honorable Court weighs "the aggravating and mitigating factors to decide whether circumstances warrant a more lenient or exacting disposition." *Disciplinary Counsel v. Roberts*, 117 Ohio St.3d 99, 2008-Ohio-505, 881. Because each disciplinary case is unique, this Honorable Court takes all relevant factors into account. *Disciplinary Counsel v. Harter*, 154 Ohio St.3d 561, 2018-Ohio-3899, 116 N.E.3d 1255, ¶28.

Mr. Bennett and Relator stipulated, and the Panel and Board found (in accepting all of the proffered stipulations *in toto*, save and except the stipulated sanction), by clear and convincing evidence, that Mr. Bennett's conduct towards J.S. 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]. [Stipulation, ¶ 45; Board Report ¶ 49].

The parties further stipulated to the aggravating factors as listed in Gov.Bar R. V(13)(B) of a dishonest or selfish motive; and the vulnerability of and resulting harm to the victim of the misconduct. [Stipulations, p. 6 ¶ 1,(a)-(b); Board Report ¶ 51].

Regarding the mitigating factors as listed in Gov.Bar R. V(13)(C), the parties stipulated and the Board found as mitigation: (i) the absence of a prior disciplinary record, (ii) full and free disclosure to the Board or cooperative attitude toward proceedings, character or reputation, and

(iii) the imposition of other penalties or sanctions. [Stipulations, pp. 6-7, ¶ 2,(a)-(d); Board Report ¶ 52].

Additionally, it is strongly posited that this Honorable Court should consider the sanctions imposed in similar cases. *Disciplinary Counsel v. Sarver*, 2020-Ohio-5478, 163 Ohio St. 3d 371, 170 N.E.3d 799 citing *Dayton Bar Assn. v. Sullivan*, 158 Ohio St.3d 423, 2020-Ohio-124, 144 N.E.3d 401, ¶ 28.

OBJECTION NO. 1: The Board erred in recommending that Mr. Bennett should serve an actual suspension for six (6) months with imposed conditions. The Court should instead order a fully stayed six (6) month suspension with conditions, as was stipulated by the parties.

This Honorable Court’s comparative prior precedents support a fully stayed suspension.

You have previously recognized that attorneys must guard against inappropriate conduct with law clerks employed in their office. *Lake County Bar Assn v. Mismas*, 139 Ohio St.3d 346, 2014-Ohio-2483, 11 N.E.3d 1180, ¶ 22. It is axiomatic that “[u]nwelcome sexual advances are unacceptable in the context of any employment,” *Id.* at ¶ 23. In determining the issue of an appropriate sanction, you have previously focused on the offensiveness of unwanted advances and the power imbalance between the parties in determining the sanction.

With those standards in view, this Honorable Court’s prior precedents, when compared to the fully stipulated facts as well as the stipulated aggravating and mitigating factors and stipulated misconduct in the instant matter, provide the guidance that the appropriate sanction to be issued relative to Mr. Bennett is a fully stayed six (6) month suspension.

A. Pertinent Precedent as Stipulated by the Parties.

1. *Disciplinary Counsel v. Berry*, 166 Ohio St.3d 112, 2021-Ohio-3864, 182 N.E.3d 1184. The instant matter is similar to *Disciplinary Counsel v. Berry* (six-month suspension, fully

stayed) which involved a judicial officer and not a practicing attorney. 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 Mr. Bennett, acknowledged that his comments were inappropriate, but stated he was unaware that they were unwelcome to the recipient at the time.

This Honorable Court in *Berry* imposed a 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, 140 N.E.3d 561, ¶ 72 . Arguably, based upon the above-cited rationale, a lesser sanction may have been issued had Berry not been a judicial officer but, rather, was a practicing attorney.

The facts in *Berry* are similar to this matter. The Board ineffectively attempted to distinguish *Berry*, which involved a judge held to a higher standard, when it stated that “Respondent’s actions are more severe than those in *Berry*, wherein the respondent-judge had no authority over the victim whatsoever ...” [Board Report ¶ 49]. *Berry* involved a courthouse staff member who was a court reporter for another judge in the same courthouse who Judge Berry attempted to date and to whom he sent numerous inappropriate messages. In that matter, the parties stipulated that, had the courthouse staff member been called to testify at Berry’s disciplinary hearing, she would have stated that she gave the judge her phone number because *she felt like she could not refuse, considering his status as a judge*. *Berry*, 2021-Ohio-3864 at [P5] (emphasis added). That fact is very similar to the facts here, where J.S. testified, as part of the OIG investigation, as to almost identical reasons why she did not report Mr. Bennett’s conduct to her

supervisor. [Board Report ¶¶ 37, 38]. Regardless of direct supervisory authority, both the courthouse staff member in *Berry* and J.S. felt powerless to object to the misconduct exhibited towards them due to the imbalance of power and status.

As is stated in the parties' Joint Hearing Brief on Sanction, "... while the recipient of Judge Berry's unwelcome messages did not work in Berry's courtroom, she was in the untenable position of receiving messages from an elected judge. Judges are not subject to normal Human Resources proceedings because, they can be investigated internally but cannot be disciplined. Although Berry had no direct authority over the staff member, the staff member also had no meaningful process to address Berry's behavior." In contrast, J.S. had a path to address Mr. Bennett's behavior as is evidenced by the OIG investigation conducted and Mr. Bennett ultimately losing his employment.

While recognizing the fact that Mr. Bennett was not J.S.' supervisor, yet fully appreciating the imbalance of his status and influence as an AUSA as it relates to J.S. as a legal intern, certainly the respondent-judge in *Berry* had similar, if not superior status, influence, and power imbalance in regard to the court reporter who worked for another judge in the same courthouse.

It should be further noted that while two of the same mitigating factors of no prior discipline and full cooperation with the disciplinary process were found in *Berry* as, here, the Board also found the additional mitigating factor of the imposition of additional sanction or penalty (which was not present in *Berry*) due to Mr. Bennett's loss of his employment with the USAO. [Board Report ¶ 52; See also Joint Exhibit 8].

Berry's inappropriate comments, social media messages, and invitations for drinks and lunch are similar to Mr. Bennett's conduct towards J.S. as are the comparisons between the matters relative to the imbalance of power, status, and influence. Judge Berry, a judicial officer appropriately being held to a higher standard, received a fully stayed six (6) month suspension

from this Honorable Court. Therefore, the same sanction should be ordered for Mr. Bennett for his misconduct.

2. Lake County Bar Assn v. Mismas, 139 Ohio St.3d 346, 2014-Ohio-2483, 11 N.E.3d 1180. In determining the sanction for inappropriate conduct in employment contexts, this Honorable Court has also looked to factors such as whether the attorney conduct is aggressive, demanding, or threatening. As the court noted in *Mismas*, 139 Ohio St.3d 346 at ¶ 9:

Mismas advised Ms. C. that she would “need to take a few beatings” before she could learn to give one. He rephrased this statement in sexual terms and then asked Ms. C. if she had ever engaged in the type of sex act he had referred to. Ms. C. told him to stop, stating that they were only speaking metaphorically, but Mismas insisted that he was serious. Ms. C. advised him that his question was inappropriate and that she would not answer it. Mismas then told her that there needed to be some level of trust between them saying, “[I]f you can’t trust me with personal issues then that’s a problem.” * * *

Thus, Mismas aggressively steered the conversation to sex. Even after Ms. C. expressly told him the question was inappropriate, he continued to imply that Ms. C. needed to be more accommodating. Later that night, Mismas again pushed the conversation towards sex:

A little before midnight, Mismas began to quiz Ms. C. about an arbitration agreement that he had given her to review. The conversation then turned to how Mismas could ensure that Ms. C. would be loyal to him. He told her, “I have an idea but your [sic] not going to like it,” and stated that she would “bolt” if he said it. After she responded that he had already taken the conversation pretty far and that she had not bolted, he suggested that she perform a sex act for him. Ms. C. flatly rejected Mismas’s suggestion, but he continued to press the issue. When she told him to stop and urged him to admit that he was joking, he repeatedly refused and insisted that her employment depended on her compliance, telling her, “If you show up at 11 you know what’s expected.” He further stated, “So its your choice. Ok. I’ll be there at 11. If you show up great. You know what you gptt. GoTta do [sic]. If not Good luck to you.” * * * *Id.* at ¶ 10 (errors in original).

A week later, Mismas attempted to get Ms. C. to take an out-of-town trip with him. He also asked her to join him on an overnight trip to Washington, D.C. *Id.* at ¶ 12. When she refused, Mismas “belittled her for her rejection and pressured her to go by suggesting that her refusal would

have adverse consequences for her employment, texting her, ‘That’s strike 1 for you. 3 strikes and you are out.’ The following day, Ms. C. resigned her employment.” *Id.*

The court suspended Mismas for one year, with six months stayed, for engaging in conduct that adversely reflected on his fitness to practice law in violation of Prof.Cond.R. 8.4(h) – the same amount of actual suspension time from the practice of law as recommended by the Board here. *Id.*

Yet, while the Board agreed with the parties in this matter that Mr. Bennett’s misconduct did not rise to the level of that in *Mismas*, it recommends a similar sanction. [Board Report ¶ 65]. By contrast to the facts present in Mr. Bennett’s case, Mismas knew that Ms. C. found his comments offensive and inappropriate because she repeatedly told him so, yet he continued to try to force her to have sex with him. J.S. never voiced her objection to Mr. Bennett’s intended joking and banter prior to the OIG investigation which he mistakenly believed to be mutually acceptable. While Mr. Bennett now understands that he should have never engaged in this behavior, he would have stopped his interactions and apologized to J.S. had he realized he was causing her discomfort and harm.

Mr. Bennett also admitted that he improperly conditioned a professional favor with sexual innuendo when he asked what he would get in exchange for a letter of recommendation. However, Mr. Bennett ultimately, in fact, did provide the letter of reference to J.S., upon J.S.’ request for a reference on a separate occasion without any inuendo by Mr. Bennett. [Stipulations ¶ 29]. A striking and seminal difference exists between Mismas’ and Mr. Bennett’s misconduct - Mismas repeatedly threatened Ms. C. that her job depended on her compliance with his sexual demands. While not seeking to minimize Mr. Bennett’s actions, it is patently obvious that Mismas’ threats to terminate Ms. C. are objectively worse than Mr. Bennett’s inuendo in desiring to know what he could get in exchange for a letter of recommendation.

Additionally, this Honorable Court should consider the degree of the power imbalance between the two parties to determine the harm the unwanted sexual comments could have caused. The greater the imbalance, the more likely a victim is to feel powerless and coerced, leading to stress, anxiety, and potential capitulation. Law clerks or legal interns are at a particularly vulnerable point in their careers; they are building nascent professional networks and are acutely aware of their supervising attorneys' power over their immediate future and long-term career prospects. *Mismas* at ¶ 22. Thus, sexual advances are “particularly egregious when they are made by attorneys with the power to hire, supervise, and fire the recipient of those advances.” *Id.* at ¶ 26.

Mr. Bennett did not have the power to hire or fire J.S., nor was he her supervisor. His authority over her was transitory, based on individual projects which he and J.S. worked on together. [Joint Exhibit 2, pg. 4]. Although Mr. Bennett directed and evaluated J.S.' work on certain tasks, she did not consider him a supervisor, which fact she provided in her sworn statement to the investigator. This is in no way meant to say that Mr. Bennett's authority was inconsequential. As an experienced attorney in the prestigious position of an AUSA, Mr. Bennett had the potential to sway the future of J.S.' career by introducing her to other lawyers, expressing favorability of her work product, and giving her professional recommendations. These are not trivial accolades for a law clerk to acquire, and they could potentially “set the course for a new attorney's entire legal career.” *Mismas* at ¶ 22. However, compared to *Mismas*, there is far less of an inherent power imbalance.

For example, in *Mismas*, it appears that Mismas had unfettered authority to hire, supervise, and fire Ms. C as he implied in his threats to coerce sex. Therefore, Mismas had the power to wreck Ms. C.'s immediate employment opportunities and her legal reputation within the

profession. He also threatened to inform her law school professors “what a stupid decision she had made” when she resigned, *Id.* at ¶ 25, potentially affecting her legal education and her ability to seek recommendations from her professors. Mr. Bennett did not have the authority to hire, supervise, and fire J.S. and, it must be noted, never, at any point, demanded sexual favors or threatened J.S. in any way, whatsoever.

In considering aggravating factors in *Mismas*, the Court ultimately found two (2) aggravating factors of (a) dishonest or selfish motive and (b) the vulnerability of and resulting harm to the victim. It found four (4) mitigating factors: (a) the absence of a prior disciplinary record, (b) his full and free disclosure to the board and cooperative attitude toward the proceedings, (c) his good character and reputation, and (d) his alcohol dependency. *Id.*

Here, the parties stipulated and the Board found that Mr. Bennett’s case, as in *Mismas*, involves the same two (2) aggravating factors of (a) dishonest or selfish motive and (b) the vulnerability of and resulting harm to the victim. While the parties stipulated that the same aggravating factors exist [Board Report ¶ 51], the parties agreed, through the stipulations accepted by the Board, that Mr. Bennett has *less* culpability for J.S.’ vulnerability because he did not have the same unfettered authority to hire, supervise, and fire J.S. as did *Mismas* with Ms. C.

This matter also involves four (4) (the same number as in *Mismas*) stipulated and found mitigating factors: (a) the absence of a prior disciplinary record, (b) Mr. Bennett’s full and free disclosure to the board and cooperative attitude toward the proceedings, (c) his good character and reputation, and (d) the imposition of other sanctions incurred through the loss of employment. [Stipulations ¶¶ 41, 42; Board Report ¶¶ 51, 52]. [While *Mismas* included mitigation involving his alcohol dependency, the parties stipulated and the Board found in Mr. Bennett’s case the mitigation factor of the imposition of other penalties or sanctions which was not present in *Mismas*.]

Additionally, while Mr. Bennett did not ask the Board to find a formal mitigating factor of a mental health disorder under Gov.Bar.R. V(13)(C)(7), the parties stipulated and the Board found that Mr. Bennett voluntarily sought on-going mental health treatment which has led to Mr. Bennett understanding the power imbalance that existed between him and J.S., the wrongfulness of his conduct, and his exhibiting positive growth as well as awareness of and setting appropriate professional boundaries. [Board Report ¶¶ 45, 53; Tr. 69-70; Joint Exhibit 7].

It is also noteworthy that Mr. Bennett did not act against J.S. after he became aware of her allegations while he was employed at the USAO and cooperated with the OIG investigation conducted by the U.S. Department of Justice. As a result of the investigation, Mr. Bennett self-reported his misconduct to Relator and has fully cooperated with the disciplinary investigation and process stipulating to all facts and misconduct.

Therefore, in keeping with the principle that the primary purpose of attorney discipline is to protect the public and not to punish the offender, the sanction imposed in this matter should be a fully stayed six (6) month suspension as opposed to the actual suspension levied in *Mismas*.

3. *Disciplinary Counsel v. Skolnick*, 153 Ohio St.3d 283, 2018-Ohio-2990, 104 N.E.3d 775. In *Disciplinary Counsel v. Skolnick*, the respondent engaged in two-and-a-half years of verbal abuse and sexual harassment against his paralegal. He “berated her for her physical appearance, dress, education, and parenting skills. He called her a bitch, a ‘hoe’, a dirtbag, and a piece of shit, and he told her that he hoped she would die.” *Id.* at ¶ 12. Skolnick also sexually harassed his victim: “While Skolnick drove L.D. and another female employee to lunch, he remarked that the two women should give him ‘road head’ so that he could rate their performances on a scale from one to ten.” *Id.* at ¶ 5.

While Mr. Bennett made inappropriate critical comments about some of J.S.'s personal and romantic choices, his comments were nowhere near as demeaning as the ones in *Skolnick*. Mr. Bennett made isolated comments about J.S.' appearance (joking about her putting on weight in response to J.S. making a comment about her own appearance), her decision to work in a distant office, and her relationship with her then-boyfriend. By contrast, Skolnick, as noted above, berated L.D. for her "appearance, dress, education, and parenting skills" and called her "a bitch, a 'hoe', a dirtbag, and a piece of shit, and he told her that he hoped she would die." *Skolnick* at ¶ 12. While Mr. Bennett's comments were unwelcome, they did not approach, by any means, those made by Skolnick, as the Board in its Report agreed.

The victim in *Skolnick* was also powerless. The court noted that L.D. quickly began looking for a new job but, despite responding to over 100 employment advertisements, she was unable to obtain one, *Skolnick* at ¶ 4, and she had to suffer Skolnick's abuse for two-and-half years. Even after L.D. eventually found another job, a clinical psychologist later diagnosed her with symptoms that met some of the criteria for post-traumatic stress disorder. *Id.* At ¶ 6.

The Court noted that Skolnick's "extreme, obnoxious, and humiliating attack," *id.* At ¶ 13, on the victim was "longstanding and pervasive," *Id.* At ¶ 14, warranting a one-year suspension with six months stayed – the same amount of actual suspension time recommended by the Board for Mr. Bennett.

Yet, the parties and the Board agree that Mr. Bennett's conduct was not nearly as egregious as Skolnick's. [Board Report ¶ 65]. For example, there is no evidence that Mr. Bennett directly requested that J.S. perform any sexual act on him, let alone oral sex, as did Skolnick. Rather, Mr. Bennett believed, albeit mistakenly, that J.S. was not offended by his comments but, rather, mistakenly considered them mutually acceptable banter. [J.S. admitted in the OIG investigation

that she made flirtatious comments to Mr. Bennett and joked that she could be his mistress.] Regardless of his then misconception of mutuality, through the help of his counseling over the past two (2) years which remains on-going, Mr. Bennett now understands that his actions crossed into unwanted sexual comments towards J.S.

In light of both the facts present herein and the previously discussed precedent, the sanction imposed in this matter upon Mr. Bennett should be a fully stayed six (6) month suspension rather than an actual six (6) month suspension, which would be akin to the one (1) year suspension with six (6) months stayed in *Skolnick*. This suggested, stipulated sanction would adequately protect the public, helping to ensure that Mr. Bennett continues to set appropriate professional boundaries, while recognizing, as opined by Ms. Zacharias, that Mr. Bennett adds value to the legal profession and that Mr. Bennett possesses the current ability to engage in the competent and ethical practice of law.

B. Additional Precedent Cited by the Board

In addition to the *Berry*, *Mismas*, and *Skolnick* cases cited by the parties in their Joint Hearing Brief on Sanctions, the Panel and Board considered three (3) additional cases involving sexually-related inappropriate conduct by a male attorney towards women in the work setting.

1. *Cincinnati Bar Assn. v. Young*, 89 Ohio St.3d 306, 2000-Ohio-160 [Board Report ¶ 60]. In *Young*, three (3) female law students were hired to work for the respondent as legal assistants. Young asked them questions whether they had boyfriends, inquired of one student if she was a virgin, and suggested to another that she could fill the position of his girlfriend. He also threatened all three (3) female students that he could positively or adversely affect their bar admission through a negative reference and aggressively harassed each of them. Young also went so far as to tell one of the women that she should be sleeping around and suggested she should be

his mistress. In so doing, he gave her a demeaning nickname.

Young also regularly yelled at one law student until she became upset and on a number of occasions insisted upon receiving a hug which the woman told him made her uncomfortable. In one instance while yelling at one of the women, he hit her in the head. *Id.*, at p. 310.

Young is more on the scale of *Mismas* and *Skolnick*. *Young* exceeds the misconduct in this case and really does not compare to this matter at all. *Young*'s conduct involved three (3) women, all of whom he had the authority to hire, fire, and supervise, and his conduct constituted eight (8) separate ethical violations between the three (3) women. He hit one of the women in the head and expressly threatened them with unfavorable recommendations for the bar exam. *Young*, at 310.

The Court issued a two (2) year suspension with one (1) year stayed for *Young*'s misconduct finding that he violated DR 1-102(B) [A lawyer shall not engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability] and 1-102(A)(6) [Engage in any other conduct that adversely reflects on the lawyer's fitness to practice law] as well as an additional violation of DR 9-101(C) [stating or implying that he was able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official)] relative to *Young*'s actions as to two (2) of the women. The only mitigation presented in *Young* was his religious faith and that he was dealing with the death of his mother. *Id.* Unlike Mr. Bennett, *Young* contested the factual allegations in the disciplinary proceeding and entered into an undisclosed financial settlement with one of the women for sexual harassment.

Given the extent of *Young*'s misconduct involving three (3) women with numerous ethical violations for which his actual time of suspension was one (1) year, *Young*, if relevant at all, respectfully, supports a fully stayed six (6) month suspension for Mr. Bennett.

2. Disciplinary Counsel v. Campbell, 68 Ohio St.3d 7, 1993-Ohio-8. Frankly, *Campbell* does not compare at all to Mr. Bennett's case and should not have even been considered by the Board, let alone cited in the Board Report. [Board Report ¶ 61]. First, for clarification and to correct the Board's misstatement, this Honorable Court suspended Campbell for one (1) year and not indefinitely as stated in the Board Report. *Campbell*, at [28] see also Board Report ¶ 61. Additionally, *Campbell* included misconduct that spanned over fourteen (14) years while the respondent was in private practice and later serving as a judge. The six (6) count complaint against Campbell, to which Campbell disputed many facts, involved repeated instances of forcible kissing and touching as well as making comments with sexual overtones with multiple women, over all of whom he had supervisory authority or who otherwise appeared in his court room. *Campbell* also involved both attorney and judicial ethical violations.

Given that this judicial officer was suspended for one (1) year for a six (6) count complaint that involved forcible touching and kissing over fourteen (14) years with many women, all while disputing many of those facts (unlike Mr. Bennett who stipulated to all facts and the single ethical violation with J.S.), the egregiousness of *Campbell* also in comparison to the instant matter, if it stands for any precedent, supports a fully stayed six (6) month suspension for Mr. Bennett.

3. In Columbus Bar Assn. v. Baker, 72 Ohio St.3d 21, 1995-Ohio-77. [Board Report ¶ 59]. In *Baker*, the Court issued a six (6) month stayed suspension and a two (2) year probation for using inappropriate, vulgar, sexually explicit, and suggestive language in the presence of a 17-year-old student who Baker employed in his office. The minor student employee was embarrassed and disgusted by the language used. Also, Baker failed to timely pay the student-employee's wages which she had earned. As a result, the court found that Baker committed two (2) counts of misconduct involving violations of DR 1-102(A)(3) [illegal conduct involving moral turpitude]

and 1-102(A)(6) [conduct that adversely reflects on fitness to practice law].

Given the young age of the employee over whom Baker presumably had authority to hire, fire, and supervise and the multiple ethical violations including one (1) which arose from failing to timely pay the student-employee's wages, *Baker* – which resulted in a six (6) month stayed suspension - would support the same suspension for Mr. Bennett.

Therefore, in light of the court's precedent in *Berry, Mismas, Skolnick, Young, Campbell, and Baker*, the appropriate sanction that this Honorable Court should order relative to Mr. Bennett is a fully stayed six (6) month suspension, on the conditions that he continue with his current mental health counseling and commit no further acts of misconduct.

OBJECTION NO. 2: The Board erred in considering cases with Prof. Cond. R. 8.4(h) violations involving relationships and sexually related misconduct with clients.

In the Board's Report, the Panel stated that it found it informative to consider cases with Prof. Cond. R. 8.4(h) violations involving relationship with clients. [Board Report ¶ 62]. While fully acknowledging the power imbalance between an attorney and a law clerk in an employment setting as discussed above, respectfully, the sanctity of the attorney-client relationship is paramount and the power imbalance between an attorney and a client, particularly at a time of peril or crisis in the client's life, and whether or not their interests are protected by the attorney, do not merit comparison.

Seminally, as often stated repeatedly by this Honorable Court, "The primary purpose of the disciplinary process is to protect the public from lawyers *who are unworthy of the trust and confidence essential to the attorney-client relationship* and to allow us to ascertain the lawyer's fitness to practice law." *Disciplinary Counsel v. Sarver*, 2020-Ohio-5478, 163 Ohio St. 3d 371,

170 N.E.3d 799 (emphasis added) citing *Disciplinary Counsel v. Sabroff*, 123 Ohio St.3d 182, 2009-Ohio-4205, 915 N.E.2d 307, ¶ 20.

With the above in mind, there, in fact, exists a separate and express rule prohibiting sexual relationships between lawyers and clients which is not relevant herein, and is over and above the letter and spirit of Prof.Cond.R. 8.4(h). Prof.Cond.R. 1.8(j) prohibits a lawyer from engaging in consensual sex with a client unless that consensual sexual relationship predates the attorney-client relationship because “[t]he *client’s reliance on the ability of her counsel in a crisis situation has the effect of putting the lawyer in a position of dominance and the client in a position of dependence and vulnerability,*” *Disciplinary Counsel v. Porter*, 2021-Ohio-4352, 166 Ohio St. 3d 117, 182 N.E.3d 1188 (emphasis added) quoting *Disciplinary Counsel v. Booher*, 75 Ohio St.3d 509, 510, 1996-Ohio-248, 664 N.E.2d 522.

While appreciating and recognizing the power imbalance between J.S. as a legal intern and Mr. Bennett as an AUSA, the same degree of trust, confidence, dependence, and vulnerability which exists within the attorney-client relationship, particularly during times of crisis when clients come to their attorneys in great need to protect the clients’ interests, is not present in this case. Therefore, this line of precedent of attorney sexual misconduct involving clients should not have been considered at all let alone relied upon by the Panel and Board in recommending a sanction. These cases are discussed below to explain why they are not instructive in the instant matter.

A. Inapplicable Precedent Considered by the Board of Prof. Cond. R. 8.4(h) Violations Involving Relationships and Sexually Related Misconduct with Clients.

1. *Akron Bar Assn. v. Miller*, 130 Ohio St.3d 1, 2011-Ohio-4412. In *Miller*, the Court issued a six (6) month stayed suspension with one (1) year of probation for misconduct committed by an attorney towards a client resulting in a Prof. Cond. R. 8.4(h) violation. Miller was appointed

by the Summit County Court of Common Pleas, Domestic Relations Division, to represent a client in defending against a show-cause order which required the client to show why she should not be held in contempt for failing to make court-ordered child support payments. *Id.* During a telephone conversation with the client, Miller asked his client about her breast size, stated that she should show him her breasts as a reward, and made a suggestion that she perform a sexual act on him. At the disciplinary hearing, the client testified that the conversation, “made her uncomfortable”, that receiving the call was “like being raped without being touched”, and that she felt as though she were reduced to mere property. *Id.* at [P11].

This Honorable Court, in determining the sanction in *Miller*, acknowledged that it “consistently disapproved of lawyers engaging in sexual conduct with clients where the sexual relationship ‘arises from and occurs during the attorney client relationship,’ and such misconduct ‘warranted a range of disciplinary measures depending on the relative impropriety of the situation ...’” *Id.* at [P18] (string citations omitted). The Court further noted that, “although the misconduct in this case did not involve an actual sexual relationship, it did involve a violation of the client's trust and a deliberate (and successful) attempt to demean her by exploiting her vulnerabilities.” *Id.* at [19].

Miller’s misconduct came at a time in his client’s life when she was facing being held in contempt of court for failure to pay child support and, thereby, facing potential incarceration, at a time when she had no job and no driver’s license. She was completely vulnerable and dependent upon Miller to protect her interests. In *Miller*, the aggravating factors, as in the instant matter, of selfish motive and harm to a vulnerable client were found. The Court also found mitigating factors of no prior disciplinary record, cooperation, evidence of good character and reputation, and the existence of a mental impairment. *Id.* Appreciating the power imbalance and vulnerability of J.S.

as Mr. Bennett has so stipulated, the degree and level of power imbalance which exists in *Miller*, respectfully, does not compare to that between an attorney and intern including the facts of the instant matter.

Nonetheless, the Board in an effort to, in counsel's view, inappropriately advocate for a sanction for Mr. Bennett greater than the agreed stipulated six (6) month stayed suspension, as imposed in *Miller*, points to the existence of the mitigation of mental impairment in *Miller*. [Board Report [at ¶65]. Momentarily setting aside that, as stated above, *Miller* and cases like it with Prof. Cond. R. 8.4(h) violations involving relationships with dependent clients should not be considered at all as comparisons to the instant matter, the Board's point about the lack of mental health mitigation, here, is misplaced. Though there is evidence, albeit with no formal mitigation finding of mental impairment in the instant matter, the Panel and Board found, as was stipulated by the parties, the applicability of mitigation evidence of imposition of other penalties or sanctions relating to Mr. Bennett's loss of employment. That same mitigation factor is not present in *Miller*.

No one mitigation factor listed in Gov.Bar R. V(13)(C) should be afforded more weight than another by the Board in simply seeking to recommend and enhance a sanction. Therefore, while preserving the above objection that *Miller* should not have been considered in determining sanction, given the degree of power imbalance in *Miller* between attorney and vulnerable, dependent client in a moment of crisis, Mr. Bennett should certainly receive no greater sanction than the same six (6) month stayed suspension issued.

2. *Cleveland Metro. Bar Assn. v. Lockshin*, 125 Ohio St.3d 529, 2010-Ohio-2207. In all candor, as a case involving relationships with dependent clients, the *Lockshin* case is not at all applicable to the current matter, is wholly irrelevant, and should not have even been considered at all by the Board in recommending a sanction for Mr. Bennett. [See Board Report at ¶ 64]. In

Lockshin, the court issued an indefinite suspension for an eight (8) count amended complaint alleging that the respondent violated DR 1-102(A)(3), DR 1-102(A)(4), DR 1-102(A)(6), and DR 7-102(A)(5) by engaging in inappropriate sexually related misconduct with a potential witness, a law-enforcement officer, and *five (5) different clients*, and for failing to file a timely appeal on a client's behalf thereby violating Prof. Cond. R. 1.3, 8.4(d), and 8.4(h). *Lockshin*, 125 Ohio St.3d 529.

One of Lockshin's clients with whom he engaged in misconduct was a 16-year-old female in a juvenile matter whom he frequently called and asked personal questions that were entirely unrelated to her case and sent instant messages to initiate "flirtatious" conversations which turned sexual. *Id.* at [P10]. Later, when the girl was 17 years old and incarcerated at a juvenile-detention center, Lockshin visited her at the detention facility, engaged in inappropriate personal conversations, "played footsie" with her, touched her leg, and informed her that he was sexually aroused. *Id.* at [P11].

In another matter while interviewing a witness for a client in a criminal matter, Lockshin commented on her appearance, implied that he had sex with clients, and touched the back of her neck when she got up to leave. When he later attempted to call her, the witness' grandmother told Lockshin that he made her granddaughter feel uncomfortable and to never call again. *Id.* at [P14, P15].

In a third count of misconduct, Lockshin showed pictures of a "scantily clad" female client to another attorney while having lunch and contacted the client to request another photograph of her to motivate him to do well in court that afternoon. *Id.* at [P17].

The fourth count of misconduct involved a client that Lockshin represented relative to a domestic violence charge and, later, in a divorce. The client testified that almost every conversation

she had with Lockshin turned sexual and that on one occasion, Lockshin told her that he wanted to meet her at a hotel to have sex, talking to her on the phone sexually aroused him, he would be satisfied just giving her oral sex, and he wanted to see and touch her breasts. During a visit to his office, he cornered the client, grabbed her by the arm, pushed himself up against her, put his arm around her, and tried to kiss her. During a third representation, the client had to block his number after Lockshin called her at home every day and sent her inappropriate text messages asking her to send him naked pictures and meet him at motels. *Id.* at [P18], [P20].

With yet another client in a divorce matter, Lockshin touched her leg and rubbed her shoulders during a meeting and asked her to meet him at a hotel. The client said that Lockshin “made her feel that she would lose custody of her young children if she did not cooperate.” *Id.* at [P23], [P24].

In another count of misconduct, Lockshin represented a woman in related criminal and children services matters. While the client was incarcerated, Lockshin showed her two pictures of clients who were exotic dancers, telling her that one of them wanted to pay for his services with sexual favors and sent the client a letter which suggested that they get a hotel room. *Id.* at [P27].

Clearly, all of these clients were extremely vulnerable and dependent upon Lockshin to protect their interests as his clients in moments of crisis in their lives and his acts violated the requisite trust and confidence that a client places in an attorney. The power imbalances which existed in *Lockshin* between attorney and clients do not and should not in any way be compared to the facts present in this matter.

Though the Board Report [¶65] ultimately reaches the correct conclusion in finding that Mr. Bennett’s misconduct does not rise to the level of that in *Lockshin*, respectfully, it was error to consider this case involving relationships with dependent clients in recommending a sanction

for Mr. Bennett. Such consideration only could have been made, for some inexplicable reason, to inappropriately seek to enhance upward the recommended sanction to an actual suspension rather than a six (6) month stayed suspension for Mr. Bennett as was jointly recommended by the parties and supported by the pertinent case law set forth in *Berry*, *Mismas*, *Skolnick*, *Young*, *Campbell*, and *Baker* involving relationships with law clerks and other employees.

B. Additional, Similar Client-Impacted Precedent Supporting a Stayed Suspension Not Considered by the Board.

Should the Court disagree with Mr. Bennett's second objection and determine that it is appropriate to consider Prof. Cond. R. 8.4(h) cases involving relationships with clients, there are several, additional such cases that were not cited in the Board Report which more readily compare to the instant matter and support the issuance of a fully stayed suspension.

1. *Disciplinary Counsel v. Hines*, 133 Ohio St.3d 166, 2012-Ohio-3929, 977 N.E.2d 575. Hines engaged in a sexual relationship with a client. He also hired his client to work at his law firm and moved her and her children into his home while representing her in a domestic-relations case. As the relationship deteriorated, Hines filed aggravated-menacing and domestic-violence charges against the client and obtained a temporary protection order against her. After an adverse judgment in the client's domestic-relations case was issued, Hines terminated his legal representation and left her without counsel at a critical juncture in her case. The Court found that Hines violated Prof. Cond. R. 1.8(j) and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law), and the court imposed a six (6) month conditionally stayed suspension for his misconduct.

Though the power imbalance between attorney and client is greater when the client's interests are dependent (in this case the client was also employed by the lawyer) and the attorney

and client shared a sexual relationship, Hines received a six (6) month conditionally stayed suspension. It is then only appropriate that the same sanction be imposed upon Mr. Bennett.

2. *Disciplinary Counsel v. Hubbell*, 2015-Ohio-3426, 144 Ohio St. 3d 334, 43 N.E.3d 397. Hubbell attempted to initiate a romantic relationship with a client he was representing *pro bono* in a custody dispute. The relator charged Hubbell with violating Prof.Cond.R. 1.8(j) and 8.4(h). This Court accepted the consent to discipline agreement reached by the parties in that matter that Hubbell violated Prof.Cond.R. 1.8(j) [dismissing the alleged violation of Prof.Cond.R. 8.4(h)] and that this conduct warranted a stayed six (6) month suspension from the practice of law. The same sanction imposed in *Hubbell* would be appropriate in this matter.

3. *Akron Bar Ass'n v. Fortado*, 2020-Ohio-517, 159 Ohio St. 3d 487, 152 N.E.3d 196. The Court ordered a conditionally stayed one (1) year suspension for Fortado for engaging in a sexual relationship with a client while in a committed, long-term relationship that outlasted the attorney-client relationship. In *Fortado*, the court recognized that the court typically required attorneys who engaged in inappropriate sexual relationships with their clients to serve actual time away from the practice of law when: (1) the attorney engages in additional rule violations or (2) when other aggravating factors were present. See also *Disciplinary Counsel v. Bunstine*, 136 Ohio St.3d 276, 2013-Ohio-3681, ¶ 32, 995 N.E.2d 184 [imposing a conditionally stayed one (1) year suspension on an attorney who, in his second disciplinary matter, solicited sex from a client in lieu of payment for his fees]. Mr. Bennett did not commit additional rule violations beyond his violating Prof.Cond.R. 8.4(h), nor are the additional aggravating factors (such as, prior discipline, multiple violations, lack of cooperation, submission of false evidence, or refusal to acknowledge wrongful nature of conduct) present in this case that would support a sanction of serving an actual suspension rather than a stayed suspension.

Respectfully, it seems fundamentally unfair and unjust that an attorney does not receive any actual suspension time for actually having a sexual relationship with a client during an attorney-client relationship (regardless of whether the misconduct compromised the client's interests) when compared to the misconduct of Mr. Bennett towards J.S. if an actual suspension is imposed against Mr. Bennett.

4. *Disciplinary Counsel v. Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946. The Court imposed a fully stayed six (6) month suspension when an attorney engaged in an improper sexual relationship with a chemically dependent client who had retained him to represent her in her divorce, a domestic-violence matter, and a related civil-protection-order proceeding. Siewert stipulated that his misconduct adversely reflected on his fitness to practice law and materially limited his ability to represent his client.

In furthering the discussion of power imbalance and vulnerability in consideration of a sanction, respectfully, the acknowledged power imbalance between Mr. Bennett and J.S. does not rise to that in *Siewert*; and, therefore, if there is any consistency to be applied by this Honorable Court, Mr. Bennett should not have a greater suspension imposed than the stayed six (6) month suspension in *Siewert*.

5. *Cleveland Metro. Bar Ass'n v. Paris*, 148 Ohio St.3d 55, 2016-Ohio-5581, 68 N.E.3d 775. The Court disciplined the attorney in *Paris* who, not only made unwelcome sexual advances toward a client, but also failed to attend the client's sentencing hearing. Although the Court found that Paris had acted with a selfish motive, engaged in multiple offenses, and harmed a vulnerable client, the Court imposed a fully stayed six (6) month suspension for his misconduct.

Additionally, unlike Mr. Bennett, the Board also found that Paris did not understand or accept the wrongful nature of his conduct or make a particularly strong showing of remorse,

neglected to attend her sentencing hearing, and yet this Honorable Court issued a fully stayed suspension in *Paris*. So should be the result in this matter.

6. *Toledo Bar Ass'n v. Burkholder*, 109 Ohio St. 3d 443, 2006-Ohio-2817, 848 N.E.2d 840. Burkholder repeatedly, for months, asked a client out even though the client told him she was not interested in dating. On one occasion at his home, Burkholder asked the client whether she wanted to see his penis. On another occasion, Burkholder touched the client while they were at a bar, putting his arm around the client, pulling her close to him, touching her shoulders and leg, and the client had to ask him twice to remove his hand from her thigh. The client testified that the respondent's actions were inappropriate and made her feel nervous and uncomfortable.

The Court held that a stayed six (6) month suspension is the appropriate sanction for misconduct in which the respondent who engaged in two (2) violations of misconduct: DR 1-102(A)(6) [prohibiting conduct that adversely reflects on a lawyer's fitness to practice law] and DR 5-101(A)(1) [barring an attorney from accepting employment if the exercise of professional judgment on behalf of the client reasonably may be affected by the lawyer's financial, business, property, or personal interests]. *Id.* In delivering its rationale for the stayed suspension, the Court noted some of its other decisions:

We have imposed stayed suspensions in other cases involving unwanted sexual advances. See *Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006 [***843] Ohio 1196, 843 N.E.2d 1205 (imposing a stayed one-year suspension and two years' probation on an attorney who had inappropriately touched a client's breasts, had made an inappropriate comment to her, and then had submitted false statements and engaged in deceptive practices during the disciplinary process); *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004 Ohio 734, 804 N.E.2d 423 (imposing a stayed one-year suspension and two years' probation on an attorney who had made unsolicited and inappropriate sexual [*446] comments to a client and had engaged in consensual sexual relations with another client). [**P13] Unlike the attorney in the *Quatman* case, respondent cooperated in the disciplinary process and did not falsely blame his misconduct on alcohol abuse. And unlike the attorney in the *Moore* case, respondent confined his misconduct to one client.

Thus, Burkholder received a stayed six (6) month suspension for persistently asking a client out when she expressly told him that she was not interested in dating, making sexually inappropriate comments to a client and repeatedly touching her despite her objections. It would be only fair, just, and appropriate for Mr. Bennett to receive the same stayed six (6) month suspension for far less egregious conduct.

C. A fully stayed six (6) month suspension with conditions is the appropriate sanction.

Should this Honorable Court determine it appropriate in determining the sanction in the instant matter to consider cases with Prof. Cond. R. 8.4(h) violations involving relationships with clients and sexually related misconduct of attorneys, the dictates of fairness require that the Court's announcements in *Hines*, *Hubbell*, *Fortado*, *Siewert*, *Paris*, *Burkholder*, *Moore*, and *Quatman* compel the imposition of the same fully stayed six (6) month suspension for Mr. Bennett rather than impose an actual suspension as inappropriately recommended by the Board.

As it specifically relates only to the cases discussed above regarding Prof. Cond. R. 8.4(h) violations involving a law clerk, legal intern, paralegal, or other employee (i.e., *Berry*, *Mismas*, and *Skolnick*), Mr. Bennett raises one distinction for this Honorable Court's consideration and acknowledges one other difference between those cases and his. First, while Mr. Bennett fully accepts responsibility for his misconduct and acknowledges that his misconduct is his own, one fact that is not present in the facts of the case law discussed above is that, at least initially, J.S. has acknowledged that both she and Mr. Bennett engaged in the flirting. [Joint Exhibit 2, p. 10, at 13-20; p. 14 at 11-16; p. 18, at 22-23; p. 18, at 22-23, p. 19, at 3-5. 8-12; See also Stipulation ¶ 36 & Board Report ¶ 39]. Despite the fact that Mr. Bennett believed the flirtation to be mutual in the beginning, Mr. Bennett admits his engagement in that activity was wrong from the beginning, and both regrets and is remorseful for the harm he caused to J.S. [Board Report ¶ 46].

The other difference is, admittedly, that this case involves an act of unwelcome, but unintended, physical contact. However, in all of the cases involving relationships with clients discussed above and those cited by the Board Report where physical contact occurred, the contact involved intentional, sometimes egregious, touching and some involved actual sexual relationships.

In August or September 2017, respondent and J.S. were in the Akron office's library when Mr. Bennett moved his arm across her body in reaching for a book, and in so doing, touched her breasts with the back of his hand and arm. J.S. has indicated that she believed the contact was intentional. While Mr. Bennett admits that the act took place, was inappropriate, and that J.S. believed it to be intentional, Mr. Bennett did not intend the action to offend or hurt J.S. or to be for purposes of his sexual gratification. In entering into the Stipulations [¶¶ 12-14] in fully cooperating with this disciplinary process and acting with sensitivity for the harm he caused J.S., Mr. Bennett has consistently expressed when asked about the touching that, though he does not clearly recall the incident, if J.S. said it happened, then it must have happened. It should be noted that, though he maintains that the touching was inadvertent and certainly not for the purposes of his own sexual gratification, Mr. Bennett stipulated that J.S. believed the touching to be intentional. [Stipulation ¶ 13]. Regardless of J.S.' belief as to whether the touching was intentional, the touch was an isolated incident, and Mr. Bennett never attempted to touch J.S. again over the next two years.

Mr. Bennett, in no way, seeks to minimize his actions. He abused a position of authority over a legal intern by subjecting her to unwanted sexual comments and an unwelcome physical touch. This conduct caused J.S. anxiety and fear over her future job prospects. However, this Honorable Court has previously imposed a fully stayed suspension where an attorney has touched

a client's breast. See *Disciplinary Counsel v. Quatman*, 108 Ohio St.3d 389, 2006-Ohio-1196, 843 N.E. 2d 1205, ¶¶ 6, 26 (fully stayed one (1) year suspension for putting hands on client's breasts and saying "You have very nice breasts."). The parties have noted that, when compared to relevant case law, Mr. Bennett's conduct is less egregious than those where this Honorable Court imposed actual suspensions. See also *Hines*, *Fortado*, *Siewert*, *Burkholder*, and *Moore*, supra.

In addition, as discussed in detail above, Mr. Bennett has been subject to other penalties or sanctions related to his stipulated misconduct through the loss of his employment with the USAO, a mitigating factor not present in the other cases discussed and compared.

As a momentary aside, counsel posits to this Honorable Court that counsel is extremely troubled by the Panel's statement in the Board Report, in making its recommended sanction of a heightened actual suspension rather than a stayed suspension as jointly recommended by the parties, that the panel is "troubled" that "(Mr. Bennett's) behavior was open and notorious" and that "there was evidence that other colleagues had similar experiences." [Board Report, ¶ 66]. In making this statement, the Panel cites and seemingly relies on pure hearsay statements made by J.S. in her statements as part of the OIG investigation - which statements were marked as Joint Exhibits 1 and 2, and sealed from public access in being included as part of this record. Those Joint Exhibits were submitted by the parties for the sole purposes of supporting their Stipulations by the evidentiary standard of clear and convincing evidence pursuant to Gov.Bar.R. V(12)(I) as to Mr. Bennett's misconduct involving J.S. while giving sensitive consideration to not requiring and subjecting J.S. to appear and testify at the hearing. -

Relator did not, in making its determination to bring charges of misconduct against Mr. Bennett, assert any other claims or counts of misconduct or factual allegations against Mr. Bennett for any interactions that he may have had with anyone other than J.S. Likewise, no such

interactions were part of the Stipulations entered into by the parties and there was no testimony, whatsoever, by J.S. or anyone else at the hearing about any subject other than Mr. Bennett's misconduct involving J.S. As a result of the Panel's statement in ¶ 66 of the Board Report, Mr. Bennett was not afforded his basic due process rights regarding any alleged interactions with persons other than J.S. including, but not limited, opportunity to confront and cross-examine any witnesses relative to any such issue. For example, J.S. statements regarding any such conduct were, at best, hearsay as she testified that, "that's just what (she) heard" from "... just another intern, because he had heard it from Cleveland, ..." and the identity of such intern J.S. could not clearly recall, but could only speculate. [Joint Exhibit 2, pp. 6-7].⁷ It was not the intent or stipulation of the parties that J.S.' additional hearsay statements about things she heard from others as included in Joint Exhibits 1 and 2 were to be considered in any way shape or form.

Thus, any reference by the Panel in the Board Report that it was "troubled" by any hearsay statements of J.S. outside the parties' Stipulations and hearing testimony does not, under any legal or factual standard, meet the evidentiary burden of clear and convincing evidence and the due process protections afforded by the attorney discipline process. It was clearly error for the Panel and Board to consider those statements of other rumored behavior and then rely upon those same statements in recommending the greater sanction of an actual suspension rather than the stayed suspension as jointly recommended by the parties and supported by the applicable case law.

Finally, in adhering to this Honorable Court's oft stated purpose underlying a disciplinary sanction that it is not to punish the offender but to protect the public, Mr. Bennett's mental health

⁷ In addition, there are sworn statements of other witnesses interviewed as part of the same OIG investigation who contradict J.S.' statements that they witnessed the things J.S. reported to the investigator. However, those witness statements are (appropriately) not part of the record in this matter as any allegations regarding Mr. Bennett's behavior involving anyone other than J.S. are not, and have not, been included in this matter.

treatment provider has opined that Mr. Bennett currently possesses the ability to engage in the ethical and competent practice of law and that he is unlikely to repeat his misconduct. [Joint Ex. 7, Christy Sugarman Depo. Tr., pp. 28-29]. Mr. Bennett's colleague and officemate, Ms. Zacharias, who has worked with Mr. Bennett and interacted with him closely these past two (2) years, has also testified to Mr. Bennett's, overall character, value to the profession, and current ability to engage in the ethical and competent practice of law. [Tr. 41-43]. Accordingly, a fully stayed six (6) month suspension will appropriately fulfill this Honorable Court's purpose of protecting the public.

Therefore, respectfully and humbly, with full regret and remorse for his misconduct, and in view of *Berry, Mismas, Skolnick, Young, Campbell, and Baker*, Mr. Bennett prays that this Honorable Court reject the recommended sanction of the Panel and Board of an actual suspension from the practice of law and, instead, order a fully stayed six (6) month suspension, on the condition that Respondent commit no further acts of misconduct and continue with his current course of mental health counseling.

IV. CONCLUSION

In light of all the above, it is clear that Mr. Bennett has and continues to treat this process with the utmost respect which we would hope all members of our profession would devote to the process, but which is not always the case as exemplified by the matters distinguished above.

In light of all of the stipulated facts, the aggravating and mitigating factors, the Joint Exhibits, the testimony taken and legal precedent discussed, as well as the joint recommendation of sanction of Mr. Bennett and Relator, Mr. Bennett respectfully requests that this Honorable Supreme Court of Ohio find, agree, and order the sanction of a stayed six (6) month suspension from the practice of law conditioned upon his continued mental health treatment, payment of all

costs in these proceedings, and engagement in no further misconduct, which will adequately protect the public of the State of Ohio as well as appropriately address the misconduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing has been served via e-mail on this 2nd day of May, 2023 upon:

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APPENDIX

1. April 7, 2023, Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct.
2. April 13, 2023, Order to Show Cause

**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.

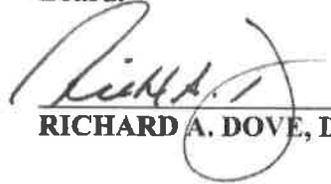
{¶68} Based upon the foregoing, the panel finds that an actual suspension is appropriate and recommends that Respondent receive a six-month suspension, with no time stayed. The panel further recommends that, as a condition of reinstatement, Respondent be required to provide proof that he has continued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



RICHARD A. DOVE, Director

The Supreme Court of Ohio

Disciplinary Counsel,
Relator,
v.
Mark Stewart Bennett,
Respondent.

Case No. 2023-0471

ORDER TO SHOW CAUSE

The Board of Professional Conduct of the Supreme Court of Ohio filed a final report in the office of the clerk of this court. In this final report the board recommends that pursuant to Gov.Bar R. V(12)(A)(3), respondent, Mark Stewart Bennett, Attorney Registration No. 0069823, be suspended from the practice of law in Ohio for six months. The board further recommends that, as a condition of reinstatement in addition to the requirements of Gov.Bar R V(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. The board further recommends that the costs of these proceedings be taxed to respondent in any disciplinary order entered, so that execution may issue.

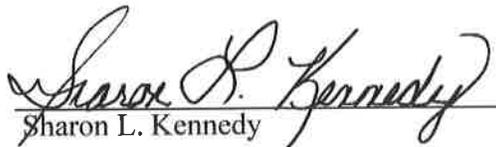
On consideration thereof, it is ordered by the court that the parties show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered. It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

It is further ordered that in lieu of objections, the parties, individually or jointly, may file a no-objection brief in support of the recommended sanction of the board pursuant to Gov.Bar R. V(17)(B)(2) within 20 days from the date of this order. It is further ordered that in lieu of objections or a no-objection brief, the parties may file a joint waiver of objections within 20 days from the date of this order.

After a hearing on the objections, or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be more severe or less severe than said recommendation.

It is further ordered that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All documents are subject to Sup.R. 44 through 47 which govern access to court records.

It is further ordered that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.


Sharon L. Kennedy
Chief Justice

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

In re:

Complaint against

Case No. 2022-034

Mark Stewart Bennett

Respondent

Disciplinary Counsel

Relator

FILED

SEP 13 2022

BOARD OF PROFESSIONAL CONDUCT

ORDER

The panel chair conducted a prehearing telephone conference with the parties on September 12, 2022. As a result of this telephone conference the following dates are established:

1. The parties shall file a timely consent-to-discipline agreement on or before December 5, 2022. By rule, no extension of time is permitted.
2. The parties shall exchange fact and expert witness lists and expert reports on or before December 8, 2022.
3. The parties shall complete depositions and other discovery on or before January 5, 2023.
4. The parties shall exchange exhibits on or before January 12, 2023. Any objections to exhibits shall be filed on or before January 19, 2023, and any responses to objections shall be filed on or before January 26, 2023. Relator's exhibits shall be consecutively numbered, and Respondent's exhibits shall be consecutively lettered. Joint or stipulated exhibits shall be marked as such and consecutively numbered.
5. The parties shall file final witness lists, hearing exhibits, and stipulations on or before January 26, 2023. The parties are directed to review the language regarding stipulations set forth below.
6. This matter shall be scheduled for formal hearing on February 2, 2023 in Columbus. A notice of formal hearing is issued contemporaneously with this order.

Stipulations

The parties are encouraged to collaborate on the preparation of stipulations for consideration by the hearing panel. The parties are reminded that stipulations of fact regarding rule violations must be supported by clear and convincing evidence, and that neither the panel nor Board is required to accept stipulated rule violations that are not supported by sufficient evidence. Evidence presented at a hearing that contradicts a stipulation of fact or a stipulated rule violation will not be considered by the panel, unless a party timely moves to withdraw the stipulation for good cause, a party seeks and is granted leave to present additional evidence, or the panel *sua sponte* rejects a factual stipulation.

The parties may submit stipulations regarding aggravating and mitigating factors. However, because the existence of aggravating and mitigating factors bears directly on any sanction the panel will recommend, the panel is not bound by such stipulations. The panel will make findings regarding aggravating and mitigating factors based on the totality of the record, including evidence presented at the hearing. The parties may make a joint recommendation regarding sanction; however, the panel is not bound to accept any recommendation regarding sanction. The panel will make a sanction recommendation based on the totality of the record, applicable case precedents, and standards established by the Supreme Court that govern the administration of professional discipline.

Elizabeth E. Cary

Panel Chair

 per authorization

FILED

MAY 10 2023

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

May 10, 2023

Disciplinary Counsel

Case No. 2023-0471

v.

Mark Stewart Bennett

NOTICE OF ORAL ARGUMENT

TO: Matthew A. Kanai

Richard S. Koblentz

The Supreme Court of Ohio will hold an oral argument on the merits in this case on Wednesday, June 28, 2023. Time allowed for oral argument will be 15 minutes per side. Counsel for respondent shall argue first.

Attorneys who argue before the court must comply with the provisions of Rule 17.03 through 17.05 of the Rules of Practice of the Supreme Court of Ohio and the instructions that follow. Pursuant to Rule 17.03, counsel for either or both parties may waive oral argument and submit the case upon briefs. The Clerk must be notified by filing a waiver of oral argument at least seven days before the date scheduled for the oral argument.

Court convenes promptly at 9 a.m. Counsel in all cases are expected to be present when court convenes. Counsel must register with the Chief Deputy Clerk **prior to 8:45 a.m.** at the information desk outside the Courtroom on the first floor of the Ohio Judicial Center.

For more information on protocol for presenting oral argument before the Supreme Court of Ohio, counsel may refer to the "Guide for Counsel Presenting Oral Argument" located at www.supremecourt.ohio.gov/clerk.

Note: Pursuant to S.Ct.Prac.R. 17.01(D), an oral-argument assignment before the Supreme Court takes precedence over assignments in other courts of this state.

ROBERT VAUGHN

CLERK OF THE COURT



CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel

Relator,

Case No. 2023-0471

v.

Mark Bennett, Esq.

On Certified Report by the
Board of Professional Conduct

Respondent.

Relator's Answer to Respondent's Objections

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Introduction

Mark Bennett, an experienced Assistant United States Attorney, sexually harassed J.S., a law clerk who aspired to work at the U.S. Department of Justice. In a joint post-hearing brief, the parties agreed that because respondent did not supervise J.S., this case was similar to *Disciplinary Counsel v. Berry*, 166 Ohio St.3d 113, 2021-Ohio-3864, 182 N.E.3d 1184. In *Berry*, the court imposed a fully stayed six-month suspension for Judge Berry's harassment of a court reporter assigned to a different judge's courtroom. The board, however, found that this case was more similar to but less egregious than cases where attorneys had supervisory authority and were actually suspended from the practice law.

The board also considered cases involving unwanted sexual advances toward employees and clients. While these cases cover a wide range of possible sanctions, the board found that respondent's conduct fell between cases with fully stayed suspensions and cases where actual suspensions were imposed. After considering all the evidence, the board concluded that respondent abused his position of authority by sexually harassing a law clerk and that his conduct was sufficiently egregious to warrant a six-month actual suspension. Although it is different from the position initially taken by relator, the board's position is a reasonable interpretation of precedent. Therefore, relator supports the board's recommendations.

Statement of Facts

The board Report and Recommendation ("Report") contains the full recitation of the facts in ¶ 7-48. J.S. was a 24-year-old law student when she started clerking at the United States Attorney's Office for the Northern District of Ohio. Report at ¶ 7. J.S. had separate clerkships; one from May 2017 to November 2018 and another from August 2018 to June 2019. *Id.* at ¶7.

During that time, J.S. heard from colleagues that respondent had made sexually inappropriate comments about her. *Id.* at ¶10. Thereafter, respondent asked J.S. about her sex life and suggested he could be her sexual partner. *Id.* at ¶ 12. He asked her to send him nude Snapchat¹ pictures of herself. *Id.* at ¶ 13. While alone in the office library together, respondent touched J.S.’s breast under the guise of reaching for a book. *Id.* at ¶ 15-17. J.S. began blocking respondent on Snapchat, Facebook, and her text messaging service. *Id.* at ¶ 19.

Respondent implicitly conditioned his assistance and approval on implicit sexual favors by asking J.S. what she was willing to do to get back in the office after her first clerkship ended, *id.* at ¶ 22, and asking what he would get in exchange for a professional recommendation, *id.* at ¶ 27. Respondent also sent text messages to J.S. regarding her sex life or sex with her. *Id.* at ¶ 30, 34, 35, Stipulations at ¶ 30-32.

During a subsequent Department of Justice investigation conducted by the Office of Inspector General (“OIG”), J.S. explained that she felt powerless to confront respondent or refuse his advances because she was an intern and he was a well-connected attorney. Report at ¶ 37-38. As a result of the investigation, respondent resigned from his position as an Assistant United States Attorney.

Argument

Answer to Objection No. 1: A six-month suspension is consistent with this court’s precedent because the board determined that respondent had significant authority over J.S.

This case raises the issue of how the disciplinary system should weigh power imbalances in workplace sexual harassment cases. The parties agreed below that respondent’s misconduct fell under this court’s recent decision in *Berry*, which involved non-supervisory authority. The

¹ Snapchat is an internet messaging service that allows users to send messages to each other that are automatically deleted after a short period of time.

board disagreed, instead likening this case to the court’s supervisory authority precedent. Given the significant authority that respondent possessed because of J.S.’s status as a law clerk, relator supports the board’s findings and recommendation.

There are, essentially, two lines of cases dealing with the issue. The first line of cases deals with attorneys who exercise traditional “supervisory authority.” Although this court has not addressed the bounds of “supervisory authority” in disciplinary cases, federal law has long-established guidelines recognizing “supervisory authority” as the power to “hire, fire, promote, [or] demote” or otherwise “directly affect the terms and conditions of a victim’s employment.” *McPherson v. HCA-Healthone, LLC*, 202 F. Supp 2d 1156, 1168 (Dist.Colo.2002) (finding no supervisory authority between a doctor and nurse).

The definition of the term “supervisor” * * * adopted by most courts * * * considers a supervisor to be a person with immediate or successively higher authority over the employee who exercises significant control over the employee’s *hiring, firing, or conditions of employment*.

Browne v. Signal Mt. Nursery, L.P., 286 F. Supp. 2d 904, 912 (Dist.Ten.2003) (emphasis added).

In Ohio’s disciplinary system, these “supervisory authority cases” are exemplified by:

- *Disciplinary Counsel v. Skolnick*, 153 Ohio St.3d 283, 2018-Ohio-2990, 104 N.E.3d 775 (one-year suspension with six months stayed for attorney who harassed his paralegal);
- *Lake Cty. Bar Assn. v. Mismas*, 139 Ohio St.3d 346, 2014-Ohio-2483, 11 N.E.3d 1180 (one-year suspension with six months stayed for attorney who hired and harassed a law student);
- *Cincinnati Bar Assn. v. Young*, 89 Ohio St. 3d 306, 307, 2000-Ohio-160, 731 N.E.2d 631 (two-year suspension with one year stayed where attorney handled all hiring of support staff and harassed three female employees);
- *Columbus Bar Assn. v. Baker*, 72 Ohio St. 3d 21, 1995-Ohio-77, 647 N.E.2d 152 (six month stayed suspension where attorney employed and harassed a high school student); and

- *Office of Disciplinary Counsel v. Campbell*, 68 Ohio St. 3d 7, 8, 1993-Ohio-8, 623 N.E.2d 24 (one-year suspension where five of six victims were either employed by or required to appear before the judge).

The court imposed actual suspensions from the practice of law in each case except *Baker*.

The second relevant precedent is *Berry*, where the court imposed a fully stayed suspension. In that case, Judge Berry and a court reporter identified as Jane Doe exchanged friendly messages on Facebook. *Berry*, 2021-Ohio-3864 at ¶ 4. However, the judge then asked Doe for her phone number and his messages on Facebook became more solicitous. *Id.* at ¶ 8-9. Respondent then began sending Doe partisan or vulgar messages on Facebook messenger. *Id.* at ¶ 10. The board characterized *Berry* as a case where Judge Berry “had no authority over the victim whatsoever[,]” Report at ¶ 65, although the *Berry* Court acknowledged that Judge Berry was nonetheless able to “exert power” over the victim as a person “associated with the judicial system.” *Berry* at ¶ 19.

Federal law has a similar analog in cases involving “non-supervisory authority.” The *McPherson* Court, for example, noted that a doctor may have “non-supervisory authority” over nurses because they can direct nurses, provide negative feedback to their supervisors, and exclude them from their procedures if the doctors find their work unsatisfactory. *McPherson*, 202 F.Supp.2d at 1169, *see also*, *Swentek v. USAIR, Inc.*, 830 F.2d 552, 558 (4th Cir., 1987) (airline pilot’s authority over flight attendant is not supervisory). Thus, the courts have recognized that doctors and pilots have non-supervisory authority over nurses and flight attendants because they have general authority during procedures and flights. This type of authority is akin to a judge and the court reporter assigned to the judge’s courtroom.

However, as a practical matter, law clerks are situated differently than nurses, flight attendants, or court reporters. Those professions are separate careers that typically are not part of

the path to becoming a doctor, pilot, or judge. By contrast, law clerks are generally aspiring lawyers. They are on the cusp of entering what will likely be their lifelong career. Non-supervisory attorneys can have an outsized effect on their careers compared to the doctors, pilots, or judges in *McPherson*, *Swentek*, or *Berry*. That is particularly true when the attorney holds a prestigious position at an agency like the United States Attorney's Office.

Respondent was an award-winning AUSA for 13 years, prosecuting general crimes, economic crimes, large drug organizations, and homeland security cases. Hearing Tr. at 58-59, Respondent's Objections at 3-4. Prior to that, he had been a senior attorney and supervisor at the Ohio Attorney General's Office and an adjunct professor of law at Cleveland State College of Law. Hearing Tr. at 49:23-50:1, 50:13-18. The board found that he held a prestigious position with potential to sway the future of J.S.'s career. Report at ¶ 66.

Respondent told J.S. how "well-connected" he was, *id.*, and therefore he could directly influence J.S.'s future by introducing her to other attorneys and judges. He could also give or withhold praise for her work or his professional recommendation. *Id.* Moreover, it was clear that respondent would do just that. When J.S. asked respondent who she should contact about returning for a second USAO clerkship in 2018, respondent asked what she was willing to do to be reemployed. *Id.* at ¶ 22. In another instance, when she asked for a professional recommendation, he asked what he would get in exchange. *Id.* at ¶ 27. J.S., like respondent, said that her "dream job" was to work at the Department of Justice, Exhibit 1, 11:12-14. In light of these facts, respondent had considerable authority over J.S., even if that authority was not supervisory in the traditional sense.

After considering the board's findings and the relevant federal treatment, relator agrees that this case is closer to the supervisory authority line of cases, particularly *Mismas*, which also

dealt with a law clerk. This is because from the victim’s perspective, being a law clerk to an influential attorney is more akin to an employer’s ability to “hire, fire, promote, [or] demote” than a non-supervisory authority’s ability to direct or provide non-career-defining negative feedback held by doctors, pilots, or judges over nurses, flight attendants, or court reporters.

In all but one of the *Mismas* line of cases, the court imposed at least a one-year suspension. The exception is the fully stayed suspension in *Baker*,² but the *Baker* Court provided scant details on its reasoning, noting only that “Respondent used inappropriate, vulgar, sexually explicit or sexually suggestive language in the presence of this student employee. She was embarrassed or disgusted by this language.” *Baker*, 72 Ohio St.3d at 22. Moreover, *Baker*, which is now nearly 30 years old, stands in stark contrast to the more recent employee sexual harassment cases. The *Baker* Court, for example, did not speak to the vulnerability of the victim at all. By contrast, *Mismas* noted:

Legal clerkships play an important role in developing the practical skills necessary for law students to become competent, ethical, and productive members of the legal profession. Often, the skills, professional relationships, and reputations that students develop in these entry-level positions open the doors to their first full-time legal employment once they graduate and pass the bar exam. These first jobs can set the course for a new attorney’s entire legal career. Attorneys who hire law students serve not only as employers but also as teachers, mentors, and role models for the next generation of our esteemed profession.

Mismas, 2014-Ohio-2483 at ¶ 22. More recently, the *Skolnick* Court similarly considered the harmful impact on the victim. *Skolnick*, 2018-Ohio-2990 at ¶ 6, 12, 14 (“he directed frequent profanity-laced verbal tirades toward and sexually harassed a vulnerable employee who needed her job to support her family”). The board and the parties agree that respondent’s misconduct was not as egregious as the conduct in *Mismas*, *Skolnick*, *Campbell*, and *Young*. Report at ¶ 65.

² Justices Resnick and Sweeney dissented, stating that the court should impose a one-year suspension with six months stayed.

However, because of respondent's significant authority over J.S., and consistent with the court's more recent line of cases, the court should impose a stricter sanction than the fully stayed suspensions in *Baker* and *Berry*.

Answer to Objection No. 2: Sexual misconduct with client cases are relevant to cases involving sexual misconduct with employees.

Respondent asserts that cases of sexual advances against clients “do not merit comparison” to cases involving sexual advances against employees. Respondent's Objections at 26. However, this court has frequently made the same comparison. For example, the *Mismas* Court considered *Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 2013-Ohio-1747, 989 N.E.2d 41 (sexual advances to a client) to determine the appropriate sanction for harassing an employee. *Mismas* at ¶19. In *Disciplinary Counsel v. Bartels*, 151 Ohio St.3d 144, 2016-Ohio-3333, 87 N.E.3d 155 (sexually-oriented texting to a client), the court stated, “We * * * find, consistently with the board, that *Mismas* is instructive here.” *Id.* at ¶ 15. And, in 2018, the *Skolnick* Court considered *Akron Bar Assn. v. Miller* 130 Ohio St. 3d 1, 2011-Ohio-4412, 955 N.E.2d 359 (sexual misconduct towards a client). *Skolnick* at ¶ 11-12. Thus, this court repeatedly made the comparison that respondent now claims is meritless. Accordingly, the court can and should consider the cases cited by the board.

A. Respondent ignored key contextual issues that distinguish the lesser sanctions in many of the cases involving sexual conduct with a client.

The court has “consistently disapproved of the conduct of lawyers who have solicited or engaged in sexual activity with their clients * * * and *depending on the relative impropriety of the situation*,” it has imposed a wide range of sanctions. *Cleveland Metro. Bar Assn. v. Paris*, 148 Ohio St.3d 55, 2016-Ohio-5581, 68 N.E.3d 775, ¶ 18 (emphasis added). One of the elements that the court considers in determining the “relative impropriety of the situation” is whether the

sexual advance was unwanted. Thus, truly consensual or non-coercive sexual conduct is treated more leniently than unwanted and offensive misconduct.

For example, the fully stayed one-year suspension in *Akron Bar Ass'n v. Fortado*, 159 Ohio St.3d 487, 2020-Ohio-517, 152 N.E.3d 196, is not on point because *Fortado* limited itself to “the unique facts of this case—including the absence of any evidence of coercion[.]” *Id.* at ¶ 21. *But see, Disciplinary Counsel v. Sarver*, 155 Ohio St. 3d 100, 2018-Ohio-4717, 119 N.E.3d 405, ¶ 25 (noting that coercion may not be obvious because vulnerable clients may “submit” to their attorney’s sexual advances out of fear). Similarly, in *Disciplinary Counsel v. Siewert*, an attorney received a fully stayed six-month suspension after having consensual sex with a client. *Disciplinary Counsel v. Siewert*, 130 Ohio St. 3d 402, 2011-Ohio-5935, 958 N.E.2d 946, ¶ 9. The court noted that a public reprimand would have been appropriate, but Siewert’s prior discipline warranted a suspension. *Id.* at ¶ 9.

The court gave an identical suspension in *Akron Bar Assn. v. Miller*, 2011-Ohio-4412, despite the fact that Miller did not have sex with a client and had no prior discipline. The sole misconduct in Miller was a four-minute portion of a telephone call where Miller “asked the client about her breast size, and he stated that she should show him her breasts as a reward, given that he was performing a great deal of work for her for little compensation. [Miller] further suggested that the client perform oral sex on him.” *Miller* at ¶ 6. The difference between *Miller* and *Siewert* was that the conduct in *Miller* was unwanted and offensive.

Respondent’s behavior was more persistent, intrusive, and consequential than Miller’s. First and foremost, respondent touched J.S.’s breast, Report at ¶ 15-17, while *Miller* did not involve any unwanted physical contact. Respondent’s misconduct intermittently spanned two years, not four minutes, and had the potential to affect J.S.’s lifelong career. It 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." Report at ¶ 66, Stipulations at ¶ 21-22, 28-29. During the OIG investigation, J.S. told the investigators that she had to appease respondent because doing otherwise would hurt her career opportunities. Stipulations at ¶ 34-35. Therefore, J.S. was subjected to respondent suggestion that he could be J.S.'s sexual partner. Report at ¶ 12, Stipulations at ¶ 9, Hearing Tr. at 17. He asked J.S. to send nude photos of herself. Report at ¶ 13, Stipulations at ¶ 10, Hearing Tr. at 17. He used innuendo to suggest that J.S. should have sex with him in exchange for employment assistance. Report at ¶ 21-22, 27; Stipulations at ¶ 18-19, 24; Hearing Tr. at 19. He told her that he couldn't wait to have her butt, which had been "looking wide for a while there[.]" Report at ¶ 34, Stipulations at ¶ 31, Hearing Tr. at 20.

The court also distinguishes cases based on the egregiousness of the misconduct. For example, in *Paris*, 2016-Ohio-5581, the court imposed a fully stayed suspension based, in part, because Paris "asked his client to go out with him several times and invited her to his house to join him in his hot tub" in the presence of her fiancé. *Id.* at ¶ 5. *See also, Disciplinary Counsel v. Hubbell*, 144 Ohio St.3d 334, 2015-Ohio-3426, 43 N.E.3d 396, ¶ 1 (attorney "attempted to initiate a romantic relationship with a client"). The conduct in this case was more persistent and intrusive than the conduct in either *Miller* or *Paris*.

Toledo Bar Assn. v. Burkholder, 109 Ohio St.3d 443, 2006-Ohio-2817, 848 N.E.2d 840, is the only case with arguably as extensive misconduct. Burkholder's advances were intrusive and involved unwelcome touching. *Id.* at ¶4-6. However, Burkholder's misconduct was more limited; spanning only two months. *Id.* at ¶ 3 (client hired Burkholder on April 20, 2004), ¶ 7 (client terminated Burkholder on June 28, 2004). And while Burkholder's advances where

unwelcome, respondent in this case implicitly conditioned his assistance (Report at ¶22) and recommendation (Report at ¶ 27) on sexual favors. Moreover, *Burkholder* was decided eight years before *Mismas*, and therefore did not have the benefits of *Mismas*'s guidance regarding attorney misconduct towards law clerks, which the board found "causes harm not only to the individual to whom the conduct is directed but also to the dignity and reputation of the profession as a whole." *Mismas* at ¶ 23.

Respondent also points to *Disciplinary Counsel v. Hines*, where an attorney received a fully stayed six-month suspension after having sex with a client and then abandoning her case. *Disciplinary Counsel v. Hines*, 133 Ohio St. 3d 166, 2012-Ohio-3929, 977 N.E.2d 575, ¶ 20. However, the court specifically noted that "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." *Id.* at ¶ 19. Here, despite having the opportunity to observe respondent during the hearing, the board did not express the same confidence in respondent's ability to conduct himself appropriately in the future.

The circumstances of the cases respondent cited do not justify a fully stayed suspension in this case. They either do not involve same issues of coercion, were not as persistent or intrusive, or did not involve the same power imbalance present in this case. Accordingly, the board correctly found that respondent's conduct was more egregious and therefore warranted a stricter sanction.

B. Respondent now seeks to justify his offensive conduct on the grounds that respondent was initially flirtatious with him.

Respondent attempted to distinguish his case from cases like *Miller* by deflecting blame to J.S. and by minimizing his own conduct. Respondent's Objections at 36-37. The parties stipulated that during the OIG investigation, J.S. admitted that she had a flirtatious personality

and probably made flirtatious jokes to respondent. Stipulations at ¶ 36. However, respondent's conduct went beyond workplace banter and clearly crossed into unwanted and offensive behavior which he simply refused to stop even after J.S. began avoiding him on social media and in the office. Report at ¶ 19, 31-33. Yet at the hearing, respondent stated that if the same conduct that he put J.S. through happened to his daughter, he would be "probably infuriated. I would be heartbroken. *Nobody should have to go through what I put J.S. through.*" Hearing Tr. at 81:9-11 (emphasis added).

Respondent also attempted to minimize his unwanted touching of J.S.'s breast by claiming it was "unintended." Respondent's Objections at 37. Yet, nothing in the record supports this claim. During his OIG investigation, respondent denied ever touching J.S. at all. Exhibit 3, 82:14-15. However, he stipulated that he touched J.S.'s breast, J.S. believed it was intentional because *he made and held eye contact with J.S. while he did so*, and he withdrew his hand when another attorney entered the area. Report at ¶ 15-17, Stipulations at ¶ 12-14, Hearing Tr. at 18. Moreover, when asked on the stand whether "everything that J.S. has said and that you have stipulated happened; it was true, correct?" respondent unequivocally stated, "It did." Hearing Tr. at 61:13-15. Respondent's claim that the touching was unintentional is unconvincing given the evidence presented at the hearing that he touched J.S.'s breast *while* making and holding eye contact with her and removed his hand when another attorney entered the room.

The board found that the relative impropriety of respondent's abuse of authority weighed in favor of a stricter sanction than in the cases cited by respondent involving fully stayed suspensions. The board's decision was reasonable given the specific facts of this case, particularly respondent's position of authority, the ongoing nature of the misconduct,

respondent's unwanted touching of J.S.'s breast, and his admission that no one should have to go through what J.S. went through.

Conclusion

Relator supports the board's recommendation. It is consistent with this court's precedent regarding attorneys who have significant authority over vulnerable employees and with the court's precedent regarding sexual misconduct with clients. Accordingly, the court should overrule respondent's objections and impose a six-month suspension from the practice of law.

Respectfully submitted,

/s Joseph M. Caligiuri

Joseph M. Caligiuri (0074786)

Disciplinary Counsel

Relator

/s Matthew A. Kanai

Matthew A. Kanai (0072768)

Assistant Disciplinary Counsel

Counsel for Relator

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Relator's Answer to Respondent's Objections was served on respondent's counsel, Richard Koblentz, by electronic mail at rich@koblentzlaw.com on this 17th day of May 2023.

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Counsel for Relator

The Supreme Court of Ohio

Disciplinary Counsel,
Relator,
v.
Mark Stewart Bennett,
Respondent.

Case No. 2023-0471

ORDER TO SHOW CAUSE

The Board of Professional Conduct of the Supreme Court of Ohio filed a final report in the office of the clerk of this court. In this final report the board recommends that pursuant to Gov.Bar R. V(12)(A)(3), respondent, Mark Stewart Bennett, Attorney Registration No. 0069823, be suspended from the practice of law in Ohio for six months. The board further recommends that, as a condition of reinstatement in addition to the requirements of Gov.Bar R V(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. The board further recommends that the costs of these proceedings be taxed to respondent in any disciplinary order entered, so that execution may issue.

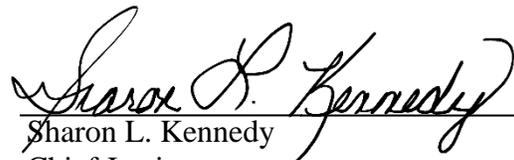
On consideration thereof, it is ordered by the court that the parties show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered. It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

It is further ordered that in lieu of objections, the parties, individually or jointly, may file a no-objection brief in support of the recommended sanction of the board pursuant to Gov.Bar R. V(17)(B)(2) within 20 days from the date of this order. It is further ordered that in lieu of objections or a no-objection brief, the parties may file a joint waiver of objections within 20 days from the date of this order.

After a hearing on the objections, or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be more severe or less severe than said recommendation.

It is further ordered that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All documents are subject to Sup.R. 44 through 47 which govern access to court records.

It is further ordered that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.


Sharon L. Kennedy
Chief Justice



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

Disciplinary Counsel

Relator,

v.

Case No. 22-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Stipulations

Relator and respondent submit these stipulations of facts, rule violations, aggravation, mitigation, exhibits, and recommended sanction.

Facts

1. Respondent was admitted to the practice of law in the state of Ohio on November 9, 1998.
2. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
3. During the period referenced below, respondent was employed as an Assistant United States Attorney (“AUSA”) in the U.S. Attorney’s Office for the Northern District of Ohio (“USAO”).
4. 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.

5. J.S. became acquainted with respondent in 2017.
6. 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.
7. J.S. heard from a male intern that respondent had made sexually inappropriate comments about her.
8. During the internship, respondent had consensual conversations with J.S. about his marital sex life.
9. Respondent also asked J.S. about her sex life and suggested that he could be J.S.'s sexual partner.
10. According to J.S., respondent requested that J.S. send him nude photos of herself on Snapchat¹ at some point during the internship.
11. During the internship, respondent offered to buy J.S. clothing from J. Crew, Victoria's Secret, and Brooks Brothers.
12. 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.
13. J.S. believed the touching was intentional because respondent made and held eye contact with her during the touching.
14. According to J.S., respondent removed the back of his hand at the time another attorney came into the library.

¹ Snapchat is a messaging platform that automatically deletes messages shortly after they are received.

15. Respondent began communicating with J.S. through various media, including Snapchat, Facebook, and text messaging.
16. 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.
17. 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.
18. 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.
19. 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.
20. J.S. was reappointed as an intern in late 2018.
21. J.S. asked to be stationed in the Youngstown office rather than the Akron or Cleveland offices where respondent was primarily stationed.
22. However, on January 2, 2019, respondent texted J.S. about why she was in Youngstown, including inquiring into her sex life:

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

J.S. mayyybeeeee

R: 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

R: but you are driving 2 hours out of ur way??? and it obviously didnt work out the first time...is IT³ really that good??

² "YNG" refers to the Youngstown office of the USAO.

³ J.S. explained that in the context of the texts, "IT" referred to sex with her then-partner.

J.S. omg im getting back to work.

R: fine...what do i care anyway if u flunk out...⁴

23. In or around January or February of 2019, J.S. asked respondent for a letter of recommendation for a clerkship.
24. Respondent replied by asking what he would get in exchange for the letter of recommendation.
25. J.S. decided not to pursue the recommendation and, instead, got recommendations from other attorneys.
26. 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.
27. In March 2019, at around 4:00 a.m., respondent Facebook messaged J.S., “Why do you haunt my dreams?”
28. 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.
29. She also asked a colleague to let her use their workstation so respondent would not know she was in the office.
30. Respondent continued to text J.S., which she felt was unwelcome and which she ignored.
31. In a June 2019 text message exchange, respondent said, “Nice. Cant 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.

⁴ All text and social media messages throughout have been reproduced verbatim, errata sic.

32. Respondent also texted her, “Damn u for making me think about it again,” referring to sexual activity.
33. 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.
34. 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[.]”
35. 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[.]”
36. 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.
37. During the investigation, respondent admitted that he may have asked J.S. for nude photos on Snapchat.
38. 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.
39. Respondent admits that his actions were inappropriate, and that he did not realize how offensive they were to J.S.
40. On June 20, 2021, respondent voluntarily sought treatment, was diagnosed, and commenced treatment for anxiety and depression. Respondent’s treatment provider has

expressed a favorable opinion that respondent has gained awareness of setting appropriate professional boundaries and has exhibited positive growth.

41. Respondent remains in counseling at this time.
42. Respondent has expressed regret and remorse for his actions towards J.S.
43. As a result of the investigation, respondent resigned from the USAO and subsequently reported his actions to the Office of Disciplinary Counsel. A short time later, the Department of Justice informed the Office of Disciplinary Counsel of its investigation of respondent.
44. Since resigning from USAO, respondent has opened his own law practice, sharing office space with other solo practitioners, in the Greater Cleveland Area.

Rule Violations

45. Respondent's conduct violates 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 and Mitigation

1. Relator and respondent stipulate to the following aggravating factors as listed in Gov.Bar R. V(13)(B):
 - a. A dishonest or selfish motive; and
 - b. The vulnerability of and resulting harm to victims of the misconduct.
2. Relator and respondent stipulate to the following mitigating factors as listed in Gov.Bar R. V(13)(C):
 - a. The absence of a prior disciplinary record;
 - b. Full and free disclosure to the board or cooperative attitude toward proceedings;
 - c. Character or reputation; and

d. Imposition of other penalties or sanctions.

Exhibits

- Joint Ex. 1 June 26, 2019 transcript of J.S. interview
- Joint Ex. 2 April 3, 2020 transcript of J.S. interview
- Joint Ex. 3 November 20, 2019 transcript of Mark Bennett's interview
- Joint Ex. 4 Character reference letters and testimonial request letters
- Joint Ex. 5 May 18, 2022 summary of treatment from Christy Sugarman
- Joint Ex. 6 November 30, 2022 summary of treatment from Christy Sugarman
- Joint Ex. 7 January 19, 2023 deposition of Christy Sugarman
- Joint Ex. 8 Affidavit of Christopher R. Landrigan.

Sanction

The parties recommend 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.

Conclusion

The undersigned parties enter into the above stipulations this 25th of January 2023.

Respectfully submitted,

/s Joseph M. Caligiuri
Joseph M. Caligiuri (0074786)
Disciplinary Counsel
Relator

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
65 East State Street, Suite 1510
Columbus, Ohio 43215-4215
Telephone: (614) 387-9700
matthew.kanai@sc.ohio.gov
Counsel for Relator


Mark Bennett (0069823)
Respondent

/s Richard Koblentz
Richard Koblentz (0002677)
3 Summit Park Dr.
Suite 440
Independence, OH 44131
(216) 621-3012
rich@koblentzlaw.com
Counsel for Respondent

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Stipulations was served on respondent's counsel, Richard Koblentz, by electronic mail at rich@koblentzlaw.com on this 26th day of January 2023.

/s Matthew A. Kanai
Matthew A. Kanai (0072768)
Counsel for Relator

KOBLENTZ, PENYOSE & FRONING, LLC

ATTORNEYS AND COUNSELORS AT LAW

RICHARD S. KOBLENTZ
BRYAN L. PENYOSE
NICHOLAS E. FRONING

MARVIN A. KOBLENTZ
1922 - 1995
OF COUNSEL
STEPHEN W. GARD

*

*

Re: Our Client: Mark S. Bennett, Esq.

Dear *:

As I believe Mark Bennett, our above-referenced client, has informed you, this office and the undersigned are acting as his professional responsibility counsel relative to a matter which he self-reported to the Office of Disciplinary Counsel of the Ohio Supreme Court.

Mark has indicated to us that you are a person who has had the opportunity, through your relationship with him, to voice an opinion as to his character and are in a position to offer a testimonial letter regarding his character which we will be able to present and utilize in our representation of Mark regarding his actions.

As lawyers who have had the privilege and honor of representing a vast number of our colleagues in the professional responsibility area, we have found that testimonials regarding our client's good general character and positive works in both the general and legal communities carry great weight within the Ohio Attorney Disciplinary System. As our Supreme Court has observed on countless occasions, the purpose of the Ohio Attorney Disciplinary System is not to discipline the attorney but to protect the public of the State of Ohio. As I am sure you can appreciate, testimonials of the type that you can furnish on Mark's behalf are extremely important in allowing the Ohio Attorney Disciplinary System to appropriately measure whether or not Mark's service to his clients is a benefit or detriment to the public of the State of Ohio. Because of our utmost respect for you and the Ohio Attorney Disciplinary System, this correspondence will painstakingly set forth the actions Mark took which caused him to self-report his conduct to the Office of Disciplinary Counsel and the many steps he has taken to rectify his past conduct which occasioned this self-report.

Between May 2017 and November 2017 and then from August 2018 through June 2019, a law student who was identified as "J.S." (to protect her privacy, this is the way that she is being identified) served as an intern with the United States Attorney's office for the Northern District of Ohio, during which entire period Mark was an Assistant United States Attorney. Shortly after "J.S." began her internship, she and Mark became acquainted and he and "J.S." began to engage in, what Mark believed to be, playful sexual banter. While Mark believed that "J.S." welcomed these interactions, he became aware of "J.S.'s" discomfort when a report was made to the Office of the Inspector General of the United States Justice Department, complaining about Mark's interactions with her and an investigation was initiated.

Mark has acknowledged and sincerely regrets engaging in actions with "J.S." which he recognizes were wholly inappropriate especially in view of the roles that he and "J.S." held at the

United States Attorney's Office, which placed him in a superior position to "J.S.", as well as being sorry for the extreme discomfort "J.S." reported to the investigators.

Through the investigation Mark and, later, we as his counsel, learned that "J.S." believed that Mark was inappropriately attempting to look up her skirt or look at her "butt" on some occasions and that she heard from another employee that Mark had made inappropriate comments about her. While Mark acknowledges "J.S.'s" belief, he has denied engaging in those actions.

Mark has acknowledged and admitted to engaging in the following actions:

- 1) Having conversations with "J.S." about his marital sex life.
- 2) Inquiring of "J.S." about her sex life and suggesting that he and "J.S." could be sexual partners.
- 3) Requesting that "J.S." send him nude photos of herself via Snapchat.
- 4) Offering to purchase "J.S." clothing.
- 5) In the fall of 2017, in the library of the United States Attorney's Akron Offices, while "J.S." was looking for a law book, reaching out and inadvertently touching her breasts with the back of his hand. While "J.S." believes that the touching was intentional, Mark, while embarrassed that the action took place, denies that the touching was intentional.
- 6) Mark attempted to communicate with "J.S." through text messaging and various social media platforms which, eventually, "J.S." began blocking and when Mark asked "J.S." about her not being visible on social media, she claimed that she was unaware of that lack of visibility and told Mark she did not know how that could have happened.
- 7) After "J.S." left her position as an intern, she later sought to return to the U.S. Attorney's office as an intern and contacted Mark. Mark asked "J.S." what she was willing to do to get back into the U.S. Attorney's office and "J.S.", believing that Mark's conversation had sexual overtones, did not pursue the issue with him any further. "J.S." resumed her internship, asking to be sited in the Youngstown office looking to, as she told the Office of the Inspector General, avoid contact with Mark. Mark, shortly thereafter, texted "J.S." asking why she requested to be sited in Youngstown and if it was because of her relationship with her boyfriend. "J.S." took that text to mean that Mark was inquiring into her sex life. Shortly after that text exchange, "J.S." asked Mark to provide her a letter of recommendation and, when Mark replied asking what he would get in exchange for such a letter, "J.S." chose not to pursue the issue any further with Mark.
- 8) Approximately one month later, Mark sent "J.S." a message asking, "Why do you haunt my dreams?"
- 9) On occasion, during her internship, "J.S." was detailed to an office where Mark was present and she later reported to the Office of the Inspector General that she disliked interacting with Mark to the extent that she would avoid contact with him, using another employee's work station so that Mark would not know she was in the office.
- 10) In June 2019, in a text message exchange with "J.S.", Mark made inappropriate sexual observations to "J.S."

- 11) "J.S." informed another employee in the office about her interactions with Mark and the fact that he made her uncomfortable. That conversation was reported to the Office of the Inspector General, which initiated an investigation regarding Mark's interactions with "J.S."
- 12) During the investigation by the Office of the Inspector General, "J.S." stated that she had not reported her discomfort because she had been raised in a background where you deal with things yourself and further said that Mark's position and his friendships within both the U.S. Attorney's office and the local legal community made her reticent to file a complaint.

The Office of the Inspector General instituted a wide-ranging and exhaustive investigation into Mark's actions, to which investigation Mark gave his full cooperation.

Recognizing that his actions were not only inappropriate, especially in view of the disparity in their respective positions, Mark resigned from his "dream job" as an Assistant United States Attorney, taking responsibility for his actions with the United States Department of Justice. Mark further recognized that his actions reflected adversely on his duties as a lawyer, which carried implications regarding his license to practice law in Ohio.

It was at this point that Mark sought our advice and counsel and, after listening to all of the facts, we told him that it was our advice that he self-report his conduct to the Office of Disciplinary Counsel, which self-report was later followed by a report made by Office of the Inspector General to the Office of Disciplinary Counsel.

As part and parcel of our investigation into this matter and our representation of Mark's interests, we have spent hours speaking with him regarding the circumstances which led him to engage in the behavior which has resulted in the investigation of that conduct. We can assure you that Mark fully recognizes the wrongfulness of his actions, is deeply remorseful, and has changed the way in which he interacts with all persons in all settings, but, particularly, with women in the work place and in the context of our profession. Mark has taken the steps to explore, through counseling, what led him to behave in the manner in which he did and, more importantly, has become equipped with the knowledge and tools to be certain that such a lapse in judgment and behavior never occurs again. Despite this lapse, we are of the opinion that Mark is a person of good character, who is honest and decent, and are fully supportive of the reparative actions which he has and continues to undertake and hope you will agree with our opinion.

Mark instructed us, as his counsel, to be open and fully cooperate with any and all aspects of the investigation conducted by the Office of Disciplinary Counsel of the Ohio Supreme Court. Through that cooperative process, Mark fully and freely admitted to all of the actions that were set forth in this letter and has entered into a Consent to Discipline with the Office of Disciplinary Counsel, admitting that his actions reflected adversely upon his role as a lawyer licensed to practice law in the State of Ohio. In reaching this Consent to Discipline, the Office of Disciplinary Counsel has recognized the steps that Mark has taken to not only recognize the wrongfulness of his actions but, more importantly, become equipped with the knowledge and tools to avoid inappropriate action in the future.

Re: Our Client: Mark S. Bennett, Esq.

*

Page 4 of 4

While we recognize that this exhaustive recitation of the facts present in Mark's matter has required quite a bit of your time to review, it is important to Mark, we as his counsel and the Ohio Attorney Disciplinary System that you be fully apprised of all of the facts and circumstances involved in Mark's matter before being asked to give a testimonial as to his character.

We would appreciate it very much if you would author a testimonial letter setting forth your view of Mark, in the role in which you know him, which will exemplify Mark's value to, as the case may be, his clients, the legal community and/or the general community. In your letter, we would appreciate if you would indicate that prior to authoring your testimonial, you reviewed this correspondence. We would further appreciate if it you would opine as to Mark's value as a lawyer and should you agree that even upon being made fully aware of his wrongful actions, that Mark, in his role as a lawyer, provides value to the public of the State of Ohio and does not pose a threat to the public of the State of Ohio which would require the public to be protected by the Ohio Attorney Disciplinary System. If, after being apprised of all of these facts, you believe that Mark would provide appropriate representation in the event that you, a friend, relative or one of your clients had a matter falling into his area of practice, that opinion would certainly be welcomed.

While we recognize that you have many obligations which require your attention, time is of the essence as, since Mark has taken full responsibility for his actions, his matter is moving forward on an accelerated basis. We would appreciate you forwarding your testimonial letter on Mark's behalf to our office in as timely a manner as possible, hopefully by September 9, 2022.

Should you desire, I would be pleased to discuss this request and answer any and all questions which you may have and invite you to call me and discuss Mark's matter and our request at any time.

On behalf of Mark, as well as our office, I wish to thank you for the time and attention you have taken to review this matter and look forward to your response.

Very truly yours,

/s/ Richard S. Koblentz

Richard S. Koblentz

cc: Mark S. Bennett, Esq.
File

Rebecca J. Bennett
30611 Mallard Cove
Westlake, Ohio 44145

July 18, 2022

Richard S. Koblentz
Koblentz & Penvose, LLC
rich@koblentzlaw.com
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

RE: Testimonial Letter for Mark S. Bennett, Esq.

Dear Mr. Koblentz:

I am writing this testimonial letter to offer my opinion as to character of Mark Bennett and his ability to practice law in a manner consistent with Ohio's professional conduct rules in connection with his matter before the Office of Disciplinary Counsel of the Ohio Supreme Court ("ODC").

Mark and I have been married for 22 years. I met Mark in law school in 1997 and served with him on the Moot Court Board of Governors. As a practicing lawyer married to Mark, I have had the opportunity to observe his professional practice throughout the years and have collaborated with him on many professional and community activities. I wish to bring to the ODC's attention the following observations that I believe demonstrate the core goodness of his character, his professionalism as a lawyer, and the value he adds to the practice of law.

- **Commitment to Justice.** Both in his civil practice and as a federal prosecutor, Mark has always taken the approach of empathetic justice. He was never one to celebrate convictions, because he understood the impact of convictions on all of the people affected. Mark is the type of lawyer who is willing to take on complicated matters where there is no roadmap. At the U.S. Attorney's office, he prosecuted Northeast Ohio mortgage fraud at the height of the global financial crisis, where the waters were uncharted, and he did so successfully. Mark would take on cases that others might turn down, because he felt strongly about the case and serving justice. On the flip side, Mark would not seek indictment of matters when he came to believe there were mitigating circumstances that warranted compassion. He was never worried about a personal score card; he was committed to justice and his role in the system. Mark has worked hard and intentionally to develop and maintain good, civil, positive, professional relationships with lawyers who represent opposing parties, as well as with the judges and court staff.
- **Commitment to Colleagues.** Mark has always gone out of his way to support the professional careers of others, regardless of age, gender, race, or other status. He has

served as a mentor to many new lawyers through the Ohio State Bar mentoring program and has made great efforts to assist his mentees in finding meaningful career opportunities. He has served as an informal mentor to other lawyers and friends, and has similarly welcomed the mentorship of those lawyers that have assisted Mark.

- **Commitment to the Legal Profession.** Since the beginning of our legal careers, Mark has always believed in volunteering to support the profession, and his dedication has inspired me to participate too. He has served on the Board of the Cleveland Metropolitan Bar Association and Foundation, he has actively participated in Bar events, he was named Volunteer of the Year on multiple occasions for various organizations. He served on the Board of Directors for Legal Aid Society of Cleveland, where he assisted in lobbying and refocusing the organization on using data to measure the mission's effectiveness. He regularly supports bar events organized by friends and colleagues, and considers this involvement a duty of the profession.
- **Commitment to the Community.** Mark has regularly donated his time to support our community. He has participated on the Board of numerous non-profit organizations and given countless volunteer hours. He has always supported me in my community and philanthropic endeavors. He is a volunteer coach. He is a good and kind neighbor. He is the type of person that clears the snow from the driveway of a neighbor without being asked.
- **Commitment to Friends and Family.** Mark is a loyal and caring friend, husband, father, son, son-in-law, and uncle. He wakes up each morning thinking about what he can do to help the people he loves and those he considers friends. He seeks to make connections between people when he sees that a friend in need may benefit from a contact that he has. When my friends and family are in the need of legal advice, they almost always go to Mark first, not me. That includes my own family. In situations of great personal trauma or stress—like job loss, financial distress, divorce, loss of a loved one—they go to Mark. I attribute that to Mark's approachability, his candor, his ability to put others at ease, and his commitment to justice. Mark is a loving father with natural, nurturing instincts. Together, we strive every day to teach and to raise our daughter, who we took custody of when she was an infant and then adopted. Our daughter's birth father is Mark's first cousin's son. Her birth parents were unable to care for her due to drug addiction and other issues. When we were asked by family if we would take custody of this baby, Mark did not hesitate. He was all-in from day one. To witness his loving kindness to his daughter is to confirm his humanity and core goodness.

Mark is a valuable asset to Ohio's legal community, and I am confident that he can serve the community as a lawyer with trust, value, and commitment to adhering to the principles of the Lawyer's Creed.

I am a daily witness to Mark's character. Mark is worthy of forgiveness, and he has my full support as he moves forward. Because of my knowledge and experience of Mark's character and professionalism, I would not hesitate to recommend or refer him to a potential client.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Bennett". The signature is written in a cursive style with a large initial "R" and "J".

Rebecca J. Bennett, Esq.
Shareholder, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Richard S. Koblentz
Koblentz & Penrose, I.L.C.
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

Re: Mark S. Bennett, Esq.

Dear Mr. Koblentz:

I am writing this testimonial letter to express my opinion of Mr. Bennett and the immense value he brings not only to the legal community, but to the public.

Please note that prior to authoring this testimonial letter, I fully and completely reviewed the above correspondence and have appraised myself of all the facts.

I have known Mr. Bennett for over three years now. When I began my legal education at Cleveland Marshall College of Law, Mr. Bennett was assigned to me as my Alumni Mentor. Upon first meeting Mr. Bennett at my law school orientation, I immediately perceived his immense passion for the legal profession. Mr. Bennett is highly dedicated and passionate towards providing the utmost representation for his clients. If I were to ever find myself, a friend or relative in need of representation in a matter falling within his area of practice, I believe and know, Mr. Bennett would go above and beyond to provide the appropriate representation.

Since meeting Mr. Bennett, he has guided me through my legal career, given priceless advice and opened countless doors for me. On several occasions throughout my legal education, I have sought advice from Mr. Bennett. In each and every occasion I sought such advice, Mr. Bennett took the time and helped me through any situation whether it was as simple as preparing for a final exam or navigating my future employment. Through every interaction I have had with him, I have never once felt uncomfortable around him; In fact, I have found Mr. Bennett to be particularly approachable in such an intimidating environment as the legal profession can be. Mr. Bennett has always shown me nothing but respect and professionalism in our interactions.

After appraising myself of all the facts of Mr. Bennett's behavior, I know they do not represent the person I have known and been mentored by over these past three years. Although this was a clear lapse in judgement on Mr. Bennett's part, this in no way represents the person he is. Mr. Bennett, through my interactions, has shown me that he is honest, diligent, respectful, and of truly impeccable character.

With Mr. Bennett's dedication, diligence and good character, he provides great value to his clients, the legal community and the public in general. As such, Mr. Bennett in my opinion, in no way presents any kind of threat to the public of the State of Ohio that would require the protection by the Ohio Attorney Disciplinary System.

I appreciate the opportunity to express my opinion of Mr. Bennett. Please feel free to contact me if I can be of any further assistance. Thank you.

Sincerely,



MaKenna Daus



DEPIERO LAW
Attorney Dean DePiero

August 2, 2022

Richard S. Koblentz
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

RE: Testimonial Letter for Mark S. Bennett, ESQ.

Dear Mr. Koblentz,

Thank you for the opportunity to write a letter on behalf of Mark Bennett. I have had an opportunity to review the July 8, 2022 correspondence that you sent to me that contained the information regarding Mark's conduct in the past. Although the information is unfortunate, I enthusiastically author this letter on his behalf.

I have practiced law as an Attorney for almost twenty-eight years. I am Of Counsel for McDonald Hopkins and operate my own firm now as DePiero Law. I am also currently the Law Director of the City of Aurora, Ohio and the Assistant Law Director for Broadview Heights, Ohio.

I have known Mark for approximately twenty years. He and his wife, Rebecca have been both friends and colleagues in the legal community.

Mark has shared office space with myself and two other Attorneys in my office building in Parma, Ohio since January of 2021. I have always known Mark as a smart, hardworking lawyer who did great work at the Department of Justice. Now I see his work ethic first hand on a daily basis. I have referred legal matters to him often and have been very impressed with his competent handling of his work. The clients are always satisfied. I am also impressed about how fast he has built a successful private practice of law as a solo practitioner. I would never hesitate to recommend Mark to any friend or family member. I know he would work hard for their interests.

Furthermore, Mark's work with Legal Aid over the years is admirable. He has advocated for me to be more involved in this endeavor and has urged me to attend the many events that he is involved with.

I also know Mark as a good husband and a loving father. My late wife, Kathleen and his wife were friends and Kathleen would always comment on the strength of their relationship. In fact, when Mark

and Rebecca started the process to adopt their daughter, Maya, my wife helped to prepare their home for her arrival.

In summary, despite Mark's past shortcomings that are the substance of the pending matter, I know that he will continue to be a great advocate for his clients, a solid community contributor and most of all a great husband and father.

Yours Truly,

A handwritten signature in blue ink, appearing to read 'D. DePiero', with a stylized flourish at the end.

Dean DePiero

September 8, 2022

To Whom It May Concern:

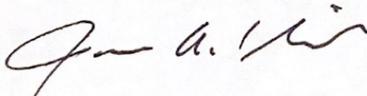
Thank you for the opportunity to provide the Disciplinary Counsel with the below letter in support of Mark S. Bennett. I am aware of the behavior Mr. Bennett disclosed to the Disciplinary Counsel as set forth in a correspondence provided by his legal counsel and submit the below for your due consideration.

I have known Mr. Bennett for nearly twenty years, having first met as members of the 2005 cohort of Cleveland Bridgebuilders, a leadership program whose mission is to advance a pipeline of civically-minded emerging leaders within Northeast Ohio. Two things struck me within the first few hours of meeting Mr. Bennett: he advocated (successfully) for one of three female minorities to assume a leadership position within our cohort and he shared with a small group of us his profound love for the practice of law and its potential to positively impact society. It was evident that Mr. Bennett held himself to a high standard rooted in fairness and honesty. Since that time, Mr. Bennett and I have remained friends and he has served as a legal advisor on several personal matters.

Mr. Bennett is generous and sincere. When the opportunity arose to help an at-risk newborn, he and his wife did not hesitate to foster and, eventually, adopt their daughter. And when my wife and I had an urgent personal matter, Mr. Bennett helped us navigate a complex circumstance purely as a favor to a friend. He has supported others in advancing their civic interests and careers through a simple introduction (as he did for me for a civic volunteer opportunity) or going so far as to advocate for an individual to get involved in furthering regional development (as he did for a mutual friend). Mr. Bennett is an asset to Ohio's legal community and a force for positive change as evidenced throughout his career.

I hope this provides you with a more comprehensive, balanced perspective of Mr. Bennett. I would be happy to provide further context, as necessary.

Sincerely,



Joseph A. Glick
37114 Hunters Trail
Avon, Ohio 44011
(440) 452-0797

Richard S. Koblentz
Koblentz, Penrose & Froning LLC
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

July 26, 2022

Dear Mr Koblentz,

I am writing this letter in support of Mark Bennett. I have known Mark since 2005, having met him when we both participated in Cleveland Bridge Builders, a development program for mid-career professional that prepares professionals for a greater role in the community by fostering teamwork, growth and learning. I am writing this letter after reviewing the detailed correspondence you provided that outlined the incident that Mark self reported to the Office of Disciplinary Counsel of the Ohio Supreme Court.

The lapse in judgement outlined in the correspondence is disappointing, but it is not the Mark that I have known and respected for over fifteen years. I have stayed connected to Mark over the years for many reasons: he is intelligent, a devoted family man, a huge supporter of women lawyers and passionate about the law and using it to do good.

Professionally Mark and I would meet several times a year. Mark and I would meet to discuss Medical Mutual's fraud investigations, new legal developments and Mark would question me about the *insurance/pharmacy/medical industry because of my role as an executive at Medical Mutual. He was always passionate about his work and insightful about his questions. His role working for the US Attorney General was a dream job for him and I was impressed by his passion for the role and public service.*

Personally Mark has always been incredibly supportive of my career as a female attorney who has taken on some very non-traditional roles like Chief Information Officer and General Auditor while raising a family of four. He has always been a sounding board and cheerleader as I have navigated my career and balanced work and home. I have also heard him talk about his wife and her legal career on numerous occasions. His pride in Rebecca is a wonderful thing to witness. Mark has also acted as a mentor for many people close to me. He allowed my niece, currently serving in the Judge Advocate General's Corps, to shadow him while she was in college. She credits the time spent with Mark as helping her define the career path she has chosen to follow. Mark has also mentored one of my sons who is currently studying for the LSAT. He helped arrange an internship with a political campaign to allow my son to explore this use of a legal degree. I know Mark has successfully mentored many other aspiring lawyers.

I do not condone Mark's behavior as outlined in the letter but I also think this incident does not define who Mark is. The legal profession and the community would suffer a loss without Mark's continued dedication to the practice of law.

Please feel free to reach out to me if you have any questions or need any additional information. I can be reached at kathygolovan@gmail.com or 216-470-5481.



Kathleen Golovan
EVP, Chief Health Officer
Medical Mutual of Ohio

Law Offices
MICHAEL P. HARVEY CO., L.P.A.
311 Northcliff Drive
Rocky River, Ohio 44116-1344
(440) 356-9108

Cellular: (440) 570-2812

Email: MPharveyCo@aol.com

September 6, 2022

Confidential
Sent via Electronic Mail

Richard S. Koblentz, Esq.
Koblentz, Penvose & Froning, LLC
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131
Email: rich@koblentzlaw.com

RE: *Mark Bennett, Esq.*

Dear Richard:

I write this letter in support of Mark Bennett, Esq. Mr. Koblentz and his law firm have made me aware of the allegations. I do know the man because I have worked with him and have been associated with him for over twenty-five years. Mark chaired the Rocky River Planning Commission before I became Chair approximately eight years ago. So, I served with Mark before his term ended.

I also know him from his work in the community including as a Partner at Weston Hurd and his work in the U.S. Attorney's Office because the areas he worked in often overlapped with what I was doing in the mortgage/forbearance area.

I can say with great assurance that Mark likely feels very badly about what occurred. Knowing him, he is taking full responsibility. But, I do believe that his contributions to the legal community over the past decades and most assuredly his future contributions will be sorely missed if his license to practice law is taken away.

I also know that he has contributed many hours to both legal and non-legal organizations and people without payment and I believe he has always been a truthful, stand-up guy with respect to what I have been working with him on.

So, I do think that Mark will likely have learned his lesson. I most assuredly would look forward to working with him again in the legal community.

Sincerely,

MICHAEL P. HARVEY, CO., L.P.A.

/s/Michael P. Harvey
Michael P. Harvey, Esq.

MPH/rrg

VIA EMAIL: rich@koblentzlaw.com

July 21, 2022

Richard S. Koblentz

3 Summit Park Drive, Suite 440

Cleveland OH 44130

Mr. Koblentz,

My name is Kimberly Kepling, and I am a retired United States Postal Inspector. I am in receipt of your email dated July 11, 2022 "Re: Our Client: Mark S. Bennett, Esq." I have reviewed the letter thoroughly. As far as writing a character letter in support of Mark S. Bennett, I do so without hesitation.

After 30 years federal service, and almost 25 years as a U. S. Postal Inspector, I retired in June 2015. I spent most of my career investigating fraud. I led many investigations, assisted other agents and officers with investigations, and participated in numerous working groups and task forces. The number of cases I investigated was in the hundreds, and the number of victims I advocated for was in the thousands. My cases were prosecuted at the federal and state level. I retired with a 100% conviction rate.

Between 2005-2018, my career path crossed Mark Bennett's on many occasions. My first interaction with Mark Bennett occurred between 2005-2007. Mark oversaw the Cleveland Office of the Ohio Attorney General (OAG). The OAG received fraud complaints, including elderly fraud, and we were meeting to determine the best course of action. During the interaction, I recall Mark Bennett being professional, well prepared, very organized, and cordial.

In 2003, I started working mortgage fraud investigations. Although the mortgage fraud problem in Cleveland in 2003 was just becoming known, the criminal conduct continued to grow and was becoming more egregious. The individuals involved in the schemes to defraud included mortgage lenders, mortgage brokers, appraisers, realtors, title company employees, buyers, sellers, and others. The cases were intertwined, paper intensive, and time consuming. Although law enforcement resources at the time were focused on 9/11 and domestic terrorism, there were agencies dedicating resources to combatting mortgage fraud. There were many overlapping cases between the federal prosecutors, including Mark Bennett as an Assistant United States Attorney, and the Cuyahoga County Mortgage Fraud Task Force. The agencies involved with these overlapping investigations included the Postal Inspection Service, FBI, IRS-CID, HUD-OIG, SSA-OIG, Secret Service, Ohio Attorney General, the Sheriff's Department, and affected local police departments.

I was the Affiant and lead investigator for a multi-location search warrant involving a document maker. The individual, Jerold Levert, created fictitious paystubs, W2s, tax returns, proof of insurance, proof of employment, and identifications. He created fictitious businesses and offered a binder for review so that individuals could view the format of the fake documents they were ordering. Levert created fake businesses to falsely verify employment. He set up phone lines for each of the businesses

to verbally verify employment when lenders would call. Next to the phone line there was a sign as a reminder of the fictitious representative name used for the bogus business. Levert created a wallet size price list for fake documents including \$25 for a pay stub up to \$500 for verification of employment. Unscrupulous mortgage brokers would send via facsimile orders for fake documents listing the name of the buyer, social security number, fake business name, and the amount of income to be shown on the fake income document. When the fake documents were picked up, Levert maintained a copy of the original faxed order form, fake document, and in red wrote the date the document was picked up, how much was paid, and who paid for the documents. The search warrant resulted in obtaining two 2-ton trucks worth of evidence. Levert's fraudulent documents resulted in more than \$60 million dollars in mortgage loans in the Cleveland Ohio area being funded by mortgage lenders. I'm explaining the complexity of just this one case to set the stage for the amount of time I spent working with Mark Bennett. I witnessed his interactions with his co-workers, defense counsel, law enforcement officers, court personnel, and others and I'm also aware of how they spoke of him when he was not around.

I first met with Mark Bennett regarding mortgage fraud investigations in approximately July 2008. Mark was presented with an exceptionally large, tangled web of individuals involved in mortgage fraud. Mark very capably began to unravel the complex case to determine the best prosecutorial avenues. As the cases were paper intensive and as there were many cooperating individuals, Mark arranged for me to have my own workspace at the US Attorney's Office in Cleveland just down from his office so that I could scan and prepare cases for interviews, indictment, and potentially trial. I interacted with Mark almost daily. Mark literally spent hundreds and hundreds of hours reviewing, preparing for, and coordinating prosecution of cases. His memory, diligence, and presentation are extremely impressive. We presented many cases in front of the grand jury and I was present in the courtroom to hear Mark during various courtroom proceedings including sentencings. Mark knew the cases inside and out. He was prepared and articulate. Mark's interaction with co-workers, staff, and other agents was always cordial and professional. His meetings with defendant's and counsel were firm but fair. Mark's work ethic and dedication were amazing, and he was held in high regard by those who interacted with him. Although Mark usually worked out at lunch time, we occasionally went to lunch together. Other than attending a few of the same retirement parties, we did not socialize outside of work. He spoke very highly of his wife and of his homelife.

After we finished our large mortgage fraud cases and I moved out of my office at the U. S. Attorney's Office, I continued to work with Mark Bennett as I was assigned to investigate Money Laundering and Mark Bennett was the head of our working group. Again, Mark continued to be well prepared, professional, and organized. We met in a conference room at the Cleveland FBI. Again, Mark was held in extremely high regard.

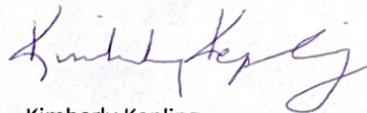
As I approached retirement age, I was recruited to work at the Ohio Attorney General's Office. Between 2015-2018, I worked with many of the same people Mark previously worked with, and Mark continued to enjoy an excellent reputation at the Cleveland OAG. I remember meeting Mark Bennett for lunch shortly after I was hired and learning that he and his wife were adopting an infant daughter and that the mother was addicted to drugs. The baby had gone through withdrawal. Mark was so proud to become a dad. He was protective, concerned for his daughter, and he seemed so happy that he and his wife had started a family.

Over a year ago, I learned that Mark Bennett was the subject of an internal investigation. At the time, he was still employed by the U. S. Attorney's Office. I reached out to Mark, and he outlined a few details of the investigation. I offered to assist him if there was anything I could do to help. I later learned that Mark left the U. S. Attorney's Office and that he had started a private practice. A few months ago, I had good friends in need of legal advice. My friend's family member had been murdered and the investigation had turned into a cold case. I referred them to Mark to help them in coordinating communication with the police, BCI, and the town's mayor.

About a month ago, after I made the referral to Mark, I met with him for lunch. He verbally detailed why he was no longer at the U. S. Attorney's Office. (The information was subsequently outlined in the July 11, 2022, letter I received from his attorney.) When Mark described what happened, he was extremely remorseful. There is a difference between someone being remorseful for their conduct and someone being remorseful because they were caught. I've known Mark a very long time, and I know he is genuinely remorseful for his conduct. I know that Mark is a person of good character. I know that he is decent, and I know that he is honest. I would hire him or continue to refer him for legal services to close family and friends without hesitation.

Please feel free to contact me regarding this character reference letter. I am also more than happy to provide verbal testimony in support of Mark Bennett. I can be reached at: 330-441-2980 or via email: KimKep4796@gmail.com.

Thank you for your consideration,



Kimberly Kepling

Hugh McKay
hmckay@porterwright.com

Porter Wright
Morris & Arthur LLP
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CHICAGO
CINCINNATI
CLEVELAND
COLUMBUS
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NAPLES
PITTSBURGH
WASHINGTON, DC

July 21, 2022

Via Electronic Mail

Richard S. Koblentz
Attorney at Law
Koblentz, Penvose & Froning, LLC
3 Summit Park Drive, Suite 440
Cleveland, OH 44131

PERSONAL AND CONFIDENTIAL

RE: Mark S. Bennett

Dear Mr. Koblentz:

I am in receipt of your letter of July 11, 2022 which details the specifics of Mark Bennett's actions, which he has acknowledged and admitted to. This letter is to state my view on Mr. Bennett, who I will refer to here as Mark.

I have known Mark personally and professionally for more than 25 years. I have worked closely with him on Cleveland Bar Association programs and initiatives, and I have had litigation matters with him (and against him) and I know him as a friend. The bottom line is that, while regrettable and inappropriate, Mark's actions that are being considered by the Office of Disciplinary Counsel are an aberration and do not reflect who Mark is as a person and as a lawyer. Over his career, Mark has demonstrated to me a steadfast commitment to the legal system, the highest standards of ethics and professionalism, and all that attorneys of Ohio do or should aspire to. In one memorable case that was hotly contested in court, Mark's co-counsel was engaging in sharp practices that stretched the limits of propriety. Mark stood up to his co-counsel, who was much his senior and an intimidating force, and held his ground to make sure the sharp practices ended. This is typical of who Mark is.

In his dealings with people, I have always known Mark to be respectful towards others and sensitive to their feelings. Again, this situation is an unfortunate aberration.

In his zealous commitment to pro bono and community work (for which he received well deserved commendation from the Cleveland Bar Association), Mark has put the public good ahead of personal profit. I have always found Mark to embody the Lawyers Creed of Professionalism that Marv Karp formulated 35 years ago. Going forward, Mark unquestionably has great value to offer the citizens of Ohio, including clients and opposing parties, and the public in general. I have no concern that Mark poses any threat of any sort to the public of Ohio. If I, or any member of my family, including my wife or daughter, needed legal counsel, I would be delighted if Mark were to represent me or them, because I know the kind of person, and lawyer, Mark is.

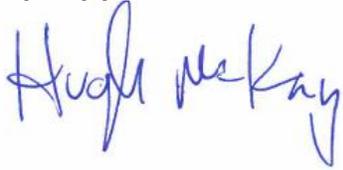
Mark's actions in question are obviously inappropriate but are totally inconsistent with who Mark has shown himself to be over his long and very positive career-except for this unfortunate situation. I know he is utterly

Richard S. Koblentz
July 21, 2022
Page 2

chastened, contrite and remorseful. I do not make any excuses for what Mark did here, but I do vouch for the fact that, going forward, punitive action against Mark, or limiting his law license in some manner, would actually work against the best interests of Ohio citizens and our legal system. Mark has a tremendous amount to offer the citizens of Ohio and clients moving forward, and I know he will zealously make sure he scrupulously lives out the highest standards of personal and professional conduct.

Feel free to let me know if you would like further input or detail as to Mark.

Very truly yours,

A handwritten signature in blue ink that reads "Hugh McKay". The signature is written in a cursive, slightly slanted style.

Hugh McKay

HEM:bh

Daniel J. Riedl
U.S. Attorney's Office for the Northern District of Ohio
801 W. Superior Avenue, Suite 400
Cleveland, Ohio 44113

July 9, 2022

The Supreme Court of Ohio
Office of Disciplinary Counsel
65 E. State Street, Suite 1510
Columbus, OH 43215

Re: Character and fitness of Mark S. Bennett, Esq.

To Whom it May Concern:

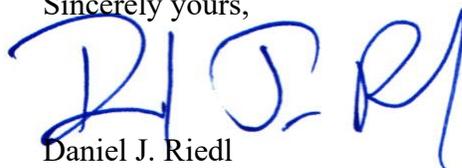
Please accept this letter in support of the character and fitness of Mark S. Bennett, Esq. Mr. Bennett and I served together as Assistant United States Attorneys starting in 2009 and I was his direct supervisor between September of 2019 and December of 2020. During the more than ten years I have known Mr. Bennett, he proved himself to be a talented, intelligent, highly conscientious, and effective attorney.

Through the course of my career alongside Mr. Bennett, he demonstrated good legal judgment, strong research and writing skills, and an outstanding work ethic. Mr. Bennett and I regularly discussed complex legal matters and he proved himself an invaluable resource on a wide variety of legal topics. Mr. Bennett does not miss a deadline, show up late for a court hearing or attend a meeting unprepared.

Before writing this letter, I reviewed a July 8, 2022, letter from Mr. Bennett's attorney detailing the conduct that led to this disciplinary action. Over the past three years, Mr. Bennett repeatedly told me of his deep regret for this conduct. He is acutely aware of the harm he caused J.S., his family and himself by his actions and I believe he is truly remorseful and committed to not repeating this behavior.

Mr. Bennett is one of the finest lawyers I know, and I would not hesitate to refer a friend or family member to him for legal services. Please don't hesitate to contact me if there is any further information I can provide.

Sincerely yours,



Daniel J. Riedl
Chief, National Security Unit
U.S. Attorney's Office for the Northern District of Ohio



Law Offices of
CARA L. SANTOSUOSSO, LLC

July 29, 2022

Office of the Disciplinary Counsel
Ohio Supreme Court
65 S. Front Street
Cleveland, Ohio 43215

Re: *Mark S. Bennett*

Dear Sir/Madam:

I write today in support of attorney Mark S. Bennett. I have known Mark both personally and professionally since 1997, and have been close friends with Mark's wife since 1978. Our families are close friends, and often celebrate holidays and special occasions together. I am godmother to Mark's daughter; his wife is godmother to my oldest daughter. My children refer to him as "Uncle Mark," and I have never had any qualms about leaving my two girls in Mark's charge.

Notwithstanding my longstanding relationship with Mark, I am relieved and grateful that Disciplinary Counsel is taking the allegations against him seriously. No member of the bar (nor any woman in the workplace) should be subject to the sort of treatment described by the accuser in this case. Mark's alleged involvement in such behavior is heartbreaking.

That said, I know that Mark is acutely aware of and repentant for any wrongdoing in this case. He understands the disappointment and pain this chapter has caused not only the accuser, but his family, friends, and colleagues. I believe this episode has been a turning point in Mark's life, both personally and professionally. His resignation from the U.S. Attorney's office – from the position he had striven for during his entire career – was extraordinarily difficult for him. Mark is a talented and dedicated attorney, who is typically committed to upholding his ethical responsibilities, without fail. He achieved many positive results for the victims of the crimes he prosecuted as an AUSA. I am confident, should he be allowed to continue to practice in Ohio, that he will bring that same dedication and skill to representing clients in the private sector.

Not long after Mark resigned from the U.S. Attorney's office, I reached out to him for assistance in my own practice. I asked him to research and draft an appeal in *In Re K.L. 2022-Ohio-992*. Mark's work on the case was impeccable, and we were successful in having the underlying judgement affirmed by the 9th District Court of Appeals. Mark was professional, capable, efficient,

and a pleasure to work with on this case. Again, I believe Mark's continued practice will be of benefit to the people of Cleveland and Ohio.

If you have any questions or if I can provide any further information, please do not hesitate to contact me.

Kind regards,

A handwritten signature in black ink, appearing to read 'Cara L. Santostosso', with a long horizontal flourish extending to the right.

Cara L. Santostosso

CLS/af

cc: Brian Penvose (via email)

August 8, 2022

Matthew W. Shepherd
743 Brookside Circle
Avon Lake, Ohio 44012

Richard S. Koblentz
Koblentz, Penvose & Froning, LLC
Attorneys and Counselors at Law
3 Summit Park Drive
Suite 440
Cleveland, Ohio 44131

Dear Mr. Koblentz,

I have received and reviewed your letter dated July 22, 2022, regarding Attorney Mark S. Bennett. As requested, I am providing this letter regarding my opinion regarding his character and fitness as an attorney for you to use in your representation of him before the Ohio Attorney Disciplinary System.

I have been a licensed Attorney in the State of Ohio since November 2001. I am currently employed as an Assistant United States Attorney in the Northern District of Ohio in Cleveland, Ohio. I have been employed as an Assistant United States Attorney since February 2007, first in the Middle District of Alabama, and since June 2010 in the Northern District of Ohio.¹

From the time I started in the Northern District of Ohio until he resigned, I knew Mark as a co-worker. We did not frequently socialize outside of office functions. I worked directly with him as co-counsel on several cases. From approximately 2018 until approximately October 31, 2019, I was his immediate supervisor. During that time, I directly observed and supervised his legal work.²

I have reviewed the detailed description of Mark's inappropriate conduct that you furnished in your letter. I had no prior knowledge of these details of Mark's inappropriate actions with and towards J.S. I did not witness any of his interactions with J.S. I do not condone Mark's conduct in any way. The purpose of this letter is limited to providing information on my personal observations and interactions with Mark as an attorney.

¹ This letter is provided in my personal capacity only. The opinions expressed in it should not be attributed to the Department of Justice or to the U.S. Attorney's Office for the Northern District of Ohio.

² Although I was his immediate supervisor during this period, I was not personally involved in or interviewed as part of any investigations of the conduct referred to in your letter.

Based on my experience supervising, observing, and working with Mark, I believe he is an outstanding attorney. Mark always displayed a firm grasp of the law and legal issues. He was always fully prepared for court hearings and trial. He always acted ethically and professionally in his dealings with victims, witnesses, attorneys, defendants, and court personnel. I never received any reports that he had behaved unprofessionally or unethically in any of his cases. Mark always worked diligently on each matter. He was also very organized. In trial, he was an excellent litigator and advocate for the government. For every matter assigned to him, he could be counted on to provide his very best efforts. In summary, as an attorney and prosecutor, I always found him to be reliable, ethical, and professional.

Beyond his legal work, I have always known Mark to be caring and compassionate to his co-workers and very considerate of their personal circumstances. I also know from talking to Mark that he was very committed to supporting the legal profession outside of his job through work with the local bar association and volunteering for legal aid programs. It was always clear from talking to Mark that he cared deeply for the local Cleveland community and those who were less fortunate than him.

Although I find Mark's conduct to be very concerning, it is very positive that Mark has taken steps to address his behavior. Based on the assurances in your letter that Mark is continuing to take the steps you described to address his conduct, I would not hesitate to consult with or retain Mark to represent me if I needed an attorney with Mark's experience and expertise. I believe Mark still has much to offer the community and legal profession as an attorney.

Please contact me if you need any further information.

Sincerely,



Matthew W. Shepherd

July 27, 2022

Via email to rich@koblenzlaw.com

Mr. Richard S. Koblentz
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

Re: Mark S. Bennett, Esq.

Dear Mr. Koblentz:

This correspondence shall serve as my reply to your letter dated July 8, 2022 and is my testimonial letter on behalf of Mark S. Bennett in regard to his pending matter before the Office of Disciplinary Counsel of the Ohio Supreme Court.

Prior to writing this correspondence I did review your letter dated July 8, 2022. It is my strong opinion that even after being made aware of Mark's wrongful actions, that Mark provides value to the public of the State of Ohio and does not pose a threat to the public of the State of Ohio which would require the public to be protected by the Ohio Attorney Disciplinary System.

I have known Mark for around ten years. I consider him to be a mentor and a friend. I met Mark through the Cleveland legal and political communities and we have stayed in touch since. He is likable, friendly, and always willing to take a phone call or a text message seeking advice or to answer a legal question. Mark is very bright and knowledgeable, and I always enjoy our conversations.

It was not until recently, however, that I had the privilege to work with Mark in a professional setting. It was an incredible experience and one for which I will forever be grateful to Mark. To summarize, in March of 2022 the Beachwood High School indoor track and field team was disqualified from competing in the Ohio Association of Track and Cross-Country Coaches indoor state championship. As a Beachwood City Councilman and concerned community member, I explored legal options to try to prevent the team from being disqualified over a clerical error not caused by any of the student-athletes. Admittedly, I could not have successfully represented these student-athletes under the circumstances because of the amount of work that needed to be performed in a short period.

I turned to Mark and another colleague for help and advice. Without hesitation, Mark dropped everything else he was working on to assist these student-athletes to file an Injunction on a pro bono basis. This turned into an all-day matter, culminating in a 5:00 pm hearing in Cuyahoga County Common Pleas Court on a Friday. Mark did the bulk of the legal work and, despite this being a stressful situation, Mark remained calm, diligent, and professional.

Mark was a pleasure to work with and I hope to be able to co-counsel another matter with him in the future.

Mark obviously made a mistake and was wrong. I think it speaks volumes to Mark's character that he admitted his wrongdoing and decided to self-report his conduct to the Office of Disciplinary Counsel.

Thank you for allowing me the opportunity to write on behalf of Mark S. Bennett. It is my sincere hope that he may resolve this matter and continue to practice law and contribute to the legal and general community of greater Cleveland and the State Ohio.

Very truly yours,

Eric Synenberg

Eric Synenberg

August 4, 2022

VIA ELECTRONIC MAIL

rich@koblentzlaw.com

Mr. Richard S. Koblentz
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

Re: Mark S. Bennett, Esq.

Dear Mr. Koblentz:

I write on behalf of Mark Bennett, who I understand to be under investigation by the Office of Disciplinary Counsel of the Ohio Supreme Court.

Mark has told me about the details of the allegations and has been very forthcoming. I have no personal knowledge about any of the claims. But I do know that Mark understands the seriousness of the allegations and the process, respects the process, and understands the importance of being cooperative, truthful and complete.

I have known Mark for over twenty years. At first, our relationship was based upon a mutual interest in local politics. I remember him to be levelheaded and open to another's opinion. After he went to work at the United States Attorney's Office, we had occasion to work on opposite sides of several cases and investigations. Again, I found Mark to be open, reasonable, approachable and willing to consider another's words. All these attributes helped make Mark a worthy but respected opponent in many difficult situations.

We tried a federal criminal case where I was representing one of two attorneys on trial. The trial was very contentious as Marc's co-counsel propounded misrepresentations and hid evidence. Eventually, defense counsel would only communicate with the government through Marc. At a time when a cool head was needed, Marc stepped up. In a very trying situation, everyone was glad to have Marc representing the United States.

Marc and I have stayed in touch over the years as we have sought advice from each other. I have always respected his opinions and trusted him to be a man of his word. I am troubled by the

claims in this case, but they do not change my opinion of Marc as a principled, trustworthy and honest man. I hope this letter will be considered as you review this matter. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Synenberg", with a long horizontal flourish extending to the right.

Roger M. Synenberg

RMS/kss

5546 Pearl Road
Parma, Ohio 44129
Phone: 216.505.0310
Fax: 216.232.9482
Email: Kelly@ZachariasLaw.com



LAW OFFICE OF
KELLY M.
ZACHARIAS

Ohio Supreme Court
Office of Disciplinary Counsel
65 E. State Street, Suite 1510
Columbus, Ohio 43215

August 4, 2022

To the Committee:

Thank you for the opportunity to present my support for Mark Bennet, Esq. I have known Mark Bennett for over 18 months when he joined our office as a suitemate. From my experience, Mark is a superior lawyer, exhibiting and engaging in the traits of diligence, preparedness, and knowledgeable for his clients. Mark puts forth 110% on all his client matters. I've witnessed Mark prepare more for a criminal arraignment than some people might prepare for a criminal trial. I have had the opportunity to see Mark engage with clients both, in the office and in the courtroom. Mark is a well-respected member of our profession. Mark is honest, trustworthy and an advocate for his clients and the legal system.

Mark was forthcoming with me about the reason he left the US Attorney's office. Mark has been honest throughout our relationship and in my opinion, Mark exhibits great remorse for his conduct. Mark approached me relative to writing a support letter on his behalf, he did not insist, or influence my decision to write this instant letter. I was provided a Testimonial Support Request from Mark's Attorney, Richard Koblentz, which laid out the misconduct engaged in by Mark. Everything contained in the Testimonial Support Letter was already disclosed to me by Mark. Since this investigation, Mark has and continues to openly discuss this matter, including, but not limited to the growth he has made through his counseling sessions. Mark and I have had numerous conversations about his counseling, and in my opinion, he has and continues to take his counseling very seriously.

Mark, engaging in his counseling and therapeutic regimen continues to put in the time and effort required, and, because of that, Mark has gained insight into himself and his past actions.

I strongly believe that Mark acknowledges and is greatly remorseful for his conduct and how his conduct has affected JS. In my experience, Mark is perceptive and considerate of other people, and I don't think he would ever want anyone to feel uncomfortable or violated because of his words or actions.

I would trust and engage Mark to represent myself, my family, or friends if the need arose. In fact, Mark has assisted my family and other referrals that I have sent to him. Mark assisted my mother with an employment contract matter she was in need of legal services for, and I referred a close friend, a local business owner, who received a demand letter over an employment issue to Mark. I also referred to Mark one of my personal long-time clients whose son is an attorney and based upon Mark's performance, he is now assisting in contract negotiations for physicians in Northeast Ohio.

Mark is a committed, caring and faithful father to his 5-year-old daughter, Maya, that he and his wife adopted as an infant when the parents (who are family members) were not able to care for her. When Mark comes into the office on Monday mornings, I hear all about Maya, their two dogs, and what the family did over the weekend. Maya is an active child, and the family is always on the go whether to her baseball games, her friends' birthday parties, going up to Kelley's Island, the zoo and other activities that Maya enjoys.

I believe that Mark is an asset to both the general public of the State of Ohio, as well as the legal profession. Mark is an advocate for his clients, a true gentleman with opposing counsel, and a pillar of professionalism within our Courts. This conduct, engaged in by Mark, in my opinion was a temporary loss of his moral compass, Mark, as I know him, is an exceptional advocate, attorney, counselor and legal professional.

Thank you for your time and consideration of this matter.

Truly yours,

A handwritten signature in black ink, appearing to read "K. Zacharias", written in a cursive style.

Kelly M. Zacharias



Stephen S. Zashin
OSBA Certified Specialist in
Labor and Employment Law
ssz@zrlaw.com

October 5, 2022

Richard S. Koblentz
Koblentz & Penvose, LLC
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

RE: Mark S. Bennett (69823)

Dear Richard:

I have known Mark Bennett professionally for over 30 years. I also know Mark's wife, Rebecca Bennett. I first met Mark in law school and worked with him when he practiced law at Walter Haverfield. We crossed paths when he worked as an Assistant U.S. Attorney. Since his departure from the U.S. Attorney's Office, I hired Mark on several occasions on behalf of my clients. Mark has done a nice job and all of my interactions with him were completely professional.

While I understand and agree the circumstances at the U.S. Attorney's office were significant and troubling to me (and I have read a letter from his counsel outlining his behavior), such behavior appears out of character and I have never seen Mark act in such a manner in all of our professional dealings.

Very truly yours,

ZASHIN & RICH CO., L.P.A.

/s/ Stephen S. Zashin

Stephen S. Zashin

SSZ/cmh

Comprehensive Behavioral Specialists, LLC
30400 Detroit Rd., Ste. 301
Westlake, Ohio 44145
(440)250-8868
Fax: (440)250-8864

May 18, 2022

Re: Mark Bennett (DOB: 7/10/69)

Treatment Summary

Mark Bennett began treatment for anxiety and depression following the loss of his job due to inappropriate behavior with a co-worker. He has been an active participant in treatment since the onset on July 20, 2021. Dates of treatment include: 7/29/21, 8/31/21, 10/19/21, 11/30/21, 2/10/22, 3/24/22, 4/28/22. His next appointment is scheduled for May 26, 2022.

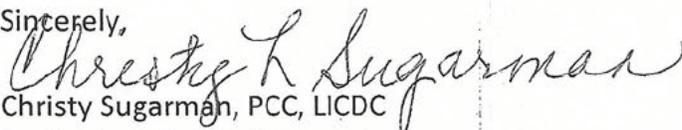
Mr. Bennett meets diagnostic criteria for Adjustment Disorder with anxiety and depressed mood. He is exhibiting remorse and regret over his conduct in the professional setting. He has also shown heightened awareness of maintaining professional boundaries outside of the work setting.

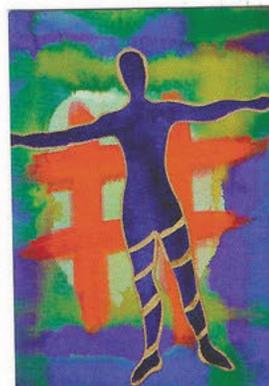
Treatment goals include:

1. Understanding inappropriate behavior and developing healthier professional boundaries.
2. Processing grief and loss of employment, infertility, health issues, changes in relationship with wife.
3. Developing coping skills to help manage anxiety and depressed mood.

Mr. Bennett has exhibited more awareness of inappropriate professional boundaries, as evidenced by his ability to relate recent incidents where he did not respond to females (both in or out of the work setting) in an inappropriate manner. He is developing greater sensitivities about how a co-worker may feel uncomfortable about his comments even while that peer may continue to engage in the banter. We continue to address and work on the development of tools to help cope with anxiety, grief and loss issues.

Please let me know if there is any additional information you may need.

Sincerely,

Christy Sugarman, PCC, LICDC
Professional Clinical Counselor



Comprehensive Behavioral Specialists, LLC
Christy Sugarman, PCC, LICDC
Professional Clinical Counselor-S
Licensed Chemical Dependency Counselor-S

30400 Detroit Road, Suite 301
Westlake, OH 44145

Phone: (440) 250-8868
Fax: (440) 250-8864

JOINT
EXHIBIT

5

Comprehensive Behavioral Specialists, LLC
30400 Detroit Rd., Ste. 301
Westlake, Ohio 44145
(440) 250-8868
Fax: (440) 250-8864

November 30, 2022

Re: Mark Bennett (DOB: 7/10/69)

Treatment Summary

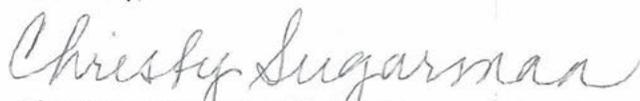
Mark Bennett began treatment on July 20, 2021. Since the last treatment update of May 18, 2022, Mr. Bennett has attended scheduled sessions on 5/26/22, 6/28/22, 7/28/22, 9/1/22 and 10/27/22. His next appointment is scheduled for tomorrow, December 1, 2022.

Mr. Bennett has continued to participate in treatment. Mr. Bennett has continued to gain insight and heightened awareness of situations and conversations as evidenced by his ability to observe and refrain from responding in ways that may be perceived as inappropriate. He is exhibiting increased awareness and sensitivity in both personal and professional settings.

Mr. Bennett is maintaining his engagement in the treatment process. Continued work will focus on continued awareness of his conversation in both work and social settings, as well as continuing to process grief, loss, and anxiety.

Please let me know if there is any additional information you may need.

Sincerely,



Christy Sugarman, PCC, LICDC
Professional Clinical Counselor
Licensed Chemical Dependency Counselor

JOINT
EXHIBIT

6

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

* * *

DISCIPLINARY COUNSEL,

Relator,

vs.

CASE NO. 22-034

MARK BENNETT, ESQUIRE,

ATTORNEY REGISTRATION NO. 0069823

Respondent.

* * *

Deposition of CHRISTY SUGARMAN, MA, PCC,
LICDC, Witness herein, called by the Relator for
cross-examination pursuant to the Rules of Civil
Procedure, taken before me remotely, Stacey M.
Mortsof, RPR, CRR, a Notary Public in and for the
State of Ohio, at the offices of Christy Sugarman,
30400 Detroit Road, Suite 301, Westlake, Ohio,
44145, on Thursday, January 19, 2023, at
12:08 p.m.

* * *

JOINT
EXHIBIT

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I N D E X

WITNESS: CHRISTY SUGARMAN, MA, PCC, LICDC

EXAMINATION	PAGE
BY MR. PENVOSE:.....	4
BY MR. KANAI:.....	30

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Joint Exhibit 5	Treatment Summary dated May 18, 2022...	15
Joint Exhibit 6	Treatment Summary dated November 30, 2022.....	15

1 REMOTE APPEARANCES:

2 On behalf of the Relator:

3 The Office of Disciplinary Counsel
4 The Supreme Court of Ohio

5 By: Matthew Kanai

6 Attorney at Law
7 65 East State Street
8 Suite 1510
9 Columbus, Ohio 43215
10 matthew.kania@sc.ohio.gov
11 (614) 387-9700

12 On behalf of the Respondent:

13 Koblentz, Penvose & Froning, LLC

14 By: Bryan Penvose

15 Richard S. Koblentz
16 Attorneys at Law
17 3 Summit Park Drive
18 Suite 440
19 Independence, Ohio 44131
20 (216) 621-3012

21 * * *

22
23
24
25

1 CHRISTY SUGARMAN, MA, PCC, LICDC
2 of lawful age, Witness herein, having been first
3 duly cautioned and sworn, as hereinafter
4 certified, was examined and said as follows:

5 CROSS-EXAMINATION

6 BY MR. PENVOSE:

7 Q. Hello, Ms. Sugarman. I'm Brian.
8 I think we've spoken on the phone but we
9 actually --

10 A. Right. Right.

11 Q. It's good to put a face to the
12 name. For the record, can you please state
13 your name?

14 A. Christy Sugarman.

15 Q. And have you ever been deposed
16 before?

17 A. No.

18 Q. Are you a little bit nervous about
19 being deposed for the first time?

20 A. Very.

21 Q. Well, that is perfectly --

22 MR. KOBLENTZ: Brian, I think what
23 you might want to do, put in -- you know, say that
24 we're here for the deposition of Christy Sugarman
25 in the case of --

1 MR. PENVOSE: Got it, Rich. She has
2 the caption. Yeah. Okay.

3 BY MR. PENVOSE:

4 Q. So you're perfectly -- it's
5 perfectly okay that you're a little bit
6 nervous. I promise that myself and Mr. Kanai,
7 if he has any questions at all for you, will be
8 as accommodating as we can.

9 As Rich pointed out, we are here
10 on the matter before the Board of Professional
11 Conduct on the Supreme Court of Ohio,
12 Disciplinary Counsel versus -- as relator
13 versus Mark Bennett, respondent, Case Number
14 22-034.

15 Do you have permission,
16 Ms. Sugarman, to testify from Mr. Bennett
17 today?

18 A. Yes.

19 Q. And are you appearing voluntarily
20 without the requirement of any subpoena being
21 issued to you by our office?

22 A. Yes.

23 Q. And since we're conducting this
24 deposition via video conferencing, just a
25 couple questions about that. What location are

1 you giving this deposition from?

2 A. 30400 Detroit Road, Suite 301,
3 Westlake, 44145.

4 Q. And that's the address of your
5 professional office?

6 A. Yes.

7 Q. Is there anyone else in the room
8 with you today?

9 A. No.

10 Q. Okay. I'm going to run through
11 just a couple quick ground rules for you so
12 that we make we're on the same page as we
13 engage in our conversation today. Unlike a
14 normal conversation, we have a court reporter
15 with us today, Stacey, who is making a written
16 record of everything we say. So it's important
17 for you to let me finish my question before you
18 respond. Do you understand?

19 A. Yes.

20 Q. And because a written record is
21 being produced, I'm going to ask that you
22 answer my questions verbally. Sometimes we
23 make noises in place of yeses or nos like
24 uh-huh or uh-uh or shrugs, but we need to use
25 the word yes and no, or I'm going to remind you

1 to respond verbally. Do you understand?

2 A. Yes.

3 Q. Some people have difficulty in
4 distinguishing between what they know and what
5 they don't remember, and there is a difference.
6 Please understand that saying I don't know or I
7 don't recall is a perfectly suitable or valid
8 answer. There is a difference, however, and
9 I'm going to ask you to be precise in your
10 deposition today. Do you understand the
11 difference between those two phrases?

12 A. Yes.

13 Q. We plan to be very brief today,
14 but please let me know if you need a break, and
15 we'll do our best to accommodate you at any
16 point in time. And if you don't understand my
17 question, I'm going to ask that you please let
18 me know why you don't understand it and that
19 you don't understand it. And if you do that,
20 I'll be happy to repeat it or rephrase it or
21 break it down in such a way that we can agree
22 that we understand the question posed. Do you
23 understand?

24 A. Yes.

25 Q. Have you brought any notes or

1 documents to the deposition with you today?

2 A. The two treatment summaries that I
3 provided earlier. My -- my qualifications list
4 and the treatment notes.

5 Q. Very good. So I think we're going
6 to take a look at some of the two treatment
7 summaries that you referenced a little bit
8 later on in our deposition, but thank you for
9 identifying those documents for us. Do you
10 understand that your testimony that you're
11 about to give today is in relation to an
12 attorney disciplinary matter involving Mark
13 Bennett before the Ohio Board of Professional
14 Conduct?

15 A. Yes.

16 Q. Do you further understand that the
17 transcript of your deposition testimony today
18 will most likely be submitted as evidence to
19 the members of the hearing panel in that
20 attorney disciplinary matter?

21 A. Yes.

22 Q. And you are testifying today in
23 your capacity and role as the treating
24 clinician for Mr. Mark Bennett, correct?

25 A. Yes.

1 Q. And is it true that we've arranged
2 to take your deposition today via video
3 conferencing as you are unable to testify and
4 travel to Columbus for the hearing scheduled in
5 his disciplinary matter on February 2nd, 2023?

6 A. Yes.

7 Q. What documents -- pardon me. What
8 documents, if any, have you reviewed in
9 preparation for your deposition today? Any
10 documents you have previously identified?

11 A. Well, whatever you had sent me,
12 the --

13 Q. Two treatment summaries?

14 A. Yes. Well, yes. Yes. And this
15 one with the --

16 Q. Oh, I sent you a draft --

17 A. Right.

18 Q. -- of the stipulations that the
19 parties are discussing entering into --

20 A. Right.

21 Q. -- as they currently exist --

22 A. Yes. Yes.

23 Q. -- so you understand some of the
24 facts involved in this matter?

25 A. Right.

1 Q. Okay. Have you reviewed your
2 notes, your treating notes in preparation?
3 Okay. I want to quickly run through some of
4 your qualifications, your background. Can you
5 please let us know what degrees you've attained
6 and from where and when?

7 A. I have a bachelor's general
8 studies degree from Kent State, 1980. John
9 Carroll University master's in counseling,
10 1995. Post master's clinical counseling at
11 John Carroll, 1996.

12 Q. Okay. Very good. Any other
13 degrees that you did not list already?

14 A. No.

15 Q. Okay. What professional licenses,
16 if any, do you hold?

17 A. I'm a Licensed Professional
18 Clinical Counselor licensed by the State of
19 Ohio and a Licensed Chemical Dependency
20 Counselor.

21 Q. And those licenses are held in
22 Ohio?

23 A. Yes.

24 Q. Do you hold licenses in any other
25 state jurisdictions?

1 A. No.

2 Q. Do your licenses allow you to make
3 diagnoses?

4 A. Yes.

5 Q. And, I'm sorry. If you already
6 said it, I missed it. When did you receive
7 those licenses?

8 A. 1998.

9 Q. And those licenses remain in good
10 standing since?

11 A. Yes.

12 Q. Okay. Now, if you could quickly
13 run me through your professional employment
14 history chronologically since you graduated
15 from John Carroll, where, when, what position
16 you've held.

17 A. Okay. Recovery Resources from
18 1995 to 2000. Psychologic -- or Psychiatric
19 and Psychological Services from 2000 to 2005.
20 Psychological Behavioral Counseling from 2005
21 to 2008.

22 Q. And that's --

23 A. And --

24 Q. -- as a therapist? I'm sorry. Is
25 that as a therapist?

1 A. Yes. Yes. Yeah. And then 2008
2 to present here at Comprehensive Behavioral
3 Specialists.

4 Q. Okay. Thank you. I apologize for
5 interrupting you. Are you a principal of the
6 current outfit with which you're affiliated,
7 Comprehensive Behavioral --

8 A. Yes.

9 Q. -- Specialists, LLC? Okay?

10 A. Yes.

11 Q. And, if you could, without naming
12 them individually, are there any other mental
13 health individuals affiliated with that
14 professional entity and, if so, how many?

15 A. Four.

16 Q. Okay. And your offices are
17 located at the address you previously provided
18 us?

19 A. Yes.

20 Q. So by my math, listening to your
21 educational background, your employment
22 history, it sounds like you've been either in
23 the agency or private setting -- practice
24 setting for about 28 years, is that right?

25 A. Correct. Yes.

1 Q. And what demographic of the
2 populations in our society do you serve?

3 A. All ages.

4 Q. Is there a particular age or group
5 that you serve more than others?

6 A. Probably adults a little more than
7 children.

8 Q. Okay. But you also counsel with
9 children and adolescents?

10 A. Yes.

11 Q. And you engage not only
12 individuals but also couples and family
13 therapy?

14 A. Yes. Correct.

15 Q. And do you have any specialties
16 that you focus your practice in?

17 A. I have a license in chemical
18 dependency. I work with mood disorders, family
19 counseling, individual couples counseling.

20 Q. What about -- what type of -- what
21 type of diagnoses do you typically treat?

22 A. Mood disorders, anxiety,
23 depression, bipolar disorder, attention deficit
24 disorder, autism spectrum disorders, chemical
25 dependency.

1 Q. Okay. And just so the record's
2 clear here, as it relates to Mr. Bennett, we're
3 not talking about any chemical dependency
4 issues, right?

5 A. No. Absolutely not.

6 Q. Now, do you hold any memberships
7 with any professional associations?

8 A. National Board Certified Counselor.

9 Q. Any other associations?

10 A. No.

11 Q. Okay. And do you hold any other
12 degrees or professional certificates or
13 licenses other than those which you've already
14 identified for us?

15 A. No.

16 Q. Okay. Great. So now I have some
17 questions that relate directly to Mr. Bennett.
18 Do you know Mr. Bennett, Mark Bennett?

19 A. Yes. Yes.

20 Q. Is he a -- is he a client of
21 yours?

22 A. Yes.

23 Q. Did you know Mr. Bennett before he
24 was a client of yours?

25 A. No.

1 Q. Okay. And I can put them on the
2 screen if you'd like, but I've asked you to
3 print them out and also have them in front of
4 you, but to make sure we're talking about the
5 same thing, I'm going to share what's been
6 marked as Joint Exhibit 5. And let me see if I
7 can screen share that real quick.

8 (Thereupon, Joint Exhibit 5,
9 Treatment Summary dated May 18, 2022, was marked
10 for purposes of identification.)

11 (Thereupon, Joint Exhibit 6,
12 Treatment Summary dated November 30, 2022, was
13 marked for purposes of identification.)

14 (Thereupon, Plaintiff's Joint
15 Exhibit 5, treatment summary from May, was marked
16 for purposes of identification.)

17 BY SMR. PENVOSE:

18 Q. Do you have that document in front
19 of you as well?

20 A. Yes. Yes. Yes.

21 Q. Okay. And can you tell me what
22 Joint Exhibit 5 is?

23 A. It's a treatment summary from
24 May 18th of 2022.

25 Q. Okay. And this is a document that

1 you authored?

2 A. Yes.

3 Q. And that you had previously
4 provided to our office?

5 A. Yes.

6 Q. Okay. I'm going to take that one
7 down, and I'm going to show you the next, I
8 hope. There we are. Okay.

9 (Thereupon, Joint Exhibit 6,
10 Treatment Summary, was marked for purposes of
11 identification.)

12 BY MR. PENVOSE:

13 Q. Okay. Do you have this same --
14 what's been marked as Joint Exhibit Number 6
15 before you --

16 A. Yes.

17 Q. -- in hard copy?

18 A. Yes.

19 Q. Okay. And can you tell me what
20 Joint Exhibit 6 is?

21 A. A treatment summary from
22 November 30th, 2022.

23 Q. And this is a document that you
24 authored?

25 A. Yes.

1 Q. Relating to your treatment of
2 Mr. Bennett?

3 A. Yes.

4 Q. And that you previously provided
5 to our office?

6 A. Yes.

7 Q. Are both Joint Exhibits Number 5
8 and 6 true and accurate copies of those
9 treatment summaries which you've provided to
10 us?

11 A. Yes.

12 Q. When did Mark -- Mr. Bennett begin
13 his treatment with you?

14 A. July 20th, 2021.

15 Q. So approximately 18 months ago?

16 A. Yes.

17 Q. All right. And I'm curious. Do
18 you know whether or not he sought treatment
19 with you before or after these attorney
20 disciplinary proceedings commenced?

21 A. Prior.

22 Q. Did he express to you why he was
23 seeking treatment with you? And I'm going
24 to --

25 A. Yes.

1 Q. Let me give you a general caveat.
2 As I continue to ask you questions, so that we
3 protect other individuals in this record, I'm
4 going to ask you, if there are persons other
5 than Mr. Bennett, that you don't identify them
6 by name, but, rather, that you just speak in
7 generalities, okay? Coworker, wife, that sort
8 of thing. Do you understand?

9 A. Yes.

10 Q. Okay. So I think I missed your
11 answer. Did he express why he was seeking
12 treatment with you?

13 A. Yes.

14 Q. And what did he express?

15 A. He expressed that there had been
16 an inappropriate interaction between him and a
17 coworker, and that he was -- he was remorseful
18 and wanted to learn more appropriate ways to
19 deal with situations both in the workplace and
20 in his personal life.

21 Q. So if I'm understanding your
22 number, he expressed to you that he hoped to
23 gain from his treatment with you an ability to
24 better understand scenarios and how to set up
25 appropriate boundaries and conduct himself

1 appropriately in those settings, is that
2 correct?

3 A. Yes.

4 Q. Is there anything else that he
5 expressed to you that he hoped to gain from his
6 treatment with you?

7 A. More of an understanding of his
8 behavior and why it happened.

9 Q. Did he want to ensure that that
10 behavior you're talking about was appropriate
11 under future circumstances?

12 A. Right. Yes.

13 Q. And what is your understanding
14 factually of what happened that led Mr. Bennett
15 to being separated from his employment? Let's
16 back up. Do you know where he was previously
17 employed?

18 A. Yes.

19 Q. And where was that?

20 A. Exactly, I don't know. But he was
21 employed by, I understand, the federal
22 government. He was an attorney.

23 Q. Very good.

24 A. Correct. Yeah.

25 Q. So let me back up to my preceding

1 question. What is your understanding factually
2 of what happened that led to Mr. Bennett being
3 separated from that employment?

4 A. He had made inappropriate gestures
5 and had inappropriate interactions both in the
6 office and online through social media with
7 a -- an intern in his office.

8 Q. Okay. And was that loss of
9 employment something that he's expressed to you
10 has troubled him?

11 A. Absolutely. Yes.

12 Q. And I'm curious. When you
13 mentioned the documents that you reviewed and
14 had in front of you today, and I disclosed that
15 we provided draft of the stipulations so that
16 you're aware of some of the facts involved in
17 this attorney disciplinary matter, correct?

18 A. Yes.

19 Q. You've had an opportunity to
20 review those?

21 A. Yes.

22 Q. And are those facts as you
23 reviewed them in our draft stipulations
24 consistent with facts that Mark has related to
25 you in the course of his counseling with you?

1 A. Yes.

2 Q. Has he expressly stated to you or
3 expressed to you that he understood --
4 Mr. Bennett understood his behavior is what led
5 him to losing his job?

6 A. Yes.

7 Q. Okay. And how regularly are you
8 meeting with Mr. Barnett for your counseling
9 sessions?

10 A. About once a month.

11 Q. Okay. And so if we -- I'm not
12 going to put it up on the screen, but everybody
13 should have the exhibit, and you do in front of
14 you. It looks like on Joint Exhibit 5 you have
15 the dates of 7-29-21; 8-31-2021; 10-19-2021;
16 11-30-2021; February 10th, 2022; March 24th,
17 2022, April 28, 2022, May 26, 2022, June 28,
18 2022; July 28, 2022; September 1st, 2022; and
19 October 27th, 2022, and then finally
20 December 1st, 2022, as the dates on which you
21 met with Mr. Bennett for therapy sessions. Is
22 that accurate?

23 A. Yes.

24 Q. Okay. And then if you look at
25 Joint Exhibit Number 6, which was then added

1 subsequently on November 30th, 2022 -- oh, I'm
2 sorry. I already included some of those dates.
3 And then I think you -- additionally in -- to
4 the dates that we already identified on Joints
5 Exhibits 5 and 6, that you've met with him on
6 January 10th of 2023, correct?

7 A. Yes.

8 Q. So that's about 14 sessions by my
9 count. Am I missing any?

10 A. No. No.

11 Q. Is Mr. Bennett continuing to
12 engage and schedule sessions for his treatment
13 with you?

14 A. Yes.

15 Q. And your conversations during your
16 sessions with Mr. Bennett, do you believe that
17 he's been both candid and forthcoming with you?

18 A. Yes.

19 Q. Has Mr. Bennett been diagnosed
20 with any psychological or emotional condition
21 or disorder?

22 A. Anxiety and depression.

23 Q. And who made those diagnoses?

24 A. Myself.

25 Q. Okay. Your licensure allows you

1 to make diagnoses?

2 A. Yes. Yes.

3 Q. In making those diagnoses, what
4 are Mr. Bennett's treatment goals that you have
5 been working on with him?

6 A. They have been, of course,
7 increasing awareness of professional behavior,
8 boundaries, and also more appropriate
9 boundaries in his social interaction with
10 people. Processing grief and loss of his
11 employment, and some other issues in his
12 personal life, as well as developing coping
13 skills to help him in the anxiety and
14 depression.

15 Q. And those are the treatment goals
16 that you've also listed on Joint Exhibit
17 Number 5, correct?

18 A. Yes.

19 Q. And I also want to back up because
20 I notice on Joint Exhibit Number 5 that you
21 identify his diagnosis as adjustment disorder
22 with anxiety and depressed mood, and that was
23 dated May 18th of 2022, so has that diagnosis
24 changed?

25 A. The diagnosis -- the only piece of

1 the diagnosis that has changed is from
2 adjustment disorder to anxiety, generalized
3 anxiety disorder, and major depression --

4 Q. Okay.

5 A. -- disorder.

6 Q. In layman's terms, can you
7 distinguish for me the difference between, you
8 know, adjustment disorder diagnosis and then
9 the diagnosis to depression and anxiety?

10 A. So anxiety disorder is simply
11 something going on in life at this moment that
12 is creating disturbances of mood. After six
13 months, if the symptoms are still present, it
14 gets changed to anxiety and depression rather
15 than the adjustment disorder because it's
16 longer term.

17 Q. I understand. So the adjustment
18 disorder is a more short-term situation?

19 A. Right. Right.

20 Q. Understood. And so Mr. Bennett
21 has now diagnoses of anxiety and depression,
22 which is something that he's continuing to work
23 on with you?

24 A. Right. Yes.

25 Q. Okay. So does Mr. Bennett have a

1 better understanding and awareness of how to
2 establish appropriate boundaries in both
3 professional and personal settings since
4 beginning his treatment with you?

5 A. Yes.

6 Q. And, in fact, I believe you talk a
7 little bit about that in Joint Exhibit
8 Number 6, correct?

9 A. Yes.

10 Q. You write continued work will
11 focus on a continued awareness of his
12 conversation in both work and social settings
13 as well as continuing to process grief, loss
14 and anxiety. Did I read that correctly?

15 A. Yes.

16 Q. And in your opinion is Mark
17 continuing to make progress in his treatment?

18 A. Yes.

19 Q. And you talk about that as well in
20 both Joints Exhibit Number 5 and 6 as well,
21 correct?

22 A. Yes.

23 Q. The progress that he's making?
24 Thank you. I think you might have mentioned it
25 earlier. Has Mr. Bennett expressed to you

1 remorse for his conduct that led to his loss of
2 employment with the United States government?

3 A. Yes.

4 Q. Do you find him and believe him to
5 be remorseful for that conduct?

6 A. Yes. Yes.

7 Q. Has he expressed regret to you
8 over what occurred?

9 A. Yes, he has.

10 Q. Okay. And do you think that that
11 remorse and that regret have served him into
12 now hopefully better understanding his
13 heightened awareness of maintaining
14 professional boundaries outside the work
15 setting?

16 A. Yes.

17 Q. Have you equipped Mr. Bennett --
18 and I don't know if this is the correct term.
19 Please correct me if I'm wrong. But have you
20 put Mark with what we call a toolbox that he
21 can utilize, that he can use to help avoid
22 engaging in the type of inappropriate behavior
23 that he did in the past with the intern at his
24 employment?

25 A. Yes.

1 Q. And what are some of those tools
2 in that toolbox?

3 A. Well, I think, first of all, that
4 heightened awareness and kind of steps to take
5 if he finds himself in a situation that may --
6 may lead to inappropriate talk or conduct that
7 he leaves the setting and comes back when he's
8 feeling like he can continue in an appropriate
9 way. And from conversations with him, he's not
10 had any issues in the workplace. There have
11 been more social situations that have come up
12 that he has greater awareness that he needs to
13 not react the way he had in -- in the past
14 prior to treatment.

15 Q. So is it your understanding
16 through your counseling session that not only
17 has he learned some of these tools, but he's
18 also utilizing them and --

19 A. Yes. Yes.

20 Q. Do you have an opinion to a
21 reasonable professional certainty whether or
22 not Mr. Bennett is likely to repeat the
23 behavior that brought him before the panel in
24 these disciplinary proceedings that also caused
25 him to lose his employment with the United

1 States government?

2 A. Yes.

3 Q. Yes, you have an opinion? So, if
4 so, what is that opinion?

5 A. My professional opinion is that he
6 is able to engage in competent and ethical
7 practice. There's not been any cognitive
8 impairment noticed, and his thought content is
9 organized and normal. No indication of any
10 hallucinations or delusions. Affect and speech
11 have been within normal limits.

12 Q. So if I'm understanding your
13 answer, it's your professional opinion that you
14 do not believe Mr. Bennett would repeat the
15 behavior that led him to this circumstance?

16 A. Correct.

17 Q. Okay. And I think if I further
18 break down that answer, it's your professional
19 opinion to -- that you don't think that there's
20 anything that precludes Mr. Bennett from
21 continuing in the practice of the ethical and
22 competent practice of law?

23 A. No.

24 Q. Okay. Do you have an opinion to a
25 reasonable professional certainly whether or

1 not Mr. Bennett possesses the requisite
2 character and fitness to engage in the
3 competent and ethical practice of law?

4 A. Yes.

5 Q. What is that opinion?

6 A. That he is competent and able to
7 practice law --

8 Q. And has that --

9 A. -- and ethical. Pardon?

10 Q. And he has the requisite character
11 and fitness to --

12 A. Yes. Yes.

13 Q. And any and all opinions which
14 you've shared with us today relative to
15 Mr. Bennett are to a reasonable degree of
16 professional certainty, meaning more likely
17 than not? Is that correct?

18 A. Yes. Yes.

19 Q. And those same opinions which
20 you've expressed are based upon your experience
21 in counseling Mr. Bennett specifically as well
22 as your overall professional experience, skill,
23 and knowledge. Is that right?

24 A. Yes.

25 MR. PENVOSE: Okay. I have no

1 further questions for you at this time. I don't
2 know if Mr. Kanai has any.

3 MR. KANAI: Yeah, I have a couple of
4 questions, Ms. Sugarman.

5 * * *

6 CROSS-EXAMINATION

7 BY MR. KANAI:

8 Q. First, you did say in response to
9 one of Mr. Penrose's questions that there was
10 nothing in the stipulations, that the
11 stipulations were consistent with your
12 understanding of the facts that Mr. Bennett had
13 given you. I'm just going to ask kind of the
14 reverse of that question. Was there anything
15 in the stipulations that was inconsistent with
16 any of the facts that you discovered from
17 Mr. Bennett?

18 A. No.

19 Q. Okay. This was a question -- I
20 wasn't quite sure how Penrose phrased it, but I
21 believe the question was something along the
22 lines of do you believe he is remorseful about
23 his conduct involving -- that led to the loss
24 of his employment. I guess I want to kind of
25 hone in on that. When you said that he was

1 remorseful and exhibiting remorse, did you mean
2 that he was remorseful that he lost his
3 employment or that he was remorseful for the
4 actual conduct that led to the loss of his
5 employment?

6 A. For the actual conduct that led to
7 his unemployment.

8 Q. Okay. So does that mean during
9 the course of your counseling you feel that
10 he's accepted responsibility for the conduct?

11 A. Absolutely. Yes. And he accepted
12 responsibility from the beginning.

13 Q. And without going into any
14 specific details, I know that the conduct that
15 you were talking about specifically was conduct
16 related to a legal intern. Did he talk about
17 any other conduct that he was alleged to have
18 committed related to his federal employment?

19 A. I don't recall.

20 MR. KANAI: Okay. Those are the only
21 questions that I have.

22 MR. PENVOSE: Thank you, Matt. Rich,
23 before we close up, is there anything that I
24 missed that you want to chime in?

25 MR. KOBLENTZ: Nothing. Just simply

1 just go over the inclusion of signature. That's
2 it.

3 MR. PENVOSE: Right. So,
4 Ms. Sugarman, you have the ability, if you'd like,
5 to review your transcript if you would like and
6 check the transcript for any errors, or you have
7 the ability to waive that right and -- by saying
8 you waive signature. What would you like to do?
9 Would you like to review or waive your signature
10 to the transcript?

11 THE WITNESS: I'll waive.

12 MR. PENVOSE: I communicated with
13 your scheduler that if I could have an expedited
14 copy by Tuesday, is that possible, at the latest?

15 THE COURT REPORTER: Yes.

16 MR. KANAI: I don't need a copy.

17 (Thereupon, the deposition was
18 concluded at 12:39 p.m.)
19
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25

1 STATE OF OHIO)
2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Stacey M. Mortsolf, a Notary Public
4 within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named CHRISTY SUGARMAN, MA, PCC, LICDC, was
8 by me first duly sworn to testify the truth, the
9 whole truth and nothing but the truth.

10 Said testimony was reduced to writing
11 by me stenographically in the presence of the
12 witness remotely and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action, nor
17 am I, or the court reporting firm with which I am
18 affiliated, under a contract as defined in Civil
19 Rule 28(D).

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25

1 IN WITNESS WHEREOF, I have hereunto set my
2 hand and seal of office at Dayton, Ohio, on this
3 24th day of January, 2023.
4

5
6 
7

8 STACEY M. MORTSOLF, RPR, CRR
9 NOTARY PUBLIC, STATE OF OHIO
10 My commission expires 5-31-2025
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and
(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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6. I understand that the alleged misconduct in paragraph no. 5 of this affidavit is the subject of Case No. 22-034, pending before the Board of Professional Conduct.
7. Mr. Bennett has authorized me, as his attorney, to provide this affidavit testifying as to the issue of whether his resignation in January 2021 from his employment as an AUSA was effectively a sanction resulting from the alleged misconduct, i.e., an acceptance by Mr. Bennett of his otherwise inevitable removal from his employment arising from the actions which were the subject of the investigation referred to in paragraph no. 5 of this affidavit. For the purposes of the clarity of the record, any waiver of the attorney-client privilege held by Mr. Bennett is limited to this issue alone for the purposes of providing this affidavit. Mr. Bennett has not and does not waive any right to attorney-client privilege beyond that very limited scope.
8. After the investigation was concluded, Mr. Bennett received notice from the USAO on November 18, 2020 stating that the USAO was proposing that he be removed from his position as an AUSA and from the federal service, no sooner than 30 days from the date of that notice, based on the results of the investigation that included the conduct referred to in paragraph no. 6 of this affidavit. It was clear to me that Mr. Bennett was ultimately going to be removed from his employment as an AUSA.
9. Accepting the position put forth by his employer, Mr. Bennett resigned from his employment as an AUSA.
10. Before receiving the November 18, 2020 letter proposing his removal, Mr. Bennett did not intend to resign from the OUSA and intended to stay at the USAO for his entire career.
11. By resigning, Mr. Bennett avoided the time, expense, and some of the difficult emotional experience that would have been involved in contesting the notice of removal which I told Mr. Bennet was, in all likelihood, inevitable.
12. By choosing to resign rather than eventually be removed, Mr. Bennett's personnel record (commonly known as an SF-50) would denote that Mr. Bennett "resigned after receiving written notice on November 18, 2020, of proposal to separate" rather than "removed," which would have been recorded had the entire removal process been carried out.
13. For the reasons stated above, it is my view and professional opinion that Mr. Bennett's resignation as an AUSA was in response to an almost certain removal by the USAO.

FURTHER AFFIANT SAYETH NAUGHT.

Christopher R Landrigan

CHRISTOPHER R. LANDRIGAN

STATE OF Florida)
Pasco COUNTY)

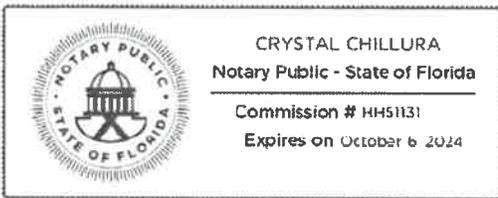
ss: **AFFIDAVIT OF
CHRISTOPHER R. LANDRIGAN**

Subscribed and sworn to (or affirmed) before me on this 24th day of January, 2023, by Christopher R. Landrigan proved to me on the basis of satisfactory evidence to be the person who appeared before me. Physical Presence, Online Notarization

ID Provided Virginia Driver's License

WITNESS my hand and official seal.

My commission expires: 10/06/2024



Crystal Chillura
NOTARY PUBLIC Crystal Chillura

Notarized online using audio-video communication