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.


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.


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 Snapchat 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 YNG\textsuperscript{2} so much?? back with the same guy???

   J.S. mayyybeeeeee

   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 IT\textsuperscript{3} really that good??

\textsuperscript{2}“YNG” refers to the Youngstown office of the USAO.
\textsuperscript{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…  

23. In or around January or February of 2019, J.S. asked respondent for a letter of recommendation for a clerkship.


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.

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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.
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]nwelcome 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* 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, text[ing] 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  See Attached
Joseph M. Caligiuri (0074786)
Disciplinary Counsel

/s/ Matthew A. Kanai  /s Richard Koblentz
Matthew A. Kanai (0072768) Richard Koblentz (0002677)
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Counsel for Relator

Mark Bennett (0069823)
Respondent

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 28th of December 2022.

Respectfully submitted,

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

/s/ Mark Bennett (0069823)
Mark Bennett
Respondent

/s Matthew A. Kanai
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Counsel for Respondent
State of Ohio,
________________ 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 day December 2022.

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