

**IN THE SUPREME COURT  
STATE OF MISSOURI**

**IN RE:**

**GAYLARD T. WILLIAMS,**

P.O. Box 4542

St. Louis, MO 63108-0542

Missouri Bar No. 33289

Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Supreme Court No. SC98245**

---

**INFORMANT'S BRIEF**

---

ALAN D. PRATZEL #29141  
Chief Disciplinary Counsel

MARC A. LAPP #34938  
Special Representative - OCDC  
515 Dielman Road  
St. Louis, MO 63132-3610  
(314) 440-9337 – Telephone  
(314) 966-2904 – Fax  
Email: [specialrep@gmail.com](mailto:specialrep@gmail.com)

**ATTORNEYS FOR INFORMANT**

**TABLE OF CONTENTS**

COVER PAGE ..... 1

TABLE OF CONTENTS ..... 2

TABLE OF AUTHORITIES..... 4

STATEMENT OF JURISDICTION ..... 6

STATEMENT OF FACTS ..... 7

    1. INTRODUCTION ..... 7

    2. PRELIMINARY FACTS ..... 7

    3. A.B.’s PERSONAL LIFE ..... 8

    4. A.B. AND RESPONDENT’S HISTORY ..... 9

    5. THE GRANDPARENT VISITATION CASE..... 12

    6. ALLEGED MISCONDUCT BY RESPONDENT ..... 13

    7. RESPONDENT’S TESTIMONY..... 26

    8. THE DISCIPLINARY HEARING PANEL’S DECISION ..... 26

POINTS RELIED ON

    I..... 31

    II..... 32

ARGUMENT

    I..... 34

    II..... 48

CONCLUSION ..... 57

CERTIFICATE OF SERVICE..... 58  
CERTIFICATION: RULE 84.06(c)..... 58

**TABLE OF AUTHORITIES**

**CASES**

*Atty. Griev. Comm’n of Md. v. Hall*, 969 A.2d. 953 (Md. App. 2009)..... 51

*In re Bergman*, SC 94689 (Mo. 2015) ..... 50

*In re Forck*, 418 S.W.3d 437 (Mo. banc 2014)..... 55, 56

*In re Gardner*, 565 S.W.3d 670 (Mo. banc 2019)..... 53

*In re Hoffmeyer*, 656 S.E.2d 376 (S.C. 2008)..... 50, 52

*In re Howard*, 912 S.W.2d 61 (Mo. banc 1995) ..... 33, 49, 53, 55

*In re Liebowitz*, 516 A.2d 246 (N.J. 1985)..... 52

*In re McMillin*, 521 S.W.3d 604 (Mo. banc 2017) ..... 53

*In re Oliver*, 285 S.W.2d 648 (Mo. banc 1956) ..... 53

*In re Schuessler*, 578 S.W.3d 762 (Mo. banc 2019) ..... 31, 34

*In re Tsoutsouris*, 748 N.E.2d 856 (Ind. 2001) ..... 50

*In the Matter of Hall*, 761 S.E.2d 51 (Ga. 2014) ..... 33, 56

*In the Matter of John R. Russo, Jr., A Judge of the Superior Court of the State of New Jersey*, #082636, Supreme Court of New Jersey, D100 September Term 2018..... 46

*Osborne v. Purdome*, 244 S.W.2d 1005, 1017 (Mo. banc 1951) (concurring opinion, Conkling, J.) ..... 52, 56

**OTHER AUTHORITIES**

ABA Comm. On Ethics and Prof’l Responsibility, Formal Op. 92-364 (July 6, 1992) ..... 50

ABA Standards for Imposing Lawyer Sanctions (1991) ..... 32, 33, 48, 53, 55

ABA/BNA Lawyer’s Manual on Professional Conduct, Conflicts of Interest:

Sexual Relations (Jan. 30, 2019) ..... 49

Etienne G. Krug, World Health Organization, World Report on Violence and

Health, Chapter 6 Sexual Violence Vol. 2 (2002) pg. 157 ..... 46

Deborah Smith, Senior Knowledge and Information Analyst, National Center for State

Courts, What Judges Need to Know About the Neurobiology of Sexual Assault

(2017) .....38

**RULES**

Missouri Supreme Court Rule 4-1.7(a)(2) ..... 31, 33, 34, 57

Missouri Supreme Court Rule 4-1.8(j)..... 31, 33, 34, 35, 57

Missouri Supreme Court Rule 4-8.4(d)..... 31, 33, 34, 57

Missouri Supreme Court Rule 5.225(a)(2)..... 33, 51, 52, 55

## **STATEMENT OF JURISDICTION**

This action is one in which Informant, the Chief Disciplinary Counsel, is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, RS MO 2016.

## **STATEMENT OF FACTS**

### **1. Introduction**

The Information herein charged Respondent, Gaylard T. Williams with violations of Rules 1.7(a)(2), 1.8(j) and 8.4(d) for engaging in sexual relations with his client, A.B.<sup>1</sup> during the course of the legal representation when no consensual sexual relationship existed between them when the client-lawyer relationship commenced.

Two witnesses testified at the disciplinary hearing, A.B. and Respondent. Following the hearing, but before the decision, the Chair of the Disciplinary Hearing Panel became ill and was unable to participate in the decision. Consequently, the panel's decision was rendered by the two remaining members.

The panel determined that A.B. was not a credible witness and recommended dismissal of the Information.

Informant rejected the panel's findings and recommendations and seeks the Court's de novo review.

### **2. Preliminary Facts**

Informant is the Chief Disciplinary Counsel appointed by the Court pursuant to Rule 5.06. (Vol. 1, pg. A3, A7)<sup>2</sup>.

---

<sup>1</sup> Initials are used to protect the identity of the witness.

<sup>2</sup> Citations to the volume and page number of the Appendix are denoted by reference followed by the exhibit number, if applicable, for example, "(Vol. 1, pg. A308) (Ex. 10)."

Respondent was licensed as an attorney in Missouri on October 10, 1986. His bar number is 33289. **(Vol. 1, pg. A3, A7).**

Respondent's disciplinary history consists of a letter of admonition dated May 10, 2000 for violating Rule 1.4 on communication by failing to timely notify his client of court judgment entries and failing to affirmatively inform his client of the time limitations to file Applications for Trial De Novo which precluded his client from filing said Applications within the specified time allowed. **(Vol. 2, pg. A314-A315) (Ex. 12).**

Respondent practices law out of his personal residence located at 2543 Ada Avenue Jennings, MO 63136. **(Vol. 1, pg. A36).**

### **3. A.B.'s Personal Life**

A.B. was born in 1962 and grew up in St. Louis. During her childhood, she witnessed her father being physically abusive to her mother. **(Vol. 1, pg. A61-A62).** Also, her father was verbally and physically abusive to A.B. **(Vol. 5 Sealed, pg. A601).** A.B. graduated Southwest High School in 1980, and then attended some college at UMSL, SLU, and in Tacoma, Washington. **(Vol. 1, pg. A61-A62).**

A.B. worked at Boeing in Washington, the Office of Administration, and then from 2002-2012 at the U.S. Record Center in St. Louis. **(Vol. 1, pg. A79-A80).**

A.B. has four children: A(1), A(2) (deceased), A(3), and E(1). **(Vol. 1, pg. A81).**

During her marriage between 1988-1995, A.B. testified that her husband was physically abusive to her and her sons. **(Vol. 1, pg. A82-A83).**

A.B. divorced her husband in 1995. **(Vol. 1, pg. A83).**



A.B.'s son, A(2), was murdered in drug-related activity on August 6, 2009. A.B. saw him dead on the ground. **(Vol. 1, pg. A81).**

A.B. testified she has pre-existing depression, and following A(2)'s murder, was diagnosed with PTSD, bipolar disorder, and anxiety. **(Vol. 1, pg. A82).**

#### **4. A.B. and Respondent's History**

A.B. recalled meeting Respondent for the first time in 1984 or 1985. She was at a party where students studying to be lawyers, doctors, and business people got together. She exchanged numbers with Respondent. **(Vol. 1, pg. A84).**

During that time period, A.B. testified Respondent invited her to his house once where she stayed no more than five minutes. "His place was messy, junky. He just had books around, he didn't have any furniture, and I just wasn't feeling the vibe, so I said I'm going to leave, and I left. And I didn't see him anymore." **(Vol. 1, pg. A84).**

A.B. specifically denied any dating relationship or consensual sexual relations with Respondent at any time. **(Vol. 1, pg. A67).**

In February 2005, A.B. retained Respondent regarding a financial dispute over A.B.'s purchase of a house. **(Vol. 2, pg. A361-A362) (Ex. 15) (Ex. 16).**

In March 2005, according to A.B., Respondent called her at her work at the Record Center on Page saying he needed her to sign some paperwork before he could go to court on her legal matter. **(Vol. 1, pg. A87):**

He came to my job, and I came downstairs—And I got into his car, and he drove down Page, and he made a right turn on Woodson, and then he drove back up into like a big parking lot

behind some buildings, and he leaned over and unbuttoned my, unbuckled the seatbelt and got on top of me, and unzipped his pants and pulled my pants down and performed sex, and then we left. He didn't say anything to A.B. I didn't fight because he's a big guy, and I'm in his car, and he's strong, and he just got on top of me. I felt dirty, bad, horrible, used, nasty and was numb.

**(Vol. 1, pg. A87-A88).**

According to A.B., the sex was not consensual. **(Vol. 1, pg. A88).**

A.B. went back to work "and did my job and just stood there and sat there. And I went home, and I drank, and I just - - I didn't talk, didn't do anything." A.B. did not go to the police, whom she did not trust to do anything. **(Vol. 1, pg. A88-A89).** A.B. did not file a complaint with the OCDC. During the cross-examination by Respondent, A.B. explained her reason for not reporting Respondent: "Because I trusted a black man, but you did me dirty. And I should've said something. But because of my ex-husband I didn't." **(Vol. 1, pg. A123).**

At the disciplinary hearing, Respondent denied in March 2005 picking A.B. up at work, driving her to a field, and sexually assaulting her, although admitted that he did have sexual relations with A.B. when she "was working at the place on Page." He maintained the sex was consensual. **(Vol. 1, pg. A39-A42; A61).**

Respondent confirmed that sexual relations occurred during the course of his legal representation of A.B. (“You have to understand the rule changed.”) (**Vol. 1, pg. A42-A43**).

Although Respondent is not charged with a Rule violation for the incident in 2005, Informant elicited the above testimony from A.B. to establish a pattern of Respondent’s engaging in non-consensual sexual relations with clients.

A.B. retained Respondent as her lawyer on three subsequent occasions (1) to represent one of her sons in a drug possession case (Year: 2011), (2) to represent A.B. regarding an order of protection (Year: 2015), and (3) to obtain for A.B. grandparent visitation rights with “Little A,” the son of her deceased son, A(2) (Year: 2015). (**Vol. 1, pg. A48, A89**).

A.B. was asked why she hired Respondent on subsequent occasions if he had sexually assaulted her in 2005. A.B. testified: “I have low self-esteem. I don’t know why. I don’t know why I married my husband after he beat me up right before we got married. I don’t know why.” (**Vol. 1, pg. A133**).

Respondent acknowledged the emotional toll taken on A.B. by her son’s murder and her history of abusive relationships:

Well, [A.B.] has a history – I think it may have tipped her, tipped her the last – the final straw that broke the camel’s back, so to speak. [A.B.] had issues prior to that. I mean, she had been in an abusive marriage, she had other situations, as I think you pointed out, abuse by her relatives. Her father had abused

her mother, different things of that nature. So, she had some issues. [A]fter she got a divorce, then she was in another abusive relationship. She's been in several abusive relationships.

**(Vol. 1, pg. A49-A51).**

As an attorney, Respondent did not feel it was necessary to treat A.B. with particular compassion given her history of trauma at the hands of abusive men. **(Vol. 1, pg. A51-A52).**

Respondent's representation of A.B. regarding an order of protection arose from a dispute with Little A's mother over the unveiling of a billboard in a campaign to "stop the violence." The billboard had a picture of A(2) and Little A on it. The resulting disagreement led to thrown liquids and loud words between A.B. and Little A's mother. **(Vol. 1, pg. A91-A93).**

### **5. The Grandparent Visitation Case**

At the order of protection hearing, with Respondent present, A.B. raised the issue of grandparent visitation. The judge told A.B. that if she wanted an order for grandparent visitation, she needed to have a lawyer draw up an order. **(Vol. 1, pg. A90-A93).**

Respondent agreed to a flat fee of \$700 to draw up the order and obtain grandparent visitation for A.B. **(Vol. 1, pg. 62-66; 94).** A.B. delivered the \$700 to Respondent in August 2015. **(Vol. 1, pg. 92).**

A.B. told Respondent that she would like to be able to visit her grandson on the weekends and go to his school to volunteer. She wanted to see him on the holidays. A.B.

was very concerned for Little A's safety. A.B. testified about several instances of physical abuse suffered by Little A while living with his mother and "wanted to have visitation so he could be with me sometimes and be loved and not be beat up." (**Vol. 1, pg. A90-A92**).

During the next six months, A.B. heard nothing from Respondent, and there was no evidence that Respondent took steps formally or informally to arrange for visits or obtain visitation. (**Vol. 1, pg. A94**).

#### **6. Alleged Misconduct by Respondent**

On February 27, 2016, Respondent texted A.B. to meet him to sign the petition for grandparent visitation. (**Vol. 1, pg. A94-A95**). A.B. met Respondent at the McDonald's on West Florissant in Ferguson. (**Vol. 1, pg. A95**). A.B. testified Respondent pulled out a yellow folder and took out a document that she signed and dated. Respondent told A.B. she was not supposed to date it and said, "we need to go back and get a copy because I didn't bring enough." A.B. drove herself and followed Respondent to his office/house. (**Vol. 1, pg. A95**).

A.B. verified Respondent's house was on Ada Avenue. She said when she pulled up, "it didn't have a driveway, it's just all dirt and grass. So, I parked ... in the back on the grass." (**Vol. 1, pg. A96**).

A.B. went into the house through the kitchen, and Respondent closed and locked the door and set the alarm. She walked straight in the middle part of the house towards the entryway. She described Respondent's office area as being on her right. She went into his office area and waited. Five minutes passed, and she heard Respondent calling out her name. She said, "what," and Respondent said, "come here." (**Vol. 1, pg. A96**). A.B.

looked around the room and said, “where are you?” Respondent said, “up here.” **(Vol. 1, pg. A97).**

According to A.B.:

So I looked behind me and there was a set of stairs. So I go up the stairs and he’s standing in the doorway of his bedroom butt (sic) naked. And he said - - I said, what are you doing? And then he said, this is going to cost you. And I said - - no, he said get undressed. And I said, no, for what? And I said, I don’t want to. It’s the dog shit right there. I said, don’t you have a girlfriend? I said, there’s crumbs in the bed. And then he said, well, if I had a girlfriend I wouldn’t have crumbs in my bed now, would I? And then he leaned over and started brushing the crumbs off the bed. Then he said, get undressed unless you won some big lawsuit, or have some money or are rich, get undressed. So I got undressed. And he said sit on the bed. So I walked over to the bed, and I sat down. He said scoot back, so I scooted back. He said, lay back, so I laid down.

**(Vol. 1, pg. A97).**

A.B. vividly described the various sexual acts Respondent forcibly engaged in and ordered her to perform:

...And then he turned over, but he never got up, he just pressed on me. And then he came on the – laying on top of me like this and started doing it. And I just laid there. I was just – was just – just laid there. Then he said, turn over, and I turned over. And he started doing it from the back. And like if I was to scoot up or move, he'll hold me like this. And then he started doing it more and more.

**(Vol. 1, pg. A98).**

A.B. said Respondent ejaculated inside her. When she asked him if he did so, he said, “are you complaining?” **(Vol. 1, pg. A98-A99).**

According to A.B.:

[W]hen [Respondent] was done, he went into the bathroom, went straight across, and he washed up, and then he came and brought me a towel. And he stood in front of me, and he said, wash up. And so I washed up – I wiped off. And he said, you can go in there and clean yourself. And I went in the bathroom. And he came right there with me and right by me, and I washed up, put on my clothes. And then he went downstairs and he got the paper and he handed me a copy and said, I'm going to file this on Monday. Then he went to the door and walked out. And I got in my car, and I left.

**(Vol. 1, pg. A98-A99).**

During her testimony at the hearing, A.B. was emotional, including crying, wailing, and shaking. The panel chair, Mr. Biesterfield, put a stop to Respondent's loud and aggressive cross-examination:

Q. (By Mr. Williams) Okay. Now, you were aware of - - you were concerned about a sexually-transmitted disease. You say that the intercourse occurred raw, is that correct?

A. I - - I said you - - yes. You - - raw. You did not have a condom or nothing. You just took it. And I said no - -.

Q. Okay.

A. - - several time, and asked you why, you said what you said.

Q. Well, but you - - you've heard of things called AIDS, haven't you?

A. And you could've given me that, so I'm reporting you for that, too. I am really pissed off.

Q. I know. And so but you didn't - -

A. You couldn't know. You don't even care.

Q. You didn't - -

Mr. Biesterfield: All right. Let's wait. Let's wait.

Mr. Lapp: I want to - - I want to object to the continuing question of this witness. This is an abuse case. I've charged the case as sex with a client, okay? The component it has to it is this is a sexual assault case. To continue to make her live



through that, to continue for him to beat her up on that, it's just not appropriate for all of us to sit here and let it happen.

So if he wants to make some arguments in closing about how the text messages support him, he can do that. But I think his questioning of her should stop.

Mr. Biesterfield: Your point is taken. Mr. Williams, I want to wrap this up.

**(Vol. 1, pg. A173).**

A.B. testified that sometime in May 2016, after Respondent received service of the petition for visitation, Respondent called her and asked for more sex. A.B. said, "no."  
**(Vol. 1, pg. A166).**

On May 7, 2016, A.B. confronted Respondent via text message about the incident on February 27:

Good morning Gaylord (sic), I would like a refund minus the petition cost. As you stated I cannot be emotional (sic). After you had sex with me raw ejaculated in me, smelling of your semen for a few weeks, I'm upset and think you're taking advantage as well as using me for your pleasure. As you stated you did not complete my petition the way I requested because you didn't want the reaction that [Little A's mother] gave you. I'm disappointed and I don't like your yelling and talking over me regarding my issues on this case. You called asked when

can you get some more sex. When I didn't come through, the next call was an angry aggressive demanding more money for the case! Now, the case is going to be long lengthy and expensive. When we sat down to discuss it, you quoted my \$700 flat fee. Everything I requested to be put in the Grandparents Visitation Order you refused and only submitted a petition. Gaylord (sic) really! I don't have any more money to spend on this Grandparents Visitation Order case because my emotions are involved. [signed] A.B.

**(Vol. 2, pg. A359) (Ex. E).**

Respondent never expressly denied the sexual incident during subsequent back and forth text messaging:

Respondent: I never solicited sex from you in exchange for ANY legal services in this or any other matter

Respondent: If you go there all you will do is create a conflict of interest which will mean I can't represent you, but it won't result in getting a refund

Respondent: I suggest you think hard before you go down this road 😊

Respondent: I don't believe in extortion or black mail since I have done nothing wrong, illegal or unethical

Respondent: So if you want to continue to talk like this and not about your case then please do not contact me. Thank you.

A.B.: Yes you did after we signed the petition and you said we had to go back to your house for a copy: once we got there, you gave me a copy went upstairs called me up. You got undressed told me to get undress so you can get some. I asked why; you said “well you don’t have any money now do you? Unless you won some big law suit or something take your clothes, you ate my p\*\*\*\*y first then had intercourse...you washed up and brought me a towel.

A.B.: You started it. It’s unethical for you to sleep with your client sir. Good evening

Respondent: I have known you for years, what you are indicating was I owed you for sex. I did know you were into prostitution. Plus what does sex have to do with your issue?

Respondent: I didn’t know you were into prostitution

Respondent: Again, I would be very careful about going down this road but if you want

**(Vol. 2, pg. A361) (Ex. E).**

A.B. testified she suffered physically and mentally from the sexual incident. She said for weeks she felt like discharge of his was running out of her. And, she was “taking douche, after douche, after douche just trying to clean myself.” **(Vol. 1, pg. A99):**

So I started stinking and smelling myself. And I went to the doctor, and I told them what happened. And they gave a vaginal thing, and said I had an infection, I had like trichomonas or something. And I wasn't even dating nobody. I hadn't had sex with nobody, and he gave me an infection. And I didn't want to have sex with him. He did me so dirty, so horrible as a woman.

**(Vol. 1, pg. A99).**

On May 9, 2016, A.B. went to SLUcare Medical Group. The doctor's notes indicated A.B.'s "last sexual encounter was 2/26/2016. It was unprotected sex." "Reports, since that encounter, she has had a mild vaginal discharge, vaginal itching, with odor, however, reports these symptoms have improved." On examination, the doctor noted: "mild white discharge, no odor." Cultures were obtained for lab work. A.B. requested a DNA test for the sample but was informed that the facility did not conduct DNA testing.

**(Vol. 5 Sealed, pg. A619-A622).**

The next day at 9:13 a.m., A.B. called SLUCare and according to a nurse:

Pt calling in complaining about her recent visit at acute care on 5/9/16 with LS, ANP. Very upset, aggressive, loud, hyper talkative, tangential speech, stating that she is bipolar and has had bipolar depression and PTSD. States she had unprotected and forced sex several weeks ago with a family friend, attorney. Understands that she was treated for STDs and will

be called with results. States she feels upset and anxious and doesn't feel that she is taken seriously. Would like everything documented in her chart, wants initials of the person who forced sex on her to be put in her record. Wants to talk with Dr. Chacko.

**(Vol. 5 Sealed, pg. A641).**

A.B. called back at 2:00 p.m. and the call "went to voice mail." A.B. called back at 5:00 p.m. and spoke to Dr. Chacko: A.B. "reports feeling anxious and sad about alleged forced sexual activity. She is not able to get in to see her psychiatrist 2/2 to insurance changes. Now she has an appointment with our Psychiatry in a few months." **(Vol. 5 Sealed, pg. A642).**

On May 11, 2016, A.B. met with a police officer from the City of Jennings to report the sexual assault. According to A.B., the officer said he would speak with Respondent before making his findings. According to Respondent, "he never spoke to a police officer." **(Vol. 1, pg. A177-A178).** Nevertheless, the investigating police officer concluded per A.B. that the sexual encounter at Respondent's house/office, although "a little uncomfortable," was "consensual" and therefore lacking the criminal element/intent for further action at this time. **(Vol. 1, pg. A223-A225).**

The results came back from Quest Labs indicating tests done on May 13, 2016. The specimen quality was deemed "inadequate," so no test for Trichomonas Vaginalis was performed. The lab report, however, did detect bacterial vaginosis (Gardnerella). A.B. was given pills and cream. **(Vol. 5 Sealed, pg. A616; Vol. 1, pg. A99).** According to the

Mayo Clinic, bacterial vaginosis occurs more often in women who have had sex with a new partner. **(Vol. 6 Sealed, pg. A885-A889) (Ex. M).**

A.B. testified feeling angry and mad. She confirmed she was told by her doctor to go see a psychiatrist. **(Vol. 1, pg. A99-A100).** A.B. testified that “it’s a very long waiting list for psychiatrists, and psychologists, and doctors and sometimes it will be six months out or a year out.” **(Vol. 1, pg. A191; Vol. 2, pg. A195).**

On June 8, 2016, at 8:42 a.m., A.B. called SLUCare. The nurse’s notes indicate: “A.B. states that her anxiety is extremely high. Went to ER but waited for hours but they never saw her. Psychiatry cancelled her appointment again and told her they could not reschedule her until after July 1<sup>st</sup>. Becoming angry at family and friends. Tearful and continually said she needs her Xanax, says she feels terrible.” **(Vol. 5 Sealed, pg. A711).**

Later that day, A.B. spoke to Dr. Chacko. Her notes are as follows:

Feelings of hurting the person who sexually assaulted that she had told me about. I advised she immediately call 911 to go to the closest ER. She reported that she went to and ER and waited a long time and left. She said they asked her if she had feelings of hopelessness and other questions, she answer “No.”  
After waiting, patient left and went to an urgent (sic)

Got a hold of Dr. M and informed him that patient was having homicidal ideation toward her “doctor that allegedly hurt her” to inform him. Dr. M thanked me for letting him know.<sup>3</sup>

**(Vol. 5 Sealed, pg. A712).**

As reported by SLUCare on December 29, 2016 telephone encounter, A.B. requested Dr. Chacko “refill” her Xanax and Percocet. Dr. Chacko declined stating that she did not prescribe these and does not know why A.B. needs them. Dr. Chacko wrote: “[A.B.] should contact her psychiatrist if she is having anxiety.” **(Vol. 5 Sealed, pg. A745).**

As reported by SLUCare on December 30, 2016 telephone encounter: “The Pt. alleges an assault [by family members] last month, on Nov. 19<sup>th</sup>. She went to Christian ER one week after the assault. She is asking for her two refill RX for the meds that were RXd (sic) for her in the ER, Xanax 0.5 mg. on every eight hours and Oxycodone/APA 7.5-325 mg. every 4-6 hours PRN pain #20.” [The nurse] spoke with Dr. Chacko who referred the patient back to her psychiatrist. The patient has not been to the psychiatrist. The one she was going to see did not accept her insurance. She sees a Dr. Anderson sometime in Feb.” **(Vol. 5 Sealed, pg. A751).**

---

<sup>3</sup> In 2010, in a separate incident, A.B. alleged that she was sexually assaulted by Dr. M. There was a lawsuit which was settled confidentially with a protective order. A.B.’s civil attorney, Mr. McCloskey appeared at Respondent’s disciplinary hearing to ensure that the confidentiality order would not be breached. **(Vol. 2, pg. A196).**

On January 19, 2017, A.B. went to see Psychiatrist, Dr. Anderson. Dr. Anderson took extensive notes about A.B.'s life trauma and specifically about the incident with Respondent:

Witnessed her father beating her mother at age 5. She tried to help her mother and her father threw her across the room.

In 2015 her father slammed an iron gate against her leaving her badly bruised. He verbally abused her on many occasions.

She was beaten by multiple family members in November 2016.

She reports having been raped by an attorney in his home which he also used as an office on 2/27/16.

Her father held her and her children at gunpoint when he was angry with them.

**(Vol. 5 Sealed, pg. A601).**

Dr. Anderson continued under "Additional History:"

This patient reports a history of multiple episodes of trauma in the form of being physically assaulted (see page 4 Trauma) and witnessing her mother being physically abused at age 5; being beaten as an adult; and raped 10 months ago.

One of her four sons was murdered in 2004.

**(Vol. 5 Sealed, pg. A602).**



Dr. Anderson diagnosed A.B. with “Major Depressive Disorder, Panic Disorder, Posttraumatic Disorder and Generalized Anxiety Disorder.” He prescribed Zoloft and Xanax. **(Vol. 5 Sealed, pg. A604).**

Throughout the remainder of 2017, the SLUCare medical records indicate various visits for matters including a truck accident, mammogram, bi-lateral shoulder pain, and a physical assault by her family members. **(Vol. 5 Sealed, pg. A607-A816).**

In August 2017, A.B.’s licensed psychologist A. Cox, with whom A.B. began treating, gave A.B. a letter telling her:

Report Gaylard to Missouri Bar & Better Business

Report of Unprofessional Conduct

Seeking a Personal Relationship, Taking Money and Not

Representing you to have a Sexual Relationship

**(Vol. 5 Sealed, pg. A606) (Ex. 6B).**

In a letter dated July 20, 2018, A. Cox confirmed that A.B. “was deeply troubled by issues of sexual assault and misconduct by an attorney she hired for her son’s need for legal representation and I can only surmise that she has filed some charges with the State of Missouri Bar Association.”<sup>4</sup> **(Vol. 5 Sealed, p. A605) (Ex. 6).**

---

<sup>4</sup> Further, A. Cox was upset with Respondent for his attempts to contact her: “I stated in a phone call that Mr. Williams was very threatening in my small office and on the phone and

A.B. filed an ethics complaint with the OCDC using the language suggested by A. Cox in her letter. **(Vol. 2, p. A217-A218) (Ex. 1).**

### **7. Respondent's Testimony**

Respondent denied A.B. came to his house on Ada on February 27, 2016 or anytime by herself. **(Vol. 1, pg. A41).**

Respondent denied they engaged in sexual relations at his house, either forced or consensual. "I never had sex with her." **(Vol. 1, pg. A41; A71-A72).**

In addition to his denial of the incident, Respondent's defense at the disciplinary hearing was to paint the impression that A.B. was too sick, too greedy, or too crafty to be believed. **(Vol. 1, pg. A105-191; Vol. 2, pg. A195-197).**

### **8. The Disciplinary Hearing Panel's Decision**

The disciplinary hearing was held in this matter over two days, on December 3, 2018 and January 28, 2019. The Chair of the Disciplinary Hearing Panel, who was present for the hearing, subsequently became ill and could not participate in the decision. Consequently, the remaining two members of the panel issued a decision on October 9, 2019.

---

he is NOT welcome to EVER return to my office or I will contact law enforcement." **(Vol. 5 (sealed), p. A605) (Ex. 6) (emphasis included).**

The panel specifically found that A.B. was not a credible witness and based its finding on the following alleged inconsistencies and conflicting material statements made by A.B.:

- A. The police report stated the sexual encounter was “consensual” which conflicted with A.B.’s complaint and testimony of a sexual assault.
- B. A.B.’s initial complaint to the OCDC alleged that Respondent gave her an STD, but the medical records showed no such diagnosis.
- C. After the 2005 incident, A.B. continued to hire Respondent claiming she did not know any other attorneys, yet hired a civil attorney to sue a doctor.

In addition, the panel found it difficult if not impossible to reconcile the following actions of A.B. and still consider her a credible witness:

- A. After being assaulted and forced to have sexual relations with Respondent in 2005, A.B. again hired Respondent for legal services a few more times.
- B. After allegedly having been assaulted and forced to have sexual relations with Respondent in 2005, A.B. goes with Respondent to his private residence.
- C. A.B. hired an attorney to proceed against Respondent in a civil claim, and it is the same attorney that represented A.B. against a physician for sexual assault in 2010.

Furthermore, in support of its findings that A.B. was not a credible witness, the panel cited A.B.’s testimony of previously acting in a violent matter: After her grandson’s mother had thrown a cup of water at her, A.B. “chased her down in her car and had her son throw a can of beer at her grandson’s mother.”

In its “Appendix,” the panel cited to specific items in the record in support of its findings:

- A.B. claimed to have “Trichomonas and I know I was stinking and I was leaking, and I had a discharge that was brown,” but the medical records showed that Trichomonas was “not detected” and that her vaginal discharge (on May 9, 2016) was “mild white discharge, no odor.”
- A.B. was seeking Xanax from Dr. Chacko on December 29, 2016, but that Dr. Chacko said she did not order and did not know why A.B. needed that.
- A.B. claims to have been assaulted and forced to have sexual relations with Respondent in 2005, yet A.B. did not report the assault and non-consensual sexual relations to the police and there is no disclosure of the assault and non-consensual sexual relations to her psychiatrist, Dr. Anderson, or her Psychologist, A. Cox.
- On June 8, 2016, A.B. continually said she needs her Xanax.
- On December 29, 2016, during a telephone encounter with staff at St. Louis University Hospital, A.B. indicated that she had been seen by Dr. Chacko and A.B. asked for a refill of her Xanax and Percocet. At 2:33 p.m. Dr. Chacko responded that she did not prescribe these, that

she did not know why A.B. needed those drugs, and that she would not be reordering them.

- On December 30, 2016, A.B. indicated that she was assaulted a month earlier, November 19, and requested Xanax and Oxycodone that had been prescribed for her at Christian ER.
- St. Louis University Hospital records do not disclose any drugs being prescribed for A.B.
- On A.B.'s July 10, 2017 visit at St. Louis University Hospital for continued pain from a truck accident in February 2016, there was no mention of any sexual assault.
- On July 10, 2017, after her appointment with Dr. Bteich, A.B. left a voicemail stating she would like Xanax but only received Flexeril.
- On July 11, 2017, A.B. telephoned Dr. Bteich asking for a refill prescribed by her psychiatrist. Dr. Bteich refused to prescribe Xanax.
- After being sexually assaulted by a physician in 2010, and then reaching a settlement with that physician, A.B. placed herself in a similar situation where she is forced into a non-consensual sexual relationship.
- During an examination on June 8, 2016 at St. Louis University Hospital, A.B. indicating she had feelings of wanting to hurt the

doctor who had sexually assaulted her (not Respondent) causing the hospital to have to warn the doctor.

**(Vol. 6 Sealed, pg. A908-A918).**

Informant rejected the DHP's decision on October 30, 2019. **(Vol. 3, pg. A571).**

**POINTS RELIED ON**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE ENGAGED IN SEXUAL RELATIONS WITH HIS CLIENT WHEN NO CONSENSUAL SEXUAL RELATIONSHIP EXISTED BETWEEN THEM WHEN THE CLIENT-LAWYER RELATIONSHIP COMMENCED.**

*In re Schuessler*, 578 S.W.3d 762, 770-71 (Mo. banc 2019)

Missouri Supreme Court Rule 4-1.7(a)(2)

Missouri Supreme Court Rule 4-1.8(j)

Missouri Supreme Court Rule 4-8.4(d)

**POINTS RELIED ON**

**II.**

**IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE PROFESSION, THE COURT SHOULD INDEFINITELY SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT UNTIL AFTER ONE YEAR BECAUSE:**

- A. AN ACTUAL SUSPENSION IS THE BASELINE DISCIPLINE FOR A LAWYER ENGAGING IN SEXUAL RELATIONS WITH AN INDIVIDUAL CLIENT UNDER THE ABA STANDARDS AND MISSOURI LAW;**
- B. THE VULNERABILITY OF AN INDIVIDUAL CLIENT IS A SIGNIFICANT AGGRAVATING FACTOR BOLSTERING THE APPROPRIATENESS OF AN ACTUAL SUSPENSION; AND**
- C. A LAWYER WHO ENGAGES IN SEXUAL RELATIONS WITH AN INDIVIDUAL CLIENT IS NOT ELIGIBLE FOR PROBATION (STAYED SUSPENSION) BECAUSE ALLOWING THE LAWYER TO PRACTICE LAW WILL CAUSE THE**



**COURTS AND PROFESSION TO FALL INTO  
DISREPUTE.**

*In re Howard*, 912 S.W.2d 61 (Mo. banc 1995)

*In the Matter of Hall*, 761 S.E.2d 51 (Ga. 2014)

Missouri Supreme Court Rule 4-1.7(a)(2)

Missouri Supreme Court 4-1.8(j)

Missouri Supreme Court 4-8.4(d)

Missouri Supreme Court 5.225(a)(2)

ABA Standards for Imposing Lawyer Sanctions (1991)

## ARGUMENT

### I.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE ENGAGED IN SEXUAL RELATIONS WITH HIS CLIENT WHEN NO CONSENSUAL SEXUAL RELATIONSHIP EXISTED BETWEEN THEM WHEN THE CLIENT-LAWYER RELATIONSHIP COMMENCED.**

#### Standard of Review

As in all attorney discipline cases, “[t]he DHP’s findings of fact and conclusions of law are advisory. The Court reviews the evidence de novo, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. Professional misconduct must be proven by a preponderance of the evidence.” *In re Schuessler*, 578 S.W.3d 762, 770-71 (Mo. banc 2019).

**Respondent violated Rules 4-1.7(a)(2), 4-1.8(j), and 4-8.4(d) by luring A.B. to his home office to engage in sexual relations**

Effective July 1, 2007, Rule 4-1.7 Comment [12] and Rule 4-1.8(j), Missouri expressly prohibited sexual relations between a lawyer and current client:<sup>5</sup>

---

<sup>5</sup> Rule 4-1.7 is concerned with the conflict of interest when a lawyer puts his or her personal interests above the client’s. Rule 4-1.8 makes an exception if the sexual relations are consensual and the consensual sexual relationship pre-existed at the commencement the client-lawyer representation.

The [client-lawyer] relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule 4-1.8(j) prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

Rule 4-1.8(j) Comment [17].

This case is particularly disturbing in that it reveals a plot and execution by Respondent to intentionally trick A.B., whom he had previously victimized, in order to satisfy his sexual appetite. Respondent was well aware of A.B.'s vulnerability.

Respondent took advantage of A.B. in 2005 and knew he could again. He conveniently created an excuse to lure A.B. to his personal residence, which he used as his office. Once inside, he locked and armed the exit and demanded she come upstairs. Once upstairs, Respondent dominated A.B. sexually. Respondent also joined the issue of money for legal services. (“...unless you won some big lawsuit, or have some money or are rich, get undressed.”). **(Vol. 1, pg. A97)**.

This case comes down to the credibility of the witnesses, and A.B. was the more credible witness.

A.B. has had a very traumatic life. A.B. grew up in a household where her father physically abused her and her mother. A.B.'s husband was physically abusive. A.B. saw her son dead following his murder. **(Vol. 1, pg. A82-A83)**. Respondent admitted sexual relations with A.B. in 2005 during the course of a legal representation. **(Vol. 1, pg. A42-A43)**. A.B. suffered from depression, and following her son's murder, was diagnosed with PTSD, bipolar disorder, and anxiety. A.B. was a repeat trauma victim. **(Vol. 1, pg. A82-A83)**.

A.B. testified with specificity regarding the sexual incident on February 27, 2016, including the back and forth words, the details of Respondent's bedroom and bed, and the elements of Respondent's horrific conduct. **(Vol. 1, pg. A96-A99)**. A.B. credibly explained how she suffered physically and emotionally from the sexual incident with

Respondent. A.B. bravely testified before the all-male panel and endured an aggressive cross examination by Respondent.

A.B.'s history she gave to all of her medical providers was consistent with her testimony before the panel. A.B. was never diagnosed with schizophrenia nor did any medical provider (including a professional psychiatrist and psychologist) indicate they thought A.B. was being untruthful. Moreover, there was a diagnostic finding of vaginal discharge and bacterial vaginosis, which is consistent with sexual contact. **(Vol. 5 Sealed, pg. A619-A622) (Vol. 6 Sealed, pg. A885-A889) (Ex. M)**. Furthermore, Psychologist, A. Cox confirmed that A.B. "was deeply troubled by issues of sexual assault and misconduct by an attorney" **(Vol. 5 Sealed, p. A605) (Ex. 6)** and gave A.B. a written note encouraging her to report Respondent's misconduct to the bar. **(Vol. 5 Sealed, pg. A606) (Ex. 6B)**.

Although Respondent denied the sexual incident with A.B. occurred, his text messages indicated otherwise:

A.B.: You started it. It's unethical for you to sleep with your client sir. Good evening

Respondent: I have known you for years, what you are indicating was I owed you for sex. I did know you were into prostitution. Plus what does sex have to do with your issue?

Respondent: I didn't know you were into prostitution

Respondent: Again, I would be very careful about going down this road but if you want

**(Vol. 2, pg. A361) (Ex. E)**.

Respondent's reply that he owed A.B. for sex was not a denial of the sexual incident. Respondent's question to A.B. of what sex has to do with her legal issue and reference to A.B. as a prostitute indicates the sexual incident occurred.

Based on the 2005 incident, Respondent knew what he could get away with from the same vulnerable client. On February 27, 2016, under false pretenses, Respondent lured A.B. to his house, then upstairs, where he had non-consensual sexual relations with her.

The clear preponderance of the evidence establishes that A.B. was the more credible witness, and that Respondent engaged A.B. in non-consensual sexual relations during the course of his legal representation.

### **The Disciplinary Hearing Panel Decision**

It appears from a review of the Disciplinary Hearing Panel's decision that the panel failed to take into account the trauma and fear caused by the painful events that occurred between A.B. and the Respondent in this case.<sup>6</sup>

---

<sup>6</sup> Deborah Smith, Senior Knowledge and Information Services Analyst, National Center for State Courts, What Judges Need to Know About the Neurobiology of Sexual Assault (2017): "It is important that judges, attorneys, law enforcement, victim advocates, and other professionals understand the neurobiology of traumatic events such as sexual assault so that they can put the behavior of victims in the proper context. Trauma and fear cause specific short-term and long-term changes to the brain that will affect a victim's behavior. When this behavior is not consistent with what is expected, the victim's veracity may be questioned. Behaviors such as inconsistent versions of events, a lack of facial

---

expressions, and a seemingly incomprehensible lack of resistance to the attack may cause doubts as to the victim's version of events. Studies on the neurobiology of assault explain the causes behind these behaviors, which are commonly seen in the survivors of sexual assault. \* \* \* Older victims are more likely to experience Post Traumatic Stress Disorder (PTSD), possibly due to a reduction in resiliency. \* \* \* This freeze response that can occur during a traumatic assault means that some victims become literally paralyzed with fear by a neurobiological condition known as "tonic immobility" or "rape-induced paralysis." The rate of rape victims who were affected by this paralysis at the time of the assault may be as high as 50 percent. Because they were unable to move their limbs, it became impossible for them to fight back as they were literally paralyzed by the attack due to the body's "autonomic response. \* \* \* Dr. Lisak explains that repeated assaults can have a cumulative effect so that the victim is not able to encode the information in the correct context or sequence but has intense sensory fragments that can reappear periodically in nightmares or from specific sounds or smells. Victims of earlier sexual assaults will go into the freeze mode much more quickly and so are unable to fight back or recall the incident in the proper sequence. \* \* \* By understanding the effect of trauma on the brain and the body, the behavior and responses exhibited by victims begin to make more sense. While one might expect a victim to be crying and hysterical, some victims may be overly calm and even numb due to the release of natural opiates. Victim's stories may change over time due to encoding and sequencing deficits brought on by the release of hormones in the body. Finally, being aware of the possibility that a victim was literally paralyzed by fear and

The panel's analysis seems to unfairly minimize A.B.'s situation and discredit her testimony:

1. Finding: The police report stated that according to A.B., the sexual encounter was "consensual," which conflicted with A.B.'s complaint and testimony of a sexual assault. **(Vol. 6 Sealed, pg. A911).**

Informant's Response: The police report was for an alleged criminal violation, not an ethics violation where consent may minimally mitigate, but not exonerate. In addition, it is doubtful that A.B. would have characterized the sexual incident as "consensual" considering she went to the police to file a complaint. The police officer stated that A.B. said she was "a little uncomfortable." That was a clue that something was amiss, which deserved more investigation. The police officer never investigated A.B.'s history of trauma and victimization, conducted an interview of Respondent, nor visited the scene. Incongruously, the panel ignored the conclusion in the police report which was that a lawyer engaged in sexual relations with his client during the course of a legal representation which is a violation of the ethics rules charged in this case.

---

could not move their limbs adds to an understanding of their behavior in the face of an attack. The criminal justice system should not be a place where victims of sexual assault are retraumatized due to a lack of understanding of the basic neurobiology of trauma."



2. Finding: A.B.'s initial complaint to the OCDC alleged that Respondent gave her an STD, but the medical records showed no such diagnosis. **(Vol. 6 Sealed, pg. A912).**

Informant's Response: A.B. suffered awful symptoms following the sexual incident with Respondent. The lab records diagnosed an infection: Gardnerella, which is a bacterial vaginosis that can be transmitted through sex. A.B.'s characterization that Respondent gave her a sexually transmitted disease is a reasonable representation of what happened from a layperson/victim's perspective.

3. Finding: After the 2005 incident, A.B. continued to hire Respondent claiming she did not know any other attorneys, yet hired a civil attorney to sue a doctor. **(Vol. 6 Sealed, pg. A913).**

Informant's Response: Blaming victims for non-consensual sexual relations has a long history. As the provided literature explains (*Infra* pg. 46), victims return to abusers for a variety of reasons. As the Court knows from countless discipline matters, clients return to attorneys who have poorly represented them. The 2005 incident was a decade before. A.B. paid Respondent in full in 2015 and trusted Respondent with the simple task of achieving her grandparent visitation. Hiring a civil lawyer for her separate case of sexual abuse by a doctor has nothing to do with hiring Respondent for a family matter.

4. Finding: After being forced to have sexual relations with Respondent in 2005, A.B. again hired Respondent for legal services a few more times. **(Vol. 6 Sealed, pg. A913).**

Informant's Response: The 2005 incident was a decade before. A.B. trusted Respondent to handle some family matters and not victimize her. The panel made unsupported assumptions and posited rational after-the-fact expectations about the actions of a sexual trauma victim who was in need of affordable and professional legal services. As the evidence reveals, A.B. had been traumatized so much that those assumptions and expectations just don't fit. Respondent knew of her past trauma; his awareness of A.B.'s vulnerability is at the heart of this case.

5. Finding: After allegedly having been forced to have sexual relations with Respondent in 2005, A.B. goes with Respondent to his private residence. **(Vol. 6 Sealed, pg. A913).**

Informant's Response: The Panel's finding misconstrues the evidence. A.B. did not go to Respondent's "private residence." She went to Respondent's "office" believing she had to sign papers. She did not expect to be lured to his second floor bedroom for sex.

6. Finding: A.B. acted in a violent matter: After her grandson's mother had thrown a cup of water at her, A.B. "chased her down in her car and had her son throw a can of beer at her grandson's mother." **(Vol. 6 Sealed, pg. A913).**

Informant's Response: This finding is immaterial and unrelated to whether A.B. was being truthful about Respondent's sexual misconduct.

7. Finding: A.B. claimed to have "Trichomonas and I know I was stinking and I was leaking, and I had a discharge that was brown," but the medical records showed that Trichomonas was "not detected" and that her vaginal discharge (on May 9, 2016) was "mild white discharge, no odor." (**Vol. 6 Sealed, pg. A915**).

Informant's Response: The medical records did not detect Trichomonas because the "specimen was insufficient," and that test was not done. (**Vol. 5 Sealed, pg. A616**).

8. Finding: On June 8, 2016, A.B. continually said she needs her Xanax. (**Vol. 6 Sealed, pg. A916**).

Informant's Response: A.B. had a prescription for Xanax. It just wasn't from St. Louis University Hospital. Moreover, the panel's finding is immaterial and unrelated to whether A.B. was being truthful about Respondent's sexual incident.

9. Finding: A.B. was seeking Xanax from Dr. Chacko on December 29, 2016, but that Dr. Chacko said she did not order and did not know why A.B. needed that. (**Vol. 6 Sealed, pg. A916-A917**).

Informant Response: According to the records, A.B. did have a prescription for Xanax. She was asking for a "refill." The original prescription was from

“Christian ER” on November 19, 2016. **(Vol. 5 Sealed, pg. A751)**. Moreover, the panel’s finding is immaterial and unrelated to whether A.B. was being truthful about Respondent’s sexual misconduct.

10. Finding: On December 30, 2016, A.B. indicated that she was assaulted a month earlier, November 19, and requested Xanax and Oxycodone that had been prescribed for her at Christian ER. **(Vol. 6 Sealed, pg. A917)**.

Informant’s Response: That’s true. According to Psychiatrist, Dr. Anderson, A.B. was assaulted on November 19 (a separate physical assault by A.B.’s family members) and received Xanax and Oxycodone from Christian ER. **(Vol. 5 Sealed, pg. A751)**. Moreover, the panel’s finding is immaterial and unrelated to whether A.B. was being truthful about Respondent’s sexual misconduct.

11. Finding: St. Louis University Hospital records do not disclose any drugs being prescribed for A.B. **(Vol. 6 Sealed, pg. A917)**.

Informant’s Response: That is false. On January 19, 2017, Dr. Anderson prescribed Zoloft and Xanax. **(Vol. 5 Sealed, pg. A604)**. Moreover, the panel’s finding is immaterial and unrelated to whether A.B. was being truthful about Respondent’s sexual misconduct. **(Vol. 5 Sealed, pg. A604)**.

12. Finding: On A.B.’s July 10, 2017 visit at St. Louis University Hospital for continued pain from a truck accident in February 2016, there was no mention of any sexual assault. **(Vol. 6 Sealed, pg. A917)**.

Informant's Response: This finding is irrelevant. A.B. was going to the doctor for pain from a truck accident. Presumably, A.B.'s focus was on the pain from the truck accident.

13. Finding: On July 10, 2017, A.B. left a voicemail stating she would like Xanax but only received Flexeril. **(Vol. 6 Sealed, pg. A917-A918).**

Informant's Response: Evidently, the doctor believed A.B. needed Flexeril for pain relief. Moreover, the panel's finding is immaterial and unrelated to whether A.B. was being truthful about Respondent's sexual misconduct.

14. Finding: After being sexually assaulted by a physician in 2010, and then reaching a settlement with that physician, A.B. placed herself in a similar situation where she is forced into a non-consensual sexual relationship. **(Vol. 6 Sealed, pg. A918).**

Informant's Response: A.B. did not expect to be forced into non-consensual sexual relations with Respondent when she went to his office to sign papers.

15. Finding: During an examination on June 8, 2016 at St. Louis University Hospital, A.B. indicating she had feelings of wanting to hurt the doctor who had sexually assaulted her (not Respondent) causing the hospital to have to warn the doctor. **(Vol. 6 Sealed, pg. A918).**

Informant's Response: Having a feeling of wanting to hurt the doctor who settled allegations of sexually assaulting A.B. in 2010 seems plausible, as

does the turmoil in A.B.'s mind from the many traumatic experiences she suffered in her life.

The DHP failed to recognize that trauma and victims of non-consensual sexual relations are often repeat victims. *See* Etienne G. Krug, World Health Organization, World Report on Violence and Health, Chapter 6 Sexual Violence Vol. 2 (2002), pg. 157: (Having been raped or sexually abused is a risk factor for sexual violence).

The Disciplinary Hearing Panel failed to properly take into account the sexual trauma that A.B. endured. *See e.g., In the Matter of John R. Russo, Jr., A Judge of the Superior Court of the State of New Jersey, #082636*, Supreme Court of New Jersey, D100 September Term 2018: Order to Show Cause and Complaint for Removal from Office (incorporating State advisory committee finding that judge's questioning of sexual assault victim suggesting she could have stopped or prevented the assault was "unwarranted, discourteous and inappropriate and had the clear potential to re-victimize the plaintiff." *In the Matter of John R. Russo, Jr., A Judge of the Superior Court of the State of New Jersey, #ACJC 2017-225* Presentment to Supreme Court of New Jersey Advisory Committee on Judicial Conduct).

The Court should ignore the DHP Findings and Conclusions of Law in this case.

Respondent's conduct of engaging his client, A.B. in sexual relations on February 27, 2016 during the course of his legal representation violated the express prohibition contained in Rules 1.8(j) and 1.7(a)(2). There was no evidence demonstrating a consensual sexual relationship between Respondent and A.B. when the 2015 lawyer-client relationship

commenced. Respondent's misconduct, including his extortion for sex, also violated Rule 8.4(d).

**ARGUMENT**

**II.**

**IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE PROFESSION, THIS COURT SHOULD INDEFINITELY SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT UNTIL AFTER ONE YEAR BECAUSE:**

**A. AN ACTUAL SUSPENSION IS THE BASELINE DISCIPLINE FOR A LAWYER ENGAGING IN SEXUAL RELATIONS WITH AN INDIVIDUAL CLIENT UNDER THE ABA STANDARDS AND MISSOURI LAW;**

**B. THE VULNERABILITY OF AN INDIVIDUAL CLIENT IS A SIGNIFICANT AGGRAVATING FACTOR BOLSTERING THE APPROPRIATENESS OF AN ACTUAL SUSPENSION; AND**

**C. A LAWYER WHO ENGAGES IN SEXUAL RELATIONS WITH AN INDIVIDUAL CLIENT IS NOT ELIGIBLE FOR PROBATION (STAYED SUSPENSION) BECAUSE ALLOWING THE LAWYER TO PRACTICE LAW WILL CAUSE THE COURTS AND PROFESSION TO FALL INTO DISREPUTE.**



### A. Baseline Suspension

According to the *ABA/BNA Lawyer's Manual on Professional Conduct, Conflicts of Interest: Sexual Relations* (Jan. 30, 2019): “For lawyers who have sex with clients, suspension seems to be the usual sanction.” (citations to 15 cases with imposed suspensions omitted).

The presumptive discipline in Missouri for a lawyer who has engaged in sexual relations with his individual client is suspension. In *In re Howard*, 912 S.W.2d 61 (Mo. banc 1995), the Court found that Howard attempted to force clients to have sexual relations with him in exchange for legal services and thus violated Rule 1.7(b) (conflict of interest) and 2.1 (failing to exercise independent professional judgment.) Despite Howard's emphasis of his thirty-three years of practice with no disciplinary violations and an exemplary record of public service, the Court imposed a six-month actual suspension.<sup>7</sup>

Here, Respondent engaged in the same type of exploitation (“get undressed unless you won some big lawsuit, or have some money or are rich, get undressed”) (**Vol. 1, pg. A97**), but more than Howard, Respondent had non-consensual sexual relations with his client.

---

<sup>7</sup> The Court only reprimands when the lawyer is merely negligent in determining whether representation may be materially affected by the lawyer's own interest and then causes injury or potential injury to the client. *Howard*, 912 S.W.2d at 64.

## B. The Vulnerable Individual Client

The vulnerability of a client undergoing a traumatic family situation is a significant aggravating factor. See *In re Hoffmeyer*, 656 S.E.2d 376, 379-80 (S.C. 2008); ABA Standard 9.2(h).

“While there are situations, especially in the commercial business setting, in which the sophisticated corporate client representative has little or no sense of dependence,<sup>8</sup> there is also a broad range of situations in which the client, by virtue of his or her emotional state, educational level, age or social status, feels particularly dependent and disarmed vis-à-vis the attorney.” *ABA Comm. On Ethics and Prof’l Responsibility*, Formal Op. 92-364 (July 6, 1992).

“An individual client, in particular, is likely to have retained a lawyer at the time of a crisis.” *ABA Formal Op.* 92-364. “The troubled client places a great deal of trust in the lawyer and rel[ies] heavily on his or her agreement to provide professional assistance.” *In re Tsoutsouris*, 748 N.E.2d 856, 860 (Ind. 2001). “The factors leading to the client’s trust and reliance on the lawyer have the potential for placing the lawyer in a position of dominance and the client in a position of vulnerability.” *ABA Formal Op.* 92-364. “[T]he more vulnerable the client, the heavier the obligation of the lawyer to avoid engaging in any relationship other than that of attorney-client.” *Id.*

A.B., a repeat victim of traumatic incidents herself, was in fear for the safety of Little A, the child of her murdered son. A.B. wanted visitation rights to protect Little A

---

<sup>8</sup> See, e.g. *In re Bergman*, SC94689 (Mo. 2015).

from abuse in his mother’s household. (Vol. 1, pg. A90-A92). A.B. trusted that Respondent would follow the directions from the judge and draft an order for grandparent visitation. Instead, Respondent used the opportunity to lure A.B. to his house in order to take advantage of A.B. for his own prurient interests.

### **C. No Eligibility for Probation**

According to Rule 5.225(a)(2), a lawyer is eligible for probation if the lawyer:

- (A) Is unlikely to harm the public during the period of probation and can be adequately supervised;
- (B) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and
- (C) Has not committed acts warranting disbarment.

(emphasis added).

To allow a lawyer who engaged in sex with a vulnerable client to continue to practice law under a term of probation would cause the courts and legal profession to fall into disrepute.

In the context of lawyer discipline cases, other states have determined that a lawyer engaging in sexual relations with an individual client causes the profession to “fall into disrepute.” *See, Atty. Griev. Comm’n of Md. v. Hall*, 969 A.2d. 953, 968 (Md. App. 2009) (“If attorneys take advantage of a client’s emotional fragility, as the Respondent did here, by having a sexual relationship with that client, this Court will not hesitate to impose disciplinary sanctions. The respondent’s conduct, without question, was prejudicial to the administration of justice and has brought “disrepute upon the integrity of the profession.”);

*In re Liebowitz*, 516 A.2d 246, 249 (N.J. 1985) (Respondent brought the *pro bono* matrimonial counsel program “into disrepute” by engaging in intimate touching with divorce client at lawyer’s house.); *Hoffmeyer*, 656 S.E.2d at 379 (A lawyer who exercised control over a stressed and sick divorce client, including engaging in sexual relations at the lawyer’s house, “[brought] the legal profession into disrepute.”).

Although Missouri has yet to interpret what would make the courts or profession fall into disrepute under Rule 5.225(a)(2), this Court has stated that “when there is any pollution whatever at any point in the process of the administration of justice or of government, the courts and the democratic processes then will ‘fall into disrepute’ deserving the condemnation of the profession and the contempt of the layman, and the judicial system as now known and recognized will head for oblivion.” *Osborne v. Purdome*, 244 S.W.2d 1005, 1017 (Mo. banc 1951) (concurring opinion, Conkling, J.) (emphasis added).

Leveraging a professional relationship with an individual client in order to engage the client in sexual relations causes the legal profession to fall into disrepute.

**In order to protect the public and the integrity of the legal profession, the Court should impose an indefinite suspension on Respondent with no leave to apply for reinstatement for at least one year.**

The purpose of attorney disciplinary proceedings is to protect the public and maintain the integrity of the legal profession. Those twin purposes may be achieved directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the Bar from engaging in similar conduct.

*In re Gardner*, 565 S.W.3d 670, 675 (Mo. banc 2019). In imposing discipline, the Court considers the ethical duty violated, the lawyer’s mental state, the extent of actual or potential injury caused by the attorney’s misconduct, and any aggravating or mitigating factors. *Id.* at 675. The Court looks to the American Bar Association Standards for Lawyer Sanctions (ABA Standards) and applies those standards and its prior cases to those facts. *Id.* at 675.

### **Duty Violated**

“The most important ethical duties are those obligations which a lawyer owes to clients.” *In re McMillin*, 521 S.W.3d 604, 610 (Mo. banc 2017). “The relationship between lawyer and client is highly fiduciary and of a very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith on the attorney’s part.” *Howard*, 912 S.W.2d at 62 citing *In re Oliver*, 285 S.W.2d 648, 655 (Mo. banc 1956).

Respondent knew or should have known that engaging in sexual relations with A.B. was prohibited under Rule 1.8(j), caused an unwaivable conflict of interest under Rule 1.7(a)(2), and prejudiced the administration of justice under Rule 8.4(d).

### **State of Mind**

“Intention” is defined as “the conscious objective or purpose to accomplish a particular result.” *Gardner*, 565 S.W.3d at 678 citing ABA Standards Definitions, p. 17.

Under the false pretense of needing to re-date a signed document, Respondent lured A.B. to his house and locked the door. He then demanded A.B. come upstairs to his bedroom where he had non-consensual sexual relations with her. Respondent tricked A.B.

once in 2005 and knew he could again. Everything about Respondent's sexual misconduct in 2016 was intentional.

### **Client Injuries**

A.B.'s personal and emotional injuries suffered from Respondent's misconduct is well-documented herein. A.B. was deeply traumatized. She went to St. Louis University Hospital on multiple occasions. Her labs were consistent with a sexual encounter. A.B. saw psychiatrist, Dr. Anderson who diagnosed A.B. with Major Depressive Disorder, Panic Disorder, Posttraumatic Disorder and Generalized Anxiety Disorder and prescribed Zoloft and Xanax. A.B. followed up with psychologist, A. Cox, who confirmed that A.B. was deeply troubled by issues of sexual misconduct by her attorney.

### **Aggravating Factors**

Five aggravating factors apply to Respondent:

The first is Respondent's substantial experience in the practice of law. At the time of the sexual misconduct, Respondent had been practicing law for thirty years.

The second is Respondent's selfish motive. A.B. tricked a victim whom he victimized previously for his own sexual pleasure.

The third is Respondent's pattern of misconduct. The current incident is the second occurrence when Respondent leveraged his professional relationship with A.B. in order to engage her in sexual relations. The first was in 2005.

The fourth is Respondent's failure to acknowledge the wrongful nature of his conduct. Respondent denied he had sexual relations with A.B. at his home on February 27, 2016.

The fifth, and most significant aggravating factor, was A.B.'s vulnerability. A.B.'s history of trauma is well-documented herein and was known by Respondent. Respondent previously exploited that vulnerability in 2005.

Applying the ABA standards, Respondent intentionally engaged in non-consensual sexual relations with a client under aggravated circumstances causing his client to suffer significant physical and emotional harm.

### **Actual Suspension Warranted**

An actual suspension in this case is clearly warranted. In *Howard*, 912 S.W.2d at 61, the Court suspended Howard for six months for, in part, making sexual advances to his individual client, despite Howard's emphasis of his thirty-three years of practice with no disciplinary violations and an exemplary record of public service. The instant case is more severe because the evidence supports a finding that Respondent had non-consensual sexual relations with A.B.

This Court should discipline Respondent with an indefinite suspension from the practice of law with no leave to apply for reinstatement for one year.

### **Probation Ineligible**

“An attorney [only] is eligible for probation if the attorney: (1) is unlikely to harm the public during the probationary period and can be supervised adequately; (2) is able to perform legal services and practice law without causing the courts or profession to fall into disrepute; and (3) has not committed acts warranting disbarment. *In re Forck*, 418 S.W.3d 437, 443 (Mo. banc 2014) citing Rule 5.225(a)(2)(A-C).

As for subparagraph one, this case raises a legitimate concern of whether Respondent is a multiple sexual offender of clients. If the Court believes A.B.'s testimony, then Respondent is a threat to other clients.

As for subparagraph two, Respondent's conduct "pollute[d] the administration of justice" by devastating his client's safety and well-being. *See Osborne*, 244 S.W.2d at 1017. Maryland, New Jersey, and South Carolina specifically found that a lawyer who engages in sexual relations with an individual client causes the profession to "fall into disrepute." *Supra*. Moreover, Respondent's misconduct was not due to his failure to understand family law. Consequently, Respondent has no need for probation to "receive education, monitoring, and support that will improve his law practice and better serve and protect his clients in the future." *Cf. Forck*, 418 S.W.3d at 444.

As for subparagraph three, Respondent's misconduct certainly could be the basis for disbarment. *See In the Matter of Hall*, 761 S.E.2d 51 (Ga. 2014) (lawyer disbarred for attempting to extort sex for legal fees).

Probation would serve no legitimate disciplinary purpose at this time.



## CONCLUSION

A clear preponderance of the evidence demonstrates that Respondent violated Rule 4-1.7(a)(2), Rule 4-1.8(j) and Rule 4-8.4(d) by engaging in sexual relations with a vulnerable individual client at his house when no consensual sexual relationship existed between them when the client-lawyer relationship commenced. The circumstances of the incident are aggravated.

In order to protect the public and the integrity of the profession, Informant respectfully requests that this Court enter an order indefinitely suspending Respondent from the practice of law with no leave to apply for reinstatement until after one year.

Respectfully submitted,  
ALAN D. PRATZEL #29141  
CHIEF DISCIPLINARY COUNSEL



By: \_\_\_\_\_  
MARC A. LAPP #34938  
Special Representative - OCDC  
515 Dielman Road  
St. Louis, MO 63132-3610  
(314) 440-9337 (phone)  
(573) 635-2240 (fax)  
[specialrep@gmail.com](mailto:specialrep@gmail.com)

**ATTORNEYS FOR INFORMANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of February 2020, the Informant’s Brief was sent through the Missouri Supreme Court e-filing system to Respondent:

Mr. Gaylard T. Williams, Esq.  
P.O. Box 4542  
St. Louis, MO 63108-0542

**Respondent, Pro Se**



---

Marc A. Lapp

**CERTIFICATION: RULE 84.06(c)**

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Was served on Respondent through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 11,365 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



---

Marc A. Lapp