In the Supreme Court of Iowa

Supreme Court No. 19-1438
Grievance Commission No. 880

Iowa Supreme Court
Attorney Disciplinary Board,

Appellee,

vs.

Abraham Watkins,

Appellant

Appeal from the Report of the Iowa Supreme Court Grievance Commission

---

Appellee's Final Brief

Amanda K. Robinson, AT0006753
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319
Telephone: (515) 348-4680
Fax: (515) 348-4699
amanda.robinson@iowacourts.gov

Attorney for Complainant- Appellee

Table of Contents

Table of Authorities

Cases

Other Authorities

Statement of Issues Presented for Review

STATEMENT OF THE CASE, STANDARD OF REVIEW, AND ROUTING STATEMENT

The Board agrees with Respondent's recitation of the course of the proceedings and standard of review. Pursuant to Iowa Court Rules 36.22, this matter should be retained by the Iowa Supreme Court for de novo review.

STATEMENT OF FACTS

Respondent's recitation of the facts of the case as recited from the Stipulation are essentially accurate.

ARGUMENT

I. Definition of Sexual Harassment

The definition of sexual harassment under Iowa Ct. R. 32:8.4(g) differs from the legal definition of sexual harassment typically used in the civil law context. The appropriate definition of sexual harassment for purposes of attorney discipline matters was discussed at length in the case of *Iowa Sup. Ct. Att'y Disc. Bd. v. Moothart*, 860 N.W.2d 598, 603-604. There the Court made clear that an attorney may be guilty of sexual harassment even if the victim is not a client, stating in regard to Iowa Ct. R. 32:8.4(g):

> The rule may be violated if a lawyer sexually harasses witnesses, court personnel, law partners, law-office employees, or other third parties that come into contact with a lawyer engaged in the practice of law.

Moothart, 860 N.W.2d 598, 603.

The court goes on in Moothart to provide further relevant definition and context:

> [W]e consider what is meant by the term "sexual harassment." In briefing before the commission, Moothart offers a narrow definition of sexual harassment borrowed largely from employment law. Citing Equal Employment Opportunity Commission

> guidelines, 29 C.F.R. § 1604.11 (1980), Moothart asserts that sexual harassment must be unwelcome and must be more than an occasional stray comment. The Board counters that Moothart's definition of sexual harassment is too narrow and out of context. According to the Board, our cases indicate sexual harassment can include **any physical or verbal act of a sexual nature that has no legitimate place in a legal setting.** See *Steffes*, 588 N.W.2d at 124 (noting that rule regarding sexual harassment was adopted in response to recommendation made by the Equality in the Courts Task Force, which examined "discriminatory treatment received by women in the courtroom and from the legal system in general" (*citing Equality in the Cts. Task Force, State of Iowa, Final* Report 41–92 (1993))). **The commission agreed with the Board's approach. So do we.**
>
> In *Steffes*, we emphasized the breadth of the term "sexual harassment" used in rule 32:8.4(g). Id. We stated **sexual harassment as used in the rule includes " 'sexual advances, requests for sexual favors, and other verbal [or] physical conduct of a sexual nature**.' " Id. (quoting Black's Law Dictionary 1375 (6th ed.1990)). We have not required that the harassment be ongoing or pervasive as has been required in some employment contexts. See, e.g., id. at 124–25 (deeming sexually revealing photos allegedly documenting back injury conduct of a sexual nature, thereby constituting sexual harassment).

Moothart, 860 N.W.2d at 604 (emphasis added).

Watkins' conduct, as described and admitted in the stipulation in this matter, consists primarily of "verbal conduct… of a sexual nature" prohibited by Iowa Ct. R. 32:8.4(g) as described above. Respondent's

comments that his employee's "boobs were distracting" him, as set forth on page 14 of the Appendix would fall into this category of sexual harassment. His comments about whether he would like to see another particular woman naked, that he wished he had a wife who would have sex with him all of the time, his joke about the "Bona" brand cleaner, his speculation about whether another woman's breasts were "real," and his comments and questions to his female employee about her medical appointments and whether "her vagina was still broke" would also fall into this category. See Appendix pages 12-16.

Respondent viewing nude photos of his wife on his computer in his office where other co-workers could easily walk in and be subjected to those images (which actually happened to Virginia Barchman, see Appendix, page 15) would constitute physical conduct of a sexual nature with no legitimate place in a legal setting in violation of Iowa Ct. R. 32:8.4(g). The same is true of Respondent being present in the office while wearing his boxer-briefs (see Appendix, page 13). This also constituted physical conduct of a sexual nature with no legitimate place in a legal setting in violation of Iowa Ct. R. 32:8.4(g).

Based on these facts, the parties agree and the Court should find that Respondent violated Iowa Ct. R. 32:8.4(g).

II. Guidelines for Sanction

As the Court reiterated in the case of *Attorney Disciplinary Board v. Santiago*, 869 N.W.2d 172 (Iowa, 2015):

> " 'Attorney disciplinary proceedings are not designed to punish, but rather to determine the fitness of an officer of [the] court to continue in that capacity, to insulate the courts and the public from those persons unfit to practice law, to protect the integrity of and the public confidence in our system of justice, and to deter other lawyers from engaging in similar acts or practices.' "

Iowa Supreme Ct. Att'y Disciplinary Bd. v. Howe, 706 N.W.2d 360, 378 (Iowa 2005) (alteration in original) (quoting *Comm. on Prof'l Ethics & Conduct v. Vesole,* 400 N.W.2d 591, 593 (Iowa 1987)). In determining the appropriate sanction,

> "we consider the nature and extent of the respondent's ethical infractions, his fitness to continue practicing law, our obligation to protect the public from further harm by the respondent, the need to deter other attorneys from engaging in similar misconduct, our desire to maintain the reputation of the bar as a whole, and any aggravating or mitigating circumstances."

Id. (quoting *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Kallsen*, 670 N.W.2d 161, 164 (Iowa 2003)). "There is no standard sanction for particular types of misconduct." *Clarity*, 838 N.W.2d at 660. While prior cases may be instructive, " 'we determine the appropriate sanctions in light of the unique circumstances of the case before us.' " Id. (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Rhinehart*, 827 N.W.2d 169, 182 (Iowa 2013)).

In regard to determining sanction in attorney discipline cases, the Court has further stated:

> We have no standard sanction for misconduct of this type. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Carpenter,* 781 N.W.2d 263, 270 (Iowa 2010). Nevertheless, we try to achieve consistency with our prior cases when determining the proper sanction. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Marzen,* 779 N.W.2d 757, 767 (Iowa 2010). In determining the proper sanction
>
> > "we consider the nature of the violations, protection of the public, deterrence of similar misconduct by others, the lawyer's fitness to practice, and the court's duty to uphold the integrity of the profession in the eyes of the public. We also consider aggravating and mitigating circumstances present in the disciplinary action."
>
> *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Powell,* 726 N.W.2d 397, 408 (Iowa 2007) (internal quotation marks and alteration omitted) (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Iversen,* 723 N.W.2d 806, 810 (Iowa 2006)). The goal of our disciplinary system is "to maintain public confidence in the legal profession as well as to provide a policing mechanism for poor lawyering." *Id.* (internal quotation marks omitted).

Iowa Supreme Court Attorney Disciplinary Bd. v. Templeton, 784 N.W.2d 761, 769–70 (Iowa 2010).

III. Sanction Analysis

The primary misconduct in this case is sexual harassment of employees. One recent Iowa cases also involves sexual harassment – *Iowa Sup. Ct. Atty. Disc. Bd. v. Stansberry*, 922 N.W.2d 591 (Iowa 2019). Stansberry engaged in sexual harassment by secretly photographing female co-workers' undergarments both in the office, as well as at one co-worker's home. He also stole underwear from one co-worker's home on the same occasion he took photos of her undergarments there. While Stansberry committed additional rule violations related to his criminal convictions and his misleading of law enforcement, sexual harassment was at the heart of that case. Stansberry was sanctioned with a one-year suspension by the Court.

Stansberry has some similar and some differentiating factors when comparing it to the case at hand. Firstly, Stansberry's rule violations involved physical conduct of a sexual nature that rose to the level of a crime. Stansberry invaded the home and personal living spaces and offices of his victims for his own sexual gratification. There is no indication here that Watkins engaged in criminal conduct or that his conduct related to his own sexual gratification or that he hoped to have a sexual relationship with his victim. Rather, Respondent was

completely inconsiderate of the damaging effects his words and conduct were having on his female employees.

Another differentiating factor is that Stansberry refused to acknowledge the wrongfulness of his conduct and had not sought mental health counseling to assist him with controlling his compulsive behavior. Here, Respondent has sought counseling and other self-help remedies. See Appendix, pages 16-21. He has also agreed to abide by the terms of a Monitored Recovery Contract to help him in his sobriety given that alcoholism was a significant contributing factor to his rule violations.

One similar and aggravating factor to the *Stansberry* case is the fact that Respondent was a prosecutor at the time of his rule violations. Stansberry was an assistant county attorney at the time of his misconduct. Respondent was an elected County Attorney, arguably, the highest ranking law enforcement official in his jurisdiction. He was also the employment supervisor of his victims, who, given his position, had limited recourse to report and try to stop the uncomfortable interactions to which they were being subjected. Therefore, his ethics violations may be viewed as even more egregious due to this

aggravating factor. See *Stansberry*, at 600 (citing *Comm. on Prof'l Ethics & Conduct v. Tompkins*, 415 N.W.2d 620, 623–24 (Iowa 1987).

Another case involving sexual harassment in violation of Iowa Ct. R. 32:8.4(g) is *Iowa Sup. Ct. Att'y Disc. Bd. v. Moothart*, 8960 N.W.2d 598 (Iowa 2015). Moothart's conduct was more egregious in that it also involved sexual contact with multiple clients resulting in criminal charges. Moothart was given a 30-month suspension. Most other Iowa cases involving sexual harassment also involve some other rule violations and/or actual physical contact with the victim. See *Iowa Sup. Ct. Att'y Disc. Bd. v. McGrath*, 713 N.W.2d 682 (Iowa 2006) (three-year suspension for sex for fee arrangement with clients), *Steffes,* 588 N.W.2d at 125 (two-year suspension for taking photographs of partially-clothed client under pretext photos needed to document back injury); *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Hill,* 540 N.W.2d 43, 45 (Iowa 1995) (twelve-month suspension for making inappropriate sexual advances toward client); *Comm. on Prof'l Ethics & Conduct v. Barrer,* 495 N.W.2d 756, 757 (Iowa 1993) (two-year suspension for making obscene phone calls to teenage boys); *Comm. on Prof'l Ethics & Conduct v. Vesole,* 400 N.W.2d 591, 593 (Iowa 1987)

(three-year suspension for repeated instances of indecent exposure to women).

It is the Board's position that Respondent's conduct is certainly not as serious as that in *Moothart* or most of the other cases cited above. It also does not appear to be as egregious as that in *Stansberry* based on the differentiations set forth above. However, Respondent's misconduct is still quite serious, particularly given the aggravating factor of his position as county attorney and his position as employer and supervisor over the victims, at least one of whom was very young and vulnerable to such a situation given the power differential involved. This toxic work environment led the young employee to quit her job so as to not have to deal with Respondent any longer.

IV. Persuasive Precedent

Though not controlling, the Court might also consider the case of *Disciplinary Counsel v. Skolnick*, 104 N.E.3d 775 (Ohio 2018). In that case the Respondent engaged in verbal harassment of a paralegal, sexual and otherwise, and received a one-year suspension with six months stayed.

V. Public Reprimand is Insufficient as a Sanction in this Case

Respondent argues that his mitigating conduct is sufficient to reduce the sanction the Court should impose to a public reprimand rather than a suspension. Respondent's position fails to appreciate that the Grievance Commission's recommendation already takes into account the mitigating factors present in this case and is a very generous recommendation. In fact, it is an overly generous recommendation. Respondent's conduct was so egregious that it very nearly got him removed from elective office. Imposing a sanction that does not involve a significant suspension ignores the seriousness of the conduct, ignores the harm that was done to the victims, and sends a message to the Bar and the to the public that the Iowa Judicial Branch is lenient when it comes to addressing issues of sexual harassment. It is important to send a message to the Bar and to the public that conduct of this nature is unethical, unacceptable, and will not be tolerated by the Iowa Judicial Branch.

Given that the sanction issued in *Stansberry* was a one-year suspension, and given the similar as well as the differentiating and mitigating facts between this case and *Stansberry*, it would be fair to

impose a sanction involving a suspension one-half the length of that imposed in *Stansberry*.

CONCLUSION

Based on the uncontested facts and the aforementioned precedent, and taking into account the aggravating and mitigating factors present, the Grievance Commission should recommend a minimum sanction of license suspension for a period of six-months, and that costs of these proceedings be assessed to Respondent Watkins.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

If the Court grants Respondent oral argument upon submission of this appeal, Counsel requests to be heard in oral argument.

Respectfully Submitted,

/s/ Amanda K. Robinson
AMANDA K. ROBINSON, AT00006753
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, Iowa 50319

515-725-8009 (telephone)
515-725-8013 (facsimile)
Email: Amanda.robinson@iowacourts.gov
ATTORNEY FOR COMPLAINANT-APPELLEE

Certificate of Service

The undersigned hereby certifies that on the 18th of November, 2019, a true copy of the foregoing instrument was electronically filed.

/s/ Amanda K. Robinson
Amanda K. Robinson

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

[X] This brief contains [2,203] words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

[ ] This brief uses a monospaced typeface and contains [state the number of] lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Cambria 14.

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

/s/ Amanda K. Robinson
Amanda K. Robinson

November 18, 2019
Date