

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Nowicki*, Slip Opinion No. 2023-Ohio-3079.]

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**SLIP OPINION NO. 2023-OHIO-3079**

**DISCIPLINARY COUNSEL v. NOWICKI.**

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Nowicki*, Slip Opinion No. 2023-Ohio-3079.]

*Attorneys—Misconduct—Violations of the Rules of Professional Conduct, including engaging in sexual activity with a client—One-year suspension, fully stayed on conditions.*

(No. 2022-1253—Submitted February 7, 2023—Decided September 5, 2023.)

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2022-002.

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**Per Curiam.**

{¶ 1} Respondent, Griff Makini Nowicki, of Riverside, Ohio, Attorney Registration No. 0071849, was admitted to the practice of law in Ohio in 2000. In 2005, we suspended his license for five days for his failure to register as an attorney for the 2005-2007 attorney-registration biennium. *See In re Attorney Registration*

*Suspension of Nowicki*, 107 Ohio St.3d 1431, 2005-Ohio-6408, 836 N.E.2d 671, *reinstatement granted*, 107 Ohio St.3d 1705, 2006-Ohio-13, 840 N.E.2d 209. On September 4, 2012, we imposed on him a conditionally stayed six-month suspension for his neglect of a single client matter. *Dayton Bar Assn. v. Nowicki*, 133 Ohio St.3d 74, 2012-Ohio-3912, 975 N.E.2d 993.

{¶ 2} In a July 2022 amended complaint, relator, disciplinary counsel, charged Nowicki with two ethical violations arising from his conduct during his representation of a husband and wife in a civil case—specifically, his commencement of a sexual relationship with the wife and his filing of a divorce action on behalf of the wife against the husband when he still represented the couple in the civil case.

{¶ 3} At a hearing before a three-member panel of the Board of Professional Conduct, the parties presented stipulations of fact, misconduct, and aggravating and mitigating factors and jointly recommended that Nowicki be suspended from the practice of law for one year, with the entire suspension stayed on conditions. The panel found that Nowicki committed the charged misconduct and recommended that he be suspended from the practice of law for one year, with six months conditionally stayed. The board adopted the panel’s findings of fact, conclusions of law, and recommended sanction. Nowicki objects to the board’s finding of an additional aggravating factor that was not stipulated by the parties and to the board’s recommended sanction. Relator supports those objections.

{¶ 4} For the reasons that follow, we overrule Nowicki’s first objection, sustain his second objection, and suspend him from the practice of law for one year, with the entire suspension conditionally stayed.

### **Misconduct**

{¶ 5} In 2018, Nowicki’s law firm hired Sondra Clark as an administrative assistant. In August 2018, Nowicki agreed to represent Clark and her husband, pro bono, in a civil lawsuit that was filed against them and other defendants in *Grimes*

*v. Byrd*, Montgomery C.P. No. 2018 CV 02340. Nowicki filed an answer to the complaint in that case on August 11, 2018. That December, Clark’s husband left Clark but Nowicki continued to represent both Clark and her husband in the *Grimes* case.

{¶ 6} In April 2019, Nowicki and Clark commenced a sexual relationship. Within a few months, they were living together. About the time that Nowicki and Clark began living together, Clark’s husband learned of the relationship and was thereafter charged with two counts of telephone harassment—one in which Clark was the alleged victim and the other in which Nowicki was the alleged victim. Clark and one of her children obtained protection orders against her husband, and in July 2019, her husband was charged with violating a protection order.

{¶ 7} On August 6, Nowicki filed a motion to withdraw from his representation of Clark’s husband in the *Grimes* matter. In that motion, Nowicki claimed that he had a conflict of interest because he and Clark were the alleged victims in her husband’s criminal cases. Nowicki did not disclose in the motion his sexual relationship with Clark or cite it as a basis for his withdrawal.

{¶ 8} On August 7—before the trial court granted his motion to withdraw as counsel for Clark’s husband in the *Grimes* matter—Nowicki filed a complaint for divorce on Clark’s behalf. About two weeks later, the *Grimes* matter was dismissed without prejudice, and there is no indication in the record that it was ever refiled. Nowicki represented Clark through the conclusion of her divorce proceedings in October 2019. Nowicki and Clark were married in 2020.

{¶ 9} The parties stipulated and the board found that Nowicki’s conduct violated Prof.Cond.R. 1.7(a)(2) (providing that a lawyer’s continued representation of a client creates a conflict of interest when there is a substantial risk that the lawyer’s ability to represent the client will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by the lawyer’s own personal interests) and 1.8(j) (prohibiting a lawyer from soliciting or engaging

in sexual activity with a client unless a consensual sexual relationship existed between them prior to the client-lawyer relationship).

{¶ 10} The board also noted that “the record would support a finding” that Nowicki violated Prof.Cond.R. 1.7(a)(1) (prohibiting a lawyer’s continued representation of a client when the representation of the client will be directly adverse to another client), because he filed a divorce complaint on behalf of Clark while simultaneously representing both her and her husband in the *Grimes* matter. However, the board declined to find a violation of that rule because it was not charged in relator’s complaint. *See Disciplinary Counsel v. Reinheimer*, 162 Ohio St.3d 219, 2020-Ohio-3941, 165 N.E.3d 235 (rejecting on due-process grounds the board’s findings that the respondent committed rule violations that were not charged in the complaint).

{¶ 11} We adopt the board’s findings of misconduct.

#### **Recommended Sanction**

{¶ 12} When imposing sanctions for attorney misconduct, we consider all relevant factors, including the ethical duties the attorney violated, the aggravating and mitigating factors listed in Gov.Bar R. V(13), and the sanctions imposed in similar cases.

{¶ 13} The parties stipulated that just one aggravating factor is present in this case—Nowicki’s prior discipline. *See* Gov.Bar R. V(13)(B)(1). The board found that Nowicki also acted with a dishonest or selfish motive. *See* Gov.Bar R. V(13)(B)(2). As for mitigating factors, the parties stipulated and the board found that Nowicki made full and free disclosure to the board and exhibited a cooperative attitude toward the disciplinary proceedings. *See* Gov.Bar R. V(13)(C)(4).

{¶ 14} The parties jointly recommended that we impose a conditionally stayed one-year suspension for Nowicki’s misconduct, citing two cases in which we imposed similar sanctions on attorneys who had engaged in sexual relationships with clients—*Akron Bar Assn. v. Fortado*, 159 Ohio St.3d 487, 2020-Ohio-517,

152 N.E.3d 196, ¶ 6, 22, and *Disciplinary Counsel v. Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946, ¶ 4, 10. The board, however, distinguished those cases from this case on their facts and found two other cases—*Disciplinary Counsel v. Leon*, 155 Ohio St.3d 582, 2018-Ohio-5090, 122 N.E.3d 1242, and *Disciplinary Counsel v. Owen*, 142 Ohio St.3d 323, 2014-Ohio-4597, 30 N.E.3d 910—to be most instructive. In *Leon*, this court imposed a one-year suspension with six months conditionally stayed on an attorney who had engaged in a sexual relationship with a client who was the spouse of another client. *Id.* at ¶ 4, 10. And in *Owen*, this court imposed a two-year suspension with one year conditionally stayed on an attorney who engaged in a sexual relationship with the spouse of a client. *Id.* at ¶ 1, 35. The board recommends that we suspend Nowicki from the practice of law for one year, with six months stayed on the condition that he commit no further misconduct, and that his reinstatement be conditioned on his completion of three hours of continuing legal education (“CLE”) focused on professional conduct, in addition to the requirements of Gov.Bar R. X.

#### **Nowicki’s Objections**

{¶ 15} Nowicki raises two objections to the board’s report and recommendation. Specifically, he objects to the board’s finding of the additional aggravating factor that he acted with a dishonest or selfish motive and the board’s recommended sanction. He argues that the conditionally stayed one-year suspension recommended by the parties is the appropriate sanction. Relator agrees with Nowicki and argues that our caselaw and the totality of the circumstances support the imposition of the parties’ recommended sanction and that the circumstances do not support a finding that Nowicki engaged in dishonest or selfish conduct.

#### **Analysis**

{¶ 16} There can be no doubt that Nowicki engaged in serious misconduct in this case. He commenced an inappropriate sexual relationship with Clark while

he represented her and her (by then estranged) husband in a civil matter. And it appears that that inappropriate sexual relationship was a contributing factor in the husband’s misdemeanor convictions for telephone harassment and violation of a protection order. When Nowicki finally sought to withdraw from representing Clark’s husband, he cited the husband’s alleged criminal conduct as the basis for his withdrawal without disclosing his own inappropriate sexual relationship with Clark. Rather than seeking to withdraw as Clark’s counsel, Nowicki undertook additional representation of her by filing her complaint for divorce—despite the substantial risk that his personal interests would materially limit his ability to properly represent her and the inherent (albeit uncharged) conflict in representing one client against another. Nowicki could have avoided these ethical dilemmas by withdrawing from his representation of both Clark and her husband *before* commencing his sexual relationship with Clark.

{¶ 17} “We have consistently disapproved of lawyers engaging in sexual conduct with clients where the sexual relationship arises from and occurs during the attorney-client relationship.” *Cleveland Bar Assn. v. Kodish*, 110 Ohio St.3d 162, 2006-Ohio-4090, 852 N.E.2d 160, ¶ 66. We have recognized that the attorney-client relationship is inherently unequal in that the client’s reliance on the ability of counsel in a crisis situation has the effect of putting the attorney in a position of dominance and the client in a position of dependence and vulnerability. *Disciplinary Counsel v. Booher*, 75 Ohio St.3d 509, 510, 664 N.E.2d 522 (1996). And we have emphasized that “[t]he more vulnerable the client, the heavier is the obligation upon the attorney not to exploit the situation for his own advantage.” *Id.*

{¶ 18} In crafting the appropriate sanctions for attorneys who have engaged in misconduct, “ ‘we examine each case individually and impose the discipline we believe appropriate based on the unique circumstances of each case.’ ” *Toledo Bar Assn. v. Hales*, 120 Ohio St.3d 340, 2008-Ohio-6201, 899 N.E.2d 130, ¶ 21, quoting *In re Disciplinary Action Against Ruffenach*, 486 N.W.2d 387, 390

(Minn.1992). *See also* Gov.Bar R. V(13)(A). “We are ever mindful that the primary purpose of the disciplinary process is not to punish the offender but to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship.” *Columbus Bar Assn. v. Kiesling*, 125 Ohio St.3d 36, 2010-Ohio-1555, 925 N.E.2d 970, ¶ 44, citing *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E.2d 368, ¶ 10.

{¶ 19} The cases cited by the parties and the board provide an ample framework for determining where Nowicki’s misconduct falls on the continuum of inappropriate sexual conduct with a client. In *Owen*, 142 Ohio St.3d 323, 2014-Ohio-4597, 30 N.E.3d 910, Owen had been the sole counsel for a client who was charged with aggravated murder with death-penalty specifications and other criminal offenses after he confessed to killing his parents. *Id.* at ¶ 5-6. A few months before the client’s trial began, the client’s wife began working in Owen’s office, assisting with tasks associated with her husband’s case. *Id.* at ¶ 7. About a week before the trial started, Owen began a sexual relationship with the client’s wife, which continued for nearly a year. *Id.* The client was found guilty of the lesser offenses of voluntary manslaughter and murder. *Id.* at ¶ 8. For those offenses, the client received consecutive sentences of 10 to 25 years in prison and 15 years to life in prison, respectively. *Id.* Although Owen worked with the client’s appellate attorneys, he did not disclose his affair to them or the client. *Id.* More than 13 years after the client’s conviction, the client’s wife told him about the affair, and with Owen’s cooperation, the client was granted a new trial. *Id.* at ¶ 9-10.

{¶ 20} This court determined that Owen’s sexual relationship with his client’s wife created an inherent and impermissible conflict of interest that compromised the relationship of trust and confidence between Owen and the client, violated the client’s constitutional right to the effective assistance of counsel, prejudiced the administration of justice, and adversely reflected on Owen’s fitness to practice law. *Id.* at ¶ 2, 29, 32. Although Owen acted with a selfish motive and

caused harm to a vulnerable client, he had a clean disciplinary record, fully cooperated in the disciplinary proceedings, and presented evidence of his good character and reputation. *Id.* at ¶ 14, 33. After the affair became public, Owen entered into a five-year contract with the Ohio Lawyers Assistance Program (“OLAP”) and commenced mental-health treatment. *Id.* at ¶ 15, 17. We suspended Owen from the practice of law for two years, with the second year stayed on the conditions that he comply with his OLAP contract and engage in no further misconduct, and we expressly found that that sanction would adequately protect the public from future harm. *Id.* at ¶ 20, 34-35.

{¶ 21} In *Leon*, 155 Ohio St.3d 582, 2018-Ohio-5090, 122 N.E.3d 1242, a husband and wife had retained Leon to file a bankruptcy petition on their behalf. *Id.* at ¶ 4. Rather than depositing their retainer and filing fee into his client trust account, Leon deposited those funds into his operating account. *Id.* at ¶ 5. Although he never filed their bankruptcy petition, he falsely told the wife that he had and then lied to her about the reason the case had been delayed. *Id.* at ¶ 5-6. Leon’s neglect allowed creditors to foreclose on the couple’s home and repossess one of their cars. *Id.* at ¶ 6. Approximately one year after the couple retained him, Leon began exchanging emails of a personal nature with the wife and “sexting” with her. *Id.* at ¶ 7. They later engaged in a sexual relationship. *Id.* After the husband confronted him about the affair, Leon immediately withdrew from the representation, but he waited 17 months to refund the couple’s retainer and filing fee. *Id.* at ¶ 7, 17.

{¶ 22} As for aggravating factors, this court determined that Leon had committed multiple offenses and had harmed financially vulnerable clients by depriving them of the protection of a bankruptcy filing and by having an affair with the wife while representing her and her husband. *Id.* at ¶ 11. We also found that Leon had acted with a selfish motive, *id.*—though it is not clear from the decision whether that finding was related to the sexual relationship, the improper handling

of the clients' funds, or both of those instances of misconduct. However, Leon had no prior discipline, fully cooperated in the disciplinary proceedings, and submitted evidence of his good character and reputation. *Id.* at ¶ 12. Although the board had recommended that we impose a conditionally stayed six-month suspension, we found that Leon's misconduct was more egregious than that in cases involving only an inappropriate sexual relationship with a client and less egregious than the sexual misconduct at issue in *Owen*, 142 Ohio St.3d 323, 2014-Ohio-4597, 30 N.E.3d 910 (sexual misconduct with the client's wife created an inherent and impermissible conflict of interest that violated the client's constitutional right to the effective assistance of counsel in a capital case). *Leon* at ¶ 17. We therefore suspended Leon from the practice of law for one year, with six months conditionally stayed. *Id.* at ¶ 18.

{¶ 23} While it is never appropriate for an attorney to commence a sexual relationship with a client during the attorney-client relationship, the sexual misconduct and other misconduct at issue in *Owen* and *Leon* was more egregious than the misconduct at issue in this case, because the clients in *Owen* and *Leon* were more vulnerable than the clients here. The client in *Owen* faced the potential loss of his life or liberty in a capital case, and the clients in *Leon* faced the loss of their home and other property in a bankruptcy proceeding. In contrast, relator has stated that Nowicki represented Clark and her husband in a "minor civil matter" related to petty vandalism charges against Clark's minor son that was ultimately dismissed. In fact, in this case, the board made no finding that the Clarks were vulnerable or that they were harmed by Nowicki's misconduct.

{¶ 24} While not an exact match, the facts of *Fortado*, 159 Ohio St.3d 487, 2020-Ohio-517, 152 N.E.3d 196, and *Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946, more closely align to those of this case.

{¶ 25} In *Fortado*, Fortado commenced a sexual relationship with a client while he represented her in a civil matter. *Id.* at ¶ 6. That relationship lasted

approximately three years and outlasted Fortado’s initial representation of the client. *Id.* Fortado remained friendly with the client for a couple more years, until the client terminated his representation of her in another legal matter. *Id.* Fortado testified that he truly cared for the client, though he admitted without qualification that it was wrong for him to have entered into an intimate relationship with her during his legal representation of her. *Id.* The parties agreed that a conditionally stayed one-year suspension was the appropriate sanction for Fortado’s single violation of Prof.Cond.R. 1.8(j), but the board recommended that this court impose a one-year suspension with just six months conditionally stayed. *Fortado* at ¶ 3-4, 7.

{¶ 26} The only aggravating factor found against Fortado was his prior two-year suspension for conduct that had adversely reflected on his fitness to practice law—namely, his conviction on two drug-related charges and his unauthorized distribution of clients’ judgment proceeds—and his failure to cooperate in the ensuing disciplinary investigation. *Id.* at ¶ 1, 9; *see also Disciplinary Counsel v. Fortado*, 74 Ohio St.3d 604, 606, 660 N.E.2d 1154 (1996). As for mitigation, we found that Fortado had not acted with a dishonest or selfish motive and that he had acknowledged his wrongdoing, cooperated in the disciplinary proceedings, and presented evidence of his good character and reputation. *Fortado*, 159 Ohio St.3d 487, 2020-Ohio-517, 152 N.E.3d 196, at ¶ 10. Citing the unique facts of that case—and the absence of any evidence of coercion of the client—we sustained Fortado’s objection to the board’s recommendation and imposed a conditionally stayed one-year suspension for his misconduct. *Id.* at ¶ 21.

{¶ 27} Similarly, in *Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946, at ¶ 4, Siewert had an improper sexual relationship with a chemically dependent client whom he represented in related divorce, domestic-violence, and civil-protection-order proceedings. In addition to finding that Siewert violated Prof.Cond.R. 1.8(j), this court found that his personal interests materially limited

his ability to appropriately represent the client, that his conduct was prejudicial to the administration of justice, and that his conduct adversely reflected on his fitness to practice law. *Siewert* at ¶ 5.

{¶ 28} The only aggravating factor found against Siewert was his prior two-year suspension, with 18 months stayed, for misconduct that included his neglect of a client’s legal matter, his failure to seek the client’s lawful objectives, his failure to carry out a contract of employment for professional services, his causing prejudice or damage to the client, and his failure to assist in the resulting disciplinary investigation. *Id.* at ¶ 1; *see also Cuyahoga Cty. Bar Assn. v. Siewert*, 40 Ohio St.3d 172, 173, 532 N.E.2d 751 (1988). As for mitigating factors, Siewert lacked a dishonest or selfish motive, provided full cooperation in the disciplinary proceedings, and submitted evidence of his good character and reputation. *Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946, at ¶ 7. After considering cases in which we publicly reprimanded attorneys who had no prior discipline but engaged in consensual sexual relationships with clients that did not compromise the clients’ interests, we imposed a conditionally stayed six-month suspension on Siewert in light of his prior discipline. *Id.* at ¶ 9.

{¶ 29} Unlike this case, neither *Fortado* nor *Siewert* involved an attorney’s sexual relationship with a client whose spouse was also a client. However, Nowicki’s two instances of prior discipline—consisting of a five-day attorney-registration suspension and a fully stayed six-month suspension for the neglect of a single client matter—are less serious than *Fortado*’s prior two-year suspension and Siewert’s prior two-year suspension with 18 months conditionally stayed.

{¶ 30} Nowicki and relator suggest that *Fortado* and *Siewert* demonstrate that an attorney’s violation of Prof.Cond.R. 1.8(j) does not by itself require a finding of a dishonest or selfish motive. They suggest that several facts—including Nowicki’s pro bono representation of Clark and her husband, the gradual progression of Nowicki’s relationship with Clark, and Clark’s husband’s purported

abandonment of the marital relationship before the misconduct began, support their position that Nowicki did not act with a dishonest or selfish motive. Although we acknowledge Nowicki's pro bono representation, we conclude that the status of the Clarks' marital relationship at the time of the misconduct—which is not entirely clear from the record—has little if any bearing on Nowicki's motive. Instead, we find that Nowicki concealed his sexual relationship with Clark from the trial court when he sought to withdraw from representing Clark's husband in the *Grimes* matter and cited the husband's alleged criminal acts as the sole basis for his withdrawal. We therefore overrule Nowicki's first objection to the board's report and recommendation and adopt the board's finding that he acted with a dishonest or selfish motive.

{¶ 31} Nonetheless, having considered Nowicki's misconduct, the aggravating and mitigating factors, and the sanctions imposed in comparable cases, we find that it is highly unlikely that Nowicki will engage in similar acts of misconduct going forward. Consequently, we hold that a one-year suspension, stayed in its entirety on the conditions recommended by the board, strikes the proper balance between sending a strong message that misconduct like Nowicki's will not be tolerated and adequately protecting the public from future harm. We therefore sustain Nowicki's second objection to the board's report and recommendation.

### **Conclusion**

{¶ 32} Accordingly, Griff Makini Nowicki is suspended from the practice of law in Ohio for one year, with the entire suspension stayed on the conditions that he commit no further misconduct and complete three hours of CLE focused on professional conduct, in addition to the requirements of Gov.Bar R. X. If Nowicki fails to comply with the conditions of the stay, the stay will be lifted and he will serve the entire one-year suspension. Costs are taxed to Nowicki.

Judgment accordingly.

DEWINE, DONNELLY, STEWART, and DETERS, JJ., concur.

KENNEDY, C.J., concurs in part and dissents in part, with an opinion joined by FISCHER and BRUNNER, JJ.

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**KENNEDY, C.J., concurring in part and dissenting in part.**

{¶ 33} Respondent, Griff Makini Nowicki, engaged in a sexual relationship with his client while the client was married to another client and he represented them and their child in a civil case. Addressing that misconduct, the Board of Professional Conduct found two aggravating factors—Nowicki had prior discipline, *see* Gov.Bar R. V(13)(B)(1), and acted with a dishonest or selfish motive, *see* Gov.Bar R. V(13)(B)(2). Today, this court should impose on Nowicki an actual suspension from the practice of law. Instead, the majority ignores our precedent.

{¶ 34} I agree with the majority that Nowicki violated two rules of professional conduct, as found by the board, and that the aggravating factors—that Nowicki had prior discipline and acted with a dishonest or selfish motive—were proved. I disagree with the majority’s determination that a fully stayed suspension is the appropriate sanction in this case.

{¶ 35} “Each disciplinary case involves unique facts and circumstances.” Gov.Bar R. V(13)(A). Accordingly, this court relies on precedent—cases involving similar misconduct and aggravating and mitigating factors—to ensure a fair and equitable disciplinary system. Our caselaw establishes that an actual suspension from the practice of law is warranted when an attorney commences a sexual relationship with a client who is married to another client and the attorney acted with a dishonest or selfish motive and has previously been disciplined. I would adopt the board’s recommended sanction and suspend Nowicki from the practice of law for one year, with six months stayed on the conditions that he engage

in no further misconduct and complete three hours of continuing legal education (“CLE”) on professional conduct. Therefore, I concur in part and dissent in part.

## **I. Background**

### *A. Misconduct*

{¶ 36} In 2018, Nowicki’s law firm hired Sondra Clark as an assistant. Soon thereafter, Nowicki offered to represent Sondra, her husband, and their son in a civil matter for free. As their attorney, Nowicki filed an answer on their behalf in the civil case.

{¶ 37} In April 2019, while Nowicki was still representing the Clarks in the civil matter, he began a sexual relationship with Sondra. Soon thereafter, Sondra’s husband learned of the relationship, and in late June, he was charged with telephone harassment of Sondra and Nowicki. In July, Sondra’s husband was charged with violating a protection order, which stemmed from the harassment. During this time, Nowicki continued to represent the Clarks in the civil matter.

{¶ 38} A couple weeks later, Nowicki filed a motion to withdraw as counsel for Sondra’s husband in the civil matter. Nowicki’s motion indicated that he was withdrawing because he and Sondra were the victims in the husband’s telephone-harassment case. Nowicki never disclosed to the trial court that he was in a sexual relationship with Sondra. The day after Nowicki filed the motion to withdraw, while still representing the Clarks in the civil case, Nowicki filed on Sondra’s behalf a complaint for divorce against her husband. A week later, the court granted Nowicki’s motion to withdraw as the husband’s counsel. The Clarks’ divorce was finalized a couple months later. Nowicki and Sondra married in 2020.

### *B. Board Report*

{¶ 39} The board determined that Nowicki violated Prof.Cond.R. 1.8(j) (“A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced”) and 1.7(a)(2) (“A lawyer’s acceptance or continuance of

representation of a client creates a conflict of interest if \* \* \* there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interest").

{¶ 40} The board also found that two aggravating factors and one mitigating factor were present in the case. First, the parties stipulated, and the board agreed, that the aggravating factor of Nowicki's prior discipline had been proved. *See* Gov.Bar R. V(13)(B)(1). The board also found that Nowicki acted with a dishonest or selfish motive, because Nowicki had a sexual relationship with Sondra while representing her and her husband. *See* Gov.Bar R. V(13)(B)(2). The board found one mitigating factor—Nowicki provided full and free disclosure to the board and had a cooperative attitude toward the disciplinary proceedings. *See* Gov.Bar R. V(13)(C)(4). Nowicki did not present any other mitigating or character evidence.

{¶ 41} In reviewing the relevant caselaw, the board found *Disciplinary Counsel v. Leon*, 155 Ohio St.3d 582, 2018-Ohio-5090, 122 N.E.3d 1242, and *Disciplinary Counsel v. Owen*, 142 Ohio St.3d 323, 2014-Ohio-4597, 30 N.E.3d 910, to be instructive. The board found *Akron Bar Assn. v. Fortado*, 159 Ohio St.3d 487, 2020-Ohio-517, 152 N.E.3d 196, and *Disciplinary Counsel v. Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946, to be distinguishable from this case. The board recommended that we impose a one-year suspension, with six months stayed on the condition that Nowicki commit no further misconduct, and that we condition his reinstatement on his completion of three hours of CLE focused on professional conduct, in addition to the requirements of Gov.Bar R. X.

#### *C. Nowicki's Objections*

{¶ 42} Nowicki has not objected to the board's findings of professional misconduct. He does object to the board's finding of the aggravating factor that he

had a dishonest or selfish motive when he began his sexual relationship with Sondra. Nowicki does not, however, object to the board’s finding that he showed a dishonest or selfish motive “by having an affair with [Sondra] while representing her and her husband.” Nowicki also objects to the board’s recommended sanction and argues that a fully stayed one-year suspension is the appropriate sanction.

{¶ 43} In support of his objections to the board’s recommendation, Nowicki argues that regarding his representation of Sondra and her husband in the civil case, he did not receive a fee for his work, performed de minimis work in the case, and did not consult with Sondra’s husband about the case, and he argues that Sondra and her husband “separated” prior to his commencement of a sexual relationship with Sondra. Nowicki also asserts that the facts here are dissimilar to those in *Leon* but similar to those in *Siewert*, because, he claims, he did not have a dishonest or selfish motive in *beginning* his relationship with Sondra. He reasons that their “relationship developed from working together to friendship to best friends to romantic.”

## **II. Nowicki’s Objections Should Be Overruled**

{¶ 44} I disagree with the majority’s decision to sustain Nowicki’s objection as to the board’s recommended sanction. I would overrule both of his objections, based on the rules violated, the weight of the aggravating factors compared to that of the mitigating factors, and our relevant caselaw.

### *A. The Rules Nowicki Violated*

#### ***1. Prohibition on Sexual Relationships with Clients***

{¶ 45} Prof.Cond.R. 1.8(j) *strictly prohibits* an attorney from soliciting or *engaging in sexual activity with a client* unless a consensual sexual relationship existed between them when the attorney-client relationship commenced. “In the absence of a preexisting, consensual sexual relationship, seeking or having sex with a client is a per se violation.” *Disciplinary Counsel v. Sarver*, 155 Ohio St.3d 100, 2018-Ohio-4717, 119 N.E.3d 405, ¶ 16.

{¶ 46} As Comment [17] to Prof.Cond.R. 1.8(j) explains, “this rule prohibits [a] lawyer from engaging in sexual activity with a client \* \* \* *regardless of the absence of prejudice to the client*, unless the sexual relationship predates the client-lawyer relationship.” (Emphasis added.) The attorney-client relationship creates an unequal balance of power in that “ ‘[t]he client’s reliance on the ability of her counsel in a crisis situation has the effect of putting the lawyer in a position of dominance and the client in a position of dependence and vulnerability.’ ” (Brackets added in *Sarver*.) *Sarver* at ¶ 24, quoting *Disciplinary Counsel v. Booher*, 75 Ohio St.3d 509, 510, 664 N.E.2d 522 (1996). “This power imbalance ‘enable[s] the lawyer to dominate and take unfair advantage’ ’ of the client.” (Brackets added in *Sarver*.) *Id.*, quoting *Iowa Supreme Court Bd. of Professional Ethics & Conduct v. Hill*, 540 N.W.2d 43, 44 (Iowa 1995), quoting former Iowa Code of Professional Responsibility EC 5-25.

{¶ 47} This court has recognized that “ ‘a sexual relationship between lawyer and client during the course of the professional relationship is inherently and insidiously harmful.’ ” *Id.* at ¶ 28, quoting *People v. Boyer*, 934 P.2d 1361, 1363 (Colo.1997). And “[t]he abuse of the attorney-client relationship not only harms the dignity of the client, whose body and trust in her lawyer have been violated, but it also impugns the legal system as a whole.” *Id.* at ¶ 29. Therefore, “the professional-conduct rules do not indicate that a lesser sanction should be imposed on the attorney when \* \* \* the client’s case does not seem to have been prejudiced.” *Id.* at ¶ 30.

{¶ 48} In his objections to the board’s recommendation, Nowicki asserts that Sondra and her husband were “separated” prior to Nowicki and Sondra’s beginning a sexual relationship, that their relationship had “developed from working together to friendship to best friends to romantic,” and that he and Sondra are now married. But these assertions are either immaterial deflections from or improper attempts to mitigate his misconduct.

{¶ 49} Prof.Cond.R. 1.8(j) *expressly prohibits* an attorney from engaging in a sexual relationship with a client unless the sexual relationship existed prior to the attorney-client relationship. Sondra’s marital status at the time of the sexual relationship, how the sexual relationship developed, and the fact that Nowicki is now married to Sondra are irrelevant to whether a violation of Prof.Cond.R. 1.8(j) occurred. And those purported excuses are not mitigating. *See* Gov.Bar R. V(13)(C).

{¶ 50} Nowicki’s objections show a basic lack of appreciation for the gravity of his misconduct, a lack of understanding of the Rules of Professional Conduct, and an unwillingness to accept responsibility for his misconduct. Nowicki’s deflections from and feeble rationalizations for his misconduct are an affront to the noble profession of the practice of law and the Rules of Professional Conduct and show why this court should impose an actual suspension from the practice of law.

## ***2. Conflicts of Interest***

{¶ 51} Regardless of how the majority characterizes the attorney-client relationships in this case, Nowicki had three clients—Sondra, Sondra’s husband, and their child. He owed each of them an equal duty of consultation, had an obligation to provide them with complete and disinterested advice, and had a duty to zealously advocate on their behalf.

{¶ 52} Prof.Cond.R. 1.7(a)(2) explains that a conflict of interest arises when a lawyer continues representing a client and “there is a substantial risk that the lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by the lawyer’s own personal interest.” Comment [1] to Prof.Cond.R. 1.7 reminds us that “[t]he principles of loyalty and independent judgment are fundamental to the attorney-client relationship.” These principles “underlie the conflict of interest provisions of [the

Rules of Professional Conduct].” *Id.* And this court has held that “a lawyer’s sexual relationship with the spouse of a current client creates an inherent conflict of interest. This conflict of interest compromises the relationship of trust and confidence between the attorney and client.” *Owen*, 142 Ohio St.3d 323, 2014-Ohio-4597, 30 N.E.3d 910, at ¶ 29.

{¶ 53} In his objections to the board’s recommendation, Nowicki states that he was not paid for his representation in the civil case, that he performed de minimis work in the case, and that he did not consult with Sondra’s husband in the case. These statements further demonstrate Nowicki’s lack of appreciation for the gravity of his misconduct, are attempts to deflect from his misconduct, and are improper attempts to mitigate his misconduct.

{¶ 54} First, Nowicki’s objections demonstrate that he does not appreciate that when an attorney-client relationship is formed, the attorney has a duty to serve as an evaluator, advisor, advocate, and negotiator for the client, and here, Sondra’s husband was one of Nowicki’s clients. Once an attorney decides to represent a client, the attorney has a professional duty to that client and must promote the client’s best interests. *See Prof.Cond.R., Preamble [4]* (“In all professional functions a lawyer should be \* \* \* loyal”). The duty of an attorney to a client does not and cannot turn on how much money the attorney will be paid for his or her work or how much time the attorney will spend on the case. An attorney’s duty to provide competent representation arises when the attorney-client relationship is formed.

{¶ 55} Second, Nowicki’s objections are an admission that he did not consult with a client—Sondra’s husband—prior to filing an answer in the civil case on his behalf. Each client has a valuable opinion about his or her case and a different perspective to share with his or her attorney. Ohio’s professional-conduct rules place a high value on attorney-client communication. *See Prof.Cond.R. 1.4.*

{¶ 56} Third, the assertions in Nowicki’s objections do not mitigate his misconduct. *See* Gov.Bar R. V(13)(C). This court has not, and should not, take an attorney’s assertions that he was not paid for his representation in a civil case, that he performed de minimis work in the case, and that he did not consult with the client in the case as evidence mitigating his misconduct. Instead, such assertions are further evidence that the attorney fails to appreciate his duty and obligations as an attorney and lacks knowledge of the Rules of Professional Conduct, and they reveal the attorney’s unwillingness to take responsibility for his or her misconduct.

{¶ 57} In addition to Nowicki’s violations of Prof.Cond.R. 1.8(j) and 1.7(a)(2), the board also found evidence of aggravating and mitigating factors. Considering these factors in light of Nowicki’s misconduct demonstrates why this court should impose an actual suspension from the practice of law.

*B. Aggravating and Mitigating Factors*

{¶ 58} As stated above, each disciplinary case involves “unique facts and circumstances.” Gov.Bar R. V(13)(A). Therefore, when considering instances of professional misconduct, the board shall consider aggravating and mitigating factors. *Id.* Aggravating factors weigh in favor of “recommending a more severe sanction.” Gov.Bar R. V(13)(B). Mitigating factors weigh in favor of “recommending a less severe sanction.” Gov.Bar R. V(13)(C).

{¶ 59} The importance or weight of a mitigating or aggravating factor depends on the facts of the case. Here, the board found two aggravating factors—Nowicki had prior discipline, *see* Gov.Bar R. V(13)(B)(1), and acted with a dishonest or selfish motive, *see* Gov.Bar R. V(13)(B)(2). The board also found **one** mitigating factor—Nowicki provided full and free disclosure to the board and had a cooperative attitude toward the disciplinary proceedings. *See* Gov.Bar R. V(13)(C)(4). In my view, this mitigating factor should be accorded little weight.

{¶ 60} Although Nowicki did attempt to enter into a consent-to-discipline agreement and later agreed to stipulations, it is not clear that he was initially

cooperative with the investigation and disciplinary proceedings. Nowicki did not timely answer or acknowledge receipt of the original disciplinary complaint, which contained allegations that he had violated eight separate rules of professional conduct. In Nowicki's answer to the complaint, which he filed following the board's notice to him that it intended to certify his default, he admitted an allegation that he had failed to respond to an investigator's request to provide records. Also, he admitted in his answer to having a sexual relationship with Sondra that did not exist prior to his representation of her, but he refused to admit that his conduct violated most of the rules alleged to have been violated, including Prof.Cond.R. 1.8(j). Additionally, Nowicki's relationship with Sondra was public, and his conflicts-of-interest were documented in the records of the civil case and the Clarks' divorce case. There was little Nowicki could do to dispute this evidence, so cooperation was his only choice. For these reasons, Nowicki's providing disclosure and cooperating in the disciplinary process should be given little weight in mitigation.

{¶ 61} The aggravating factors, however, should be afforded more weight than the majority assigns them. First, the board correctly found that Nowicki has twice been disciplined for misconduct, with his most serious offense being failing to represent a client with reasonable diligence. *See Dayton Bar Assn. v. Nowicki*, 133 Ohio St.3d 74, 2012-Ohio-3912, 975 N.E.2d 993. Second, the board found that Nowicki "acted with a dishonest or selfish motive by having an affair with [Sondra] while representing her and her husband." Nowicki did not object to this finding; his objection is limited to his assertion that he did not have a dishonest or selfish motive when he *began* his sexual relationship with Sondra.

{¶ 62} But Nowicki's motive when he began his sexual relationship with Sondra is irrelevant. The board's finding of a dishonest or selfish motive was not based on when Nowicki began having sexual relations with Sondra; it was based on Nowicki's having a sexual relationship with Sondra when he also had an

attorney-client relationship with her husband. Nowicki displayed dishonest and deceitful conduct in his continued representation of Sondra's husband during his relationship with Sondra. Nowicki could have moved to withdraw as the husband's counsel in the civil case when he began his sexual relationship with Sondra, but he did not. Nowicki instead waited to seek leave to withdraw from representing Sondra's husband in the civil case until the day before he filed Sondra's complaint for divorce against the husband. And there is no indication in the record that Nowicki attempted to communicate with Sondra's husband about his withdrawal in the civil case in order to minimize any harm to the husband. *See Prof.Cond.R. 1.7, Comment [7]*. Nowicki's attorney-client relationship with the husband is at the heart of his conflict-of-interest misconduct.

{¶ 63} I agree with the board's finding that Nowicki had a dishonest or selfish motive based on the fact that he represented *both* Sondra *and* Sondra's husband. By engaging in a sexual relationship with Sondra, he betrayed his duty and obligations as an attorney to Sondra's husband, and our caselaw supports the imposition of an actual suspension from the practice of law for that misconduct.

*C. Caselaw Supports the Imposition of an Actual Suspension*

***I. Owen and Leon Are Instructive***

{¶ 64} As the board noted, our precedent includes two cases that are factually similar to this case and are instructive on the proper sanction to impose for Nowicki's misconduct. In *Owen*, the attorney began a sexual relationship with the wife of a client in a criminal case. 142 Ohio St.3d 323, 2014-Ohio-4597, 30 N.E.3d 910, at ¶ 6-7. This court held that a "lawyer who engages in a sexual relationship with a client's spouse during the representation creates an inherent and impermissible conflict between the interests of the lawyer and those of the client." *Id.* at ¶ 32. This court considered two aggravating factors: (1) Owen's selfish motive and (2) his harm to a vulnerable client. *Id.* at ¶ 14. As for mitigation, this court found that Owen had no prior discipline, cooperated in the disciplinary

proceedings, and provided evidence of his good character and reputation. *Id.* at ¶ 33. We imposed a two-year suspension, with one year conditionally stayed. *Id.* at ¶ 35.

{¶ 65} Here, like in *Owen*, the sexual relationship created an inherent and impermissible conflict, because the relationship was with the spouse of a client. Like *Owen*, *Nowicki* acted with a dishonest or selfish motive. And worse than *Owen*, *Nowicki* has prior discipline and has not presented any evidence of his good character and reputation.

{¶ 66} In *Leon*, the attorney was representing a husband and wife when he began a sexual relationship with the wife. 155 Ohio St.3d 582, 2018-Ohio-5090, 122 N.E.3d 1242, at ¶ 7. *Leon* also mishandled the clients' funds and failed to act diligently in handling their case. *Id.* at ¶ 5, 8. This court found that *Leon* violated Prof.Cond.R. 1.8(j), along with three other professional-conduct rules. *Leon* at ¶ 8-9. We also considered three aggravating factors: (1) *Leon's* selfish motive, (2) his committing multiple offenses, and (3) his financially harming vulnerable clients and causing additional harm by having an affair with the wife while representing her and her husband. *Id.* at ¶ 11. As for mitigation, this court found that *Leon* had no prior disciplinary offenses, cooperated in the disciplinary proceedings, and provided evidence of his good character and reputation. *Id.* at ¶ 12. This court imposed a one-year suspension, with six months conditionally stayed. *Id.* at ¶ 18.

{¶ 67} The facts concerning the attorney-client sexual relationship in this case match those in *Leon*. Like *Leon*, *Nowicki* engaged in a sexual relationship with a client who was the spouse of another client. *Nowicki*, like *Leon*, acted with a dishonest or selfish motive. While *Leon* involved additional violations and aggravating factors not present here, it also involved additional mitigating factors, namely that *Leon* had no prior discipline and presented evidence of his good character and reputation.

{¶ 68} The majority attempts to distinguish *Owen* and *Leon* based on the increased vulnerability of the clients in those cases, i.e., the potential or actual harm to those clients. But the absence of any finding that Sondra, her husband, or their child were vulnerable clients in this case does not negate the seriousness of Nowicki’s misconduct, his dishonest or selfish motive, or the fact this is his second disciplinary proceeding involving substantial misconduct. And though, as the majority finds, the board made no finding that the Clarks were harmed by Nowicki’s misconduct, “the professional-conduct rules do not indicate that a lesser sanction should be imposed” for Prof.Cond.R. 1.8(j) violations when the clients do not seem to have been prejudiced by the attorney’s misconduct, *Sarver*, 155 Ohio St.3d 100, 2018-Ohio-4717, 119 N.E.3d 405, at ¶ 30. *See also* Prof.Cond.R. 1.8(j), Comment [17]. The “resulting harm to victims of the misconduct” is an aggravating factor that may be considered, Gov.Bar R. V(13)(B)(8), but the lack of such harm does not absolve the misconduct.

{¶ 69} Moreover, the majority’s reliance on the board’s not finding that the Clarks were vulnerable or were harmed by Nowicki’s misconduct is based in speculation. The majority knows that Nowicki was less than forthright with the court in the civil case when he sought leave to withdraw as Sondra’s husband’s attorney. For all the majority knows, the civil case has been refiled. Therefore, whether the Clarks have been harmed by Nowicki’s misconduct is unknown. It is possible that because he did not consult with Sondra’s husband before filing an answer in the civil case, Nowicki failed to fully answer the complaint or failed to assert a viable affirmative defense. This court does not know those things and the majority should not speculate about them.

{¶ 70} The majority also minimizes the harm that Sondra suffered by her husband’s telephone harassment, which, based on the facts, is a direct result of Nowicki’s misconduct.

## 2. Fortado and Siewert Are Distinguishable

{¶ 71} The board also correctly found that *Fortado*, 159 Ohio St.3d 487, 2020-Ohio-517, 152 N.E.3d 196, and *Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946, are distinguishable, and the majority’s reliance on those cases is erroneous. In *Fortado*, the attorney began a sexual relationship with a client. *Id.* at ¶ 6. That relationship lasted several years. *Id.* The board found a single violation of Prof.Cond.R. 1.8(j) and only one aggravating factor—Fortado’s prior discipline. *Fortado* at ¶ 7, 9.

{¶ 72} As for mitigation, the board considered the following mitigating factors: (1) Fortado’s lack of a dishonest or selfish motive, (2) his acknowledgment of wrongdoing and full cooperation in the disciplinary proceedings, and (3) his strong character and reputation evidence. *Id.* at ¶ 10. And this court considered that there was no evidence that Fortado had coerced the client. *Id.* at ¶ 21. The board recommended that we suspend Fortado from the practice of law for one year, with six months conditionally stayed. *Id.* at ¶ 12.

{¶ 73} This court imposed on Fortado a one-year suspension, fully stayed on the condition that he engage in no further misconduct. *Id.* at ¶ 22. In determining that an actual suspension was not warranted, the *Fortado* majority distinguished that case from other cases that “involved either acts of misconduct in addition to” a violation of Prof.Cond.R. 1.8(j) “or significant aggravating factors” that were not present in *Fortado*. *Id.* at ¶ 18. And in reaching its decision, the *Fortado* majority also relied on the mitigating factors mentioned above. *See id.* at ¶ 21.

{¶ 74} The facts here are not comparable to those in *Fortado*, 159 Ohio St.3d 487, 2020-Ohio-517, 152 N.E.3d 196. Fortado did not engage in a sexual relationship with a client whose spouse was also his client. Unlike Nowicki, Fortado did not act with a dishonest or selfish motive. Further, Nowicki’s sole mitigating factor of providing full and free disclosure to the board and having a

cooperative attitude toward the disciplinary proceedings is worth very little here and cannot be equated to the multiple mitigating factors found in *Fortado*.

{¶ 75} But even if *Fortado* is applicable, the *Fortado* court’s reasoning warrants the imposition of an actual suspension here. Nowicki’s continued representation of Sondra’s husband during (1) his sexual relationship with Sondra, (2) the pendency of the husband’s criminal case, and (3) during the divorce proceedings, created an impermissible conflict amounting to a violation of Prof.Cond.R. 1.7(a)(2). Following the reasoning of *Fortado*, this “misconduct in addition to,” *id.* at ¶ 18, the Prof.Cond.R. 1.8(j) violation supports the imposition of an actual suspension. Further, *Fortado* implies that the aggravating factor of Nowicki’s having acted with a dishonest or selfish motive is “significant” enough to tip the scales in favor of an actual suspension. *Id.*

{¶ 76} The facts in *Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946, are also distinguishable. In *Siewert*, the attorney began a sexual relationship with a client whom he was representing in several matters. *Id.* at ¶ 4. This court imposed a six-month suspension, fully stayed on the condition that *Siewert* commit no further misconduct. *Id.* at ¶ 10. In arriving at that conclusion, this court considered a single aggravating factor—*Siewert*’s prior discipline. *Id.* at ¶ 7. Mitigating factors included (1) that *Siewert* did not have a dishonest motive, (2) his full and free disclosure and cooperative attitude toward the proceedings, and (3) evidence of his good character and reputation. *Id.*

{¶ 77} *Siewert* is also inapplicable. Here, Nowicki had a sexual relationship with a client whose spouse was also his client. That fact was not present in *Siewert*. Further, this court finds as an aggravating factor that Nowicki acted with a dishonest or selfish motive, when in *Siewert*, the absence of such a motive was a mitigating factor, *id.* at ¶ 7. Finally, the mitigating factor of having shown evidence of good character or reputation, Gov.Bar R. V(13)(B)(5), which was found in *Siewert*, is not present here.

{¶ 78} The majority asserts that the facts of *Fortado* and *Siewert* more closely align with this case, but then it acknowledges that “[u]nlike this case, neither *Fortado* nor *Siewert* involved an attorney’s sexual relationship with a client whose spouse was also a client.” Majority opinion, ¶ 29. As noted above, each disciplinary case involves “unique facts and circumstances,” Gov.Bar R. V(13)(A), and the unique facts are at the very heart of this misconduct case. Sondra’s husband is the victim of Nowicki’s misconduct too.

{¶ 79} When imposing attorney discipline, this court relies on precedent to align similar instances of misconduct. In determining the appropriate sanction, the board is required to consider “all relevant factors, precedent established by the Supreme Court of Ohio, and the aggravating and mitigating factors.” Gov.Bar R. V(13)(A). The majority should follow established precedent, and this case should not stand as an exception or an outlier.

{¶ 80} The specific misconduct at issue in *Leon*, 155 Ohio St.3d 582, 2018-Ohio-5090, 122 N.E.3d 1242, more closely aligns with the misconduct here, and *Owen*, 142 Ohio St.3d 323, 2014-Ohio-4597, 30 N.E.3d 910, provides further instruction regarding the conflict-of-interest-rule violation. By maintaining that the misconduct in this case is less serious than that at issue in *Fortado* and *Siewert*, the majority focuses on a single aggravating factor: prior discipline. While Nowicki’s disciplinary sanction in 2012 was a stayed suspension, we cannot ignore that his prior misconduct resulted in a judgment that “caused extreme financial hardship for \* \* \* a single mother supporting three young children.” *Nowicki*, 133 Ohio St.3d 74, 2012-Ohio-3912, 975 N.E.2d 993, at ¶ 3. Nowicki has violated the Rules of Professional Conduct again, and the majority fails to account for the remaining aggravating factor here—Nowicki’s dishonest or selfish motive.

{¶ 81} The majority also does not distinguish this case based on the mitigating factor of good character or reputation, which was found in *Fortado* and

*Siewert* but was not found in this case. And again, the lack of a dishonest or selfish motive was a mitigating factor in both *Fortado* and *Siewert*.

**III. An Actual Suspension Would Protect the Public**

{¶ 82} The primary purpose of attorney discipline “is not to punish the offender, but to protect the public.” *Disciplinary Counsel v. O’Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286, ¶ 53. If the majority were to impose an actual suspension, this court would fulfill its role of protecting the public “from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship,” *Columbus Bar Assn. v. Kiesling*, 125 Ohio St.3d 36, 2010-Ohio-1555, 925 N.E.2d 970, ¶ 44.

{¶ 83} “Protecting the public \* \* \* is not strictly limited to protecting clients from a specific attorney’s potential misconduct. Imposing attorney-discipline sanctions also protects the public by demonstrating to the bar and the public that this type of conduct will not be tolerated.” *Disciplinary Counsel v. Schuman*, 152 Ohio St.3d 47, 2017-Ohio-8800, 92 N.E.3d 850, ¶ 17. The facts of this case speak for themselves.

{¶ 84} Contrary to the majority’s assertion, a fully stayed suspension here does not send a “strong message” to attorneys across Ohio. Majority opinion at ¶ 31. The imposition of a fully stayed suspension here, given the facts of this case and Nowicki’s pathetic excuses, signals that the majority is returning to days gone by—when an attorney’s engaging in a sexual relationship with a client is tolerable and the sanction for a violation of Prof.Cond.R. 1.8(j) is a slap on the wrist.

{¶ 85} Moreover, the majority’s additional justification for not following our precedent and not imposing an actual suspension—that it is “highly unlikely” that Nowicki will engage in similar acts of misconduct in the future, majority opinion at ¶ 31—is not supported by any evidence in the record or Nowicki’s past behavior. This bald assertion, which the majority fails to support with any concrete reasoning aside from its purported consideration of “Nowicki’s misconduct, the

aggravating and mitigating factors, and the sanctions imposed in comparable cases,” *id.* at ¶ 31, is unjustified. The majority’s decision will allow Nowicki to have access to clients and all of the public, and any continued bad behavior or lack of sound judgment by him will affect the public and compromise the integrity of the entire Ohio legal system.

#### IV. Conclusion

{¶ 86} There is no justification in the record for departing from our caselaw holding that an actual suspension from the practice of law is warranted in this case. The similarity of the facts in this case to those in *Owen*, 142 Ohio St.3d 323, 2014-Ohio-4597, 30 N.E.3d 910, and *Leon*, 155 Ohio St.3d 582, 2018-Ohio-5090, 122 N.E.3d 1242, the additional misconduct in this case for violating Prof.Cond.R. 1.7(a)(2), the aggravating factors, and the absence of additional mitigating factors, support the imposition of an actual suspension from the practice of law. For these reasons, I would impose the board’s recommended sanction and suspend Nowicki from the practice of law for one year, with six months stayed on the conditions that he commit no further misconduct and that his reinstatement be conditioned on his completion of three hours of CLE focused on professional conduct, in addition to the requirements of Gov.Bar R. X.

{¶ 87} Therefore, I concur in part and dissent in part.

FISCHER and BRUNNER, JJ., concur in the foregoing opinion.

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Joseph M. Caligiuri, Disciplinary Counsel, for relator.

Griff Nowicki, pro se.

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