PROPOSED AMENDMENT TO VRPC, RULE 1.8 (adds a new paragraph to existing rule).

Proposed Rule 1.8(k) is not yet adopted. It must be reviewed by Council of the Virginia State Bar and adopted by the Supreme Court of Virginia and has no force and effect until then. The proposal is to add a new paragraph to Rule 1.8:

RULE 1.8 Conflict of Interest: Prohibited Transactions

(k) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

Comments:

Client-Lawyer Sexual Relationships

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

Like a conflict arising under paragraph (i) of this Rule, this conflict is personal to the lawyer and is not imputed to other lawyers in the firm with which the lawyer is associated.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (k) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

The Standing Committee on Legal Ethics recommends adoption of a rule similar to ABA Model Rule 1.8(j), prohibiting sexual relationships with clients unless the relationship predates the attorney-client relationship. Currently, the Virginia Rules of Professional Conduct do not directly address the question, although LEO 1853 (which is advisory only as it was reviewed/adopted by the SCV) does provide guidance on the issue and indicates that sex with a client will often violate the RPCs. We think (and bar counsel/the discipline department agree) that this should be included in the black-letter rule, since that is how it's handled by the ABA and most states. Remarkably, there is currently no black letter rule prohibiting a lawyer from having sexual relations with a client. A rule better clarifies the issue for lawyers and others looking for guidance on this, can only ease disciplining lawyers who do have consensual sexual relations with their clients, and appropriately indicates that this is a firm rule rather than just an advisory opinion. Non-consensual sex with a client is a crime or deliberately wrongful act under Rule 8.4(b) but a lawyer's consensual sexual relationship with a client arguably falls outside the scope of the rule.

The vast majority of states (43, including DC) have adopted a rule, or at least a comment to a rule, on this topic; most are similar or identical to the ABA rule although some take a position more akin to LEO 1853 rather than a per se ban on the practice. Some states that have adopted the ABA rule, or variations of it, also define the term "sexual relations" as "sexual intercourse or any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party." If we adopt this rule, we might want to add that or similar language to a comment to make sure that the rule is as clear as it can be.

Imputation of conflicts of interest arising under Rule 1.8 is governed by current Rule 1.8(k) (which would become 1.8(l) under this proposal), which imputes all conflicts under the rule except for conflicts based on opposing lawyers being related to one another (1.8(i)). We would need to consider whether conflicts based on a sexual relationship should be imputed – the ABA rule does not impute those conflicts to other members of the firm, but as we know, the ABA rules generally have much less imputation of personal conflicts. Our recommendation is that current 1.8(k) be amended so that conflicts arising under this rule are not imputed to other members of the firm, for the same reasons that conflicts based on a familial relationship are not imputed and that we attempted unsuccessfully to modify Rule 1.10(a) to avoid the imputation of other personal interest conflicts, a proposal which the Supreme Court of Virginia rejected in 2019 without explanation.

Arguments in favor of the rule:

1. The is no black letter rule prohibiting sexual relations with a client, only an advisory opinion.

2. So called "consensual sexual relationships" are often not consensual due to imbalance or power or leverage in the attorney-client relationship. A client, especially in family law cases, is emotionally vulnerable and may "consent" to sexual relations with a lawyer, but the consent is not an adequate informed consent.

3. Sexual relations with a client adds an unnecessary personal interest conflict in the relationship that interferes with the lawyer's independent professional judgement.

4. Without a per se rule, lawyers continue to exploit the professional relationship for sexual gratification arguing that consensual sexual relations with a client is not prohibited by the RPC. Although courts and disciplinary cases have condemned lawyer-client sex, lawyers have continued to engage in sexual relations after commencement of the professional relationship, asserting that if the sexual relationship is between two consenting adults, the matter is none of the regulatory bar's business, that the client's case was not prejudiced, or that no harm to the client had occurred. Reported cases are filled with clients who have said that they submitted to their attorney's sexual advances out of fear that refusing to submit would affect the quality of their representation at a time of vulnerability and dependence on the attorney. *E.g., Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 989 N.E.2d 41 (2013); *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261 , 804 N.E.2d 423 (2004); *Akron Bar Ass'n v. Williams*, 104 Ohio St.3d 317 , 819 N.E.2d 677 (2004); *In re Vogel*, 482 S.W.3d 520 , 525 , 544 (Tenn.2016); *Iowa Supreme Court Atty. Disciplinary Bd. v. Moothart,* 860 N.W.2d 598 , 617 (Iowa 2015); *Matter of Berg*, 264 Kan. 254, 281 , 955 P.2d 1240 (1998); *In re Rinella*, 175 Ill.2d 504 , 516 , 677 N.E.2d 909 , 222 Ill. Dec. 375 (1997).

5. Conduct that is not illegal may nonetheless be unethical. The RPC properly imposes ethical standards that require more of lawyers than mere compliance with criminal laws.

6. Over 30 states now have adopted ABA Model Rule 1.8(j) and other states have adopted variants that outright ban sexual relations with clients. Having a rule that imposes an explicit ban is the right thing to do.

7. The abuse of the attorney-client relationship, by having sex with a client, not only damages the dignity of the client, who has reposed trust and confidence in the lawyer, it impugns the integrity of the legal profession and the administration of justice.

Arguments against the rule:

1. LEO 1853, though advisory, adequately warns lawyers of the dangers/risks and other RPCs that will be violated if the lawyer has sexual relations with a client. Bar Counsel has successfully prosecuted misconduct cases involving attorney-client sex without a broad per se rule.

2. The blanket prohibition sweeps to broadly and interferes with personal relationship choices; a consensual sexual relationship is not illegal and therefore should not be deemed per se unethical in the absence of other conflicts or problems relating to the legal representation of the client. The rule should be narrowed to circumstances involving overreaching and taking undue advantage of the attorney's position of influence.

3. Clients are capable of consenting to a sexual relationship and should be allowed to give an informed consent to potential conflicts arising out of a personal or intimate relationship with their lawyer, as the rules allow with regard to other conflicts of interest.

4. "Sexual relations" with a client needs to be clearly defined.

5. The prohibition under the proposed rule—see proposed Comment [19] should not prohibit sexual relations between a lawyer and in house counsel or an executive officer when the lawyer is representing an organization.

6. The rule should not ban sexual relations if the lawyer had a pre-existing intimate relationship with a client but did not have sexual relations until after the professional relationship ensued.

The Case for an Outright Bar on Lawyer-Client Sex

In 1997, for the first time, the Virginia State Bar Disciplinary Board addressed the straightforward issue of the ethical propriety of a lawyer having sexual relations which his client during the professional relationship. *In the Matter of Sterling H. Weaver, Sr.*, VSB Docket No. 97-010-0846 (VSB Disc. Bd. 1997). Mr. Weaver, a former VSB District Committee member, had sexual intercourse with his client during her one-hour consultation in his office. The client testified that she did not consent, but she did not cry out or object because she "did not believe this was happening to her." *Mr. Weaver claimed the sexual intercourse was consensual and the Board made a finding of fact that it was.* Mr. Weaver's defense was "that sexual conduct between two consenting adults, even in the context of an attorney-client relationship is a private matter and no concern of the Virginia State Bar." Therefore, he argued, there was no professional misconduct. The Disciplinary Board in *Weaver* made this observation:

> Surprisingly, the Code of Professional Responsibility does not give specific guidance to an Attorney regarding romantic and sexual situations that can and do arise out of the Attorney Client relationship. In fact, if the reported cases are an indication, the increasing incidents of this relationship are of a more recent origin. Historically, the Bar has seemingly operated on the notion that the sexual activities and preferences of lawyers is not a matter for official interest.

The Board continued with a passage from one of the leading authorities on legal ethics, the late Professor Charles W. Wolfram, author of the treatise *Modern Legal Ethics* (West 1st ed. 1986), from a unpublished draft of his second edition, in a chapter entitled "Special Topics in Conflicts of Interest":

> Yet, in at least certain kinds of representations, the situation is such that a lawyer's pursuit of a sexual or romantic relationship with a client presents the client with a choice that is not truly free. That lack of equal sexual bargaining power, to speak metaphorically, is one root cause of the problem. The problem is not confined to intimate sexual relationships that may blossom into stable, long lasting relationships. A lawyer's power can be used for the purpose of plainly opportunistic sexual relationships. Thus, a lawyer may make sexual advances to a series of women clients, or when the advances are plainly unwanted and resisted. Or a lawyer may attempt to induce vulnerable clients to engage in pornographic activities in lieu of paying a fee. For the most part, the decisions concern lawyers in domestic relations practice, but client vulnerability can also exist because of involvement in other difficulties, such as criminal charges, a personal injury case, or a suit seeking to establish paternity.

Weaver, 1997 WL 873025 at 2. But as the Board went further to explain, sexual predation is not the only concern:

> The other root cause recognized in the sex with clients decisions is a variation on Freud's observation: sex and romance have a way of twisting both reality and otherwise sound judgment. Even in the most Platonic, socially acceptable, and decorous of romantic

> involvements between lawyer and client, the romantic aspects of the relationship strongly suggest that the lawyer's ability to function as objective and professional adviser and helper have already been rather hopelessly compromised.
>
> In this matter, the Panel believed by clear and convincing evidence that the sexual relations occurred without any initial planning and were the result of instantaneous decisions. At the time of the interview, the client was seeking a reconciliation with her husband and she was also a therapy patient.

Id. Clients seek advice and counsel from lawyers in solving their legal problems. Many of their legal situations are emotionally trying or desperate. For the relationship to work clients must have trust and confidence in their legal counselor. Clients share their very personal intimate secrets with their lawyer. Clients are often emotionally vulnerable when they seek a lawyer's assistance if their freedom, rights, property, or personal or business affairs are at risk. A client seeking to avoid deportation, loss of custody of a child or incarceration is likely to demand a great deal of attention from her attorney (not always "legal attention" but what some describe as "hand-holding"). These relationships may be aptly described as intense. Relationships of such intensity involve inherent power imbalances and inevitably invite misplaced emotional reactions that can lead to client-initiated and lawyer-initiated sexual relations.

The lawyer's top priority is to protect the client. A fiduciary relationship is created and based on the client's expectation that the lawyer will act in the best interests of the trusting client.

A fiduciary relationship is created:

> [w]herever confidence on one side results in superiority and influence on the other side; where a special confidence is reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing the confidence; where confidence is reposed and accepted, whether the origin is moral, social, domestic, or merely personal; or where a person has knowledge and authority which he is bound to exercise for the benefit of another person.

During the relationship nothing should be allowed that would limit, impair or cloud the lawyer's professional independent judgement.

Whenever sex is injected into this relationship, there is an imbalance of power and influence, therefore an assertion that the sexual relationship was "consensual" might reasonably be questioned. There is a significant risk of exploitation.

A sexual or intimate relationship started after the commencement of the legal representation has at least the reasonable possibility of adversely influencing the lawyer's judgment, creating a personal conflict of interest, and allowing the lawyer to use client confidential information for the lawyer's personal advantage. *See, e.g., In re Liebowitz*, 516 A.2d 246, 248 (N.J. 1985) (finding that "sexual episodes with clients jeopardize the attorney-client relationship and have a strong potential to involve the attorney in a breach of one or more Disciplinary Rules")

For example, in *In re Disciplinary Proceedings Against Atta*, an attorney represented a client in a divorce proceeding. During the representation, the attorney told his client, whose husband had left her and

married another, that the attorney had strong feelings for her and discussed one day marrying her. Subsequently the client accused her attorney of failing to timely file her divorce papers and asserted the attorney had "taken advantage of her by engaging in a sexual relationship with her while she was in an emotional stage in her life." The Supreme Court of Wisconsin found that by representing his client while simultaneously engaging in a romantic relationship with her, the attorney violated: (1) Rule 1.7(a)(2), due to the lawyer's material limitation based upon his personal interest; (2) Rule 1.16(a) for failing to withdraw from the representation once the conflict arose; and (3) Rule 1.8(j) by having sexual relations with a client while representing her in the divorce action.

In another case, a court noted:

> The lawyer-client relation in a criminal matter is inherently unequal. The 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. The more vulnerable the client, the heavier is the obligation upon the attorney not to exploit the situation for his own ad-vantage. Whether a client consents to or initiates sexual activity with the lawyer, the burden is on the lawyer to ensure that all attorney-client dealings remain on a professional level.

Disciplinary Counsel v. Booher, 664 N.E.2d 522 (Ohio 1996).

When one is presented with an opportunity for a consensual sexual encounter, it is possible that the person may proceed and succumb to temptation. Such a situation could, and often does, develop during an attorney's representation of a client. In an attorney-client relationship, the attorney holds the position of power and dominance. The attorney-client relationship from the outset, therefore, is inherently unequal. Such an unequal relationship, where the client in most cases is emotionally and financially vulnerable, is a recipe for abuse by attorneys. Could there be consent in such a relationship? In most cases, especially emotionally charged cases, probably not. Commenting on attorney-client sexual relations, one court succinctly stated: "we have nevertheless been consistent in noting that the professional relationship renders it impossible for the vulnerable layperson to be considered 'consenting.'" *Iowa Sup. Ct. Bd. of Professional Ethics and Conduct v. Hill*, 540 N.W.2d 43, 44 (1995).

For decades, legal commentators and academicians have long supported or advocated rules imposing an explicit per se ban on lawyer sex with clients:

> See, e.g., John M. O'Connell, Note, *Keeping Sex Out of the Attorney-Client Relationship: A Proposed Rule*, 92 Colum. L. Rev. 887 (advocating a per se rule prohibiting attorney-client sexual relations); Lawrence Dubin, *Sex and the Divorce Lawyer: Is the Client Off Limits?* 1 Geo. J. Legal Ethics 585 (1988) (proposing per se rule for divorce attorney); Lawrence Dubin, *How the Michigan Supreme Court Can Better Protect the Public From Bad Lawyers: The Ball is in Their Court*, 73 U. Det. Mercy L. Rev. 667 (1996) (advocating that Michigan adopt a per se rule prohibiting attorney-client sexual relations as a conflict of interest); Jill M. Crumpacker, Note*, Regulation of Lawyer-Client Sex: Codifying the "Cold Shower" or a "Fatal Attraction" per se?* 32 Washburn L.J. 379 (1993) (presenting both argument for and against prohibiting of attorney-client sexual relations); Caroline Forell, *Oregon's "Hands-Off" Rule: Ethical and Liability Issues Presented By Attorney-Client Sexual Contact*, 29 Willamette L.J. 711 (1993) (advocating a

per se rule prohibiting attorney-client sexual relations and allowing recovery for emotional injuries that were created from sexual relationship); Caroline Forell, *Lawyer, Clients and Sex: Breaking the Silence on the Ethical and Liability Issues*, 22 Golden Gate U. L. Rev. 611 (1992) (proposing a clear per se ethical rule prohibiting attorney-client sexual relations); Thomas Lyon, *Sexual Exploitations of Divorce Clients: The Lawyer's Prerogative*?, 10 Harv. Women's L.J. 159, 178 (1987) ("Given the potential harm of attorney-client sexuality, divorce lawyers ought to be both ethically and legally obligated to resist the temptation to satisfy their personal desires in their professional capacity."); Molly A. McQueen, *Regulating Attorney-Client Sex: The Need For An Express Rule*, 29 Gonz. L. Rev. 405, 406 (1993-1994) (insisting that "a bright line rule is a valid and necessary means to protect clients against coercive sexual advances from their attorneys"); Nancy E. Goldberg, *Sex and the Attorney-Client Relationship: An Argument for a Prophylactic Rule*, 26 Akron L. Rev. 45 (1992) (advocating an express prohibition of sexual relationship between an attorney and client); Anthony E. Davis & Judith Grimaldi, *Sexual Confusion: Attorney-Client Sex and the Need for a Clear Ethical Rule*, 7 Notre Dame J.L. Ethics & Pub. Pol'y 57 (1993) (stressing the need for a specific rule prohibiting attorney-client sexual relations); Linda Mabus Jorgenson & Pamela K. Sutherland, *Fiduciary Theory Applied to Personal Dealings: Attorney-Client Sexual Contact*, 45 Ark. L. Rev. 459 (1992) (noting that there should be a rebuttable presumption that the attorney breaches his fiduciary duty to client when engaged in sex and proposing a ban); David H. Pincus, Note, *Lawyers in Lust: Does New York's New Rule Addressing Attorney-Client Sexual Relations Do Enough?* 2 J.L. & Pol'y 249 (1994) (encouraging New York to expand its prohibition of attorney-client sex further than domestic relations); Marvin H. Firestone & Robert I. Simon*, Intimacy Versus Advocacy: Attorney-Client Sex*, 27 Tort & Ins. L.J. 679 (1992) (suggesting the need for clear ethical guidelines in attorney-client sexual relationships and arguing that divorce and pro-bate matters are most vulnerable for the client and should not be exploited; Jennifer L. Myers et al., *To Regulate Or Not to Regulate Attorney-Client Sex? The Ethical Question In Pennsylvania*, 69 Temp. L. Rev. 741 (1996) (advocating a per se prohibition in Pennsylvania and all over); Margit Livingston, *When Libido Subverts Credo: Regulation Of Attorney-Client Sexual Relations*, 62 Fordham L. Rev. 5 (1993) (advocating a per se rule prohibiting attorney-client sexual relationship); Yael Levy*, Attorneys, Clients and Sex: Conflicting Interests in the California Rule*, 5 Geo. J. Legal Ethics 649 (1992) (proposing a prohibiting of attorney-client sex in divorce case, custody cases, criminal cases and pro bono cases); Linda Fitts Mischler*, Reconciling Rapture, Representation, and Responsibility: An Argument Against Per Se Bans on Attorney-Client Sex*, 10 Geo. J. Legal Ethics 209 (1997) (arguing that a ban on sexual relations is unconstitutional intrusion in attorney and client right to privacy and proposes education of bar and client rather than treating women as vulnerable sexual objects); Phyllis Coleman, *Sex in Power Dependency Relationships: Taking Unfair Advantage Of the "Fair" Sex*, 53 Alb. L. Rev. 95, 128 (1988) (stating that "a sexual relationship during any legal representation should be prohibited"); Joanne Pelton Pitulla, *Lawyer Client Sex-Incompatible Roles?*, Professional Law., 6 No. 2 Prof. Law 14 (1995) (finding that attorney-client sexual conduct violates the existing rules of professional conduct); Robert H. Muriel, *Suppressed v. Suppressed: A Court's Refusal To*

Remedy the Legal Profession's "Dirty Little Secret," Attorney-Client Sexual Exploitation, 23 Loy. U. Chi. L.J. 309, 313 (1992) (predicting that per se rules prohibiting attorney client sexual relations will be adopted by many states and that courts will likely allow clients to recover monetary damages for malpractice when an attorney induced or coerces client into sexual relations); Howard W. Brill, *Sex and the Client: Ten Reasons To Say "No!,"* 33 Santa Clara L. Rev. 651 (1993) (listing ten reasons why a lawyer should not en-gage in sexual contact with clients); Melissa M. Eckhause, Note*, A Chastity Belt for Lawyers: Proposed MRPC 1.8(k) and the Regulation of Attorney-Client Sexual Relationships*, 75 U. Det. Mercy L. Rev. 115 (1997) (supporting Michigan's proposed rule prohibiting attorney-client sex).

While some disciplinary cases cite to and rely on the conflicts of interest rules, many commentators argue persuasively that the conflict of interests rules are not adequate to address lawyer-client sexual relations. For example, in cases where the sexual relationship did not adversely affect the attorney's legal representation, it is argued that the conflict of interests rules are not implicated. Moreover, the attorney may argue that the conflict was waived by the client's consent after full disclosure. *See, e.g., Edwards v Edwards*, 567 N.Y.S.2d 645 (1991). In Edwards, an attorney was sexually involved with a client in a divorce matter. The court held that he did not take advantage of his client or the attorney-client relationship nor was his legal representation deficient. Once the attorney was named in the complaint and became a potential witness for adultery, then the attorney had to withdraw, which he voluntarily did. In addition, the conflicts of interest rules leave it to the attorney to decide, on "reasonable belief," whether he can adequately represent the client's interests in spite of a material limiting personal interest conflict [sexual relationship] under Rule 1.7(a)(2); or, seek a waiver of the conflict with the client's informed consent. The conflict of interest rules do not offer much protection for client who is reluctant to spurn an attorney's advances for fear that rejection will impair the legal representation.

Rule 8.4(b) says it is professional misconduct for a lawyer to commit a crime or a deliberately wrongful act. But if the lawyer maintains that the sexual relationship with a client was consensual, the bar counsel must prove by clear and convincing evidence that the lawyer's exploitation and abuse of the attorney-client relationship for his personal sexual gratification was a crime or deliberately wrongful act.

The only legal ethics opinion on consensual lawyer-client sexual relations in Virginia is LEO 1853, an advisory opinion not adopted by the Supreme Court and is therefore not binding. Because the risk of violating other rules of professional conduct are so great, LEO 1853 ultimately concludes that a lawyer *should not* have sex with a client but is not prohibited from entering a sexual relationship with a client. While much of the reasoning in LEO 1853 supports a bright line prohibition, LEO 1853 falls short.

Other RPCs, including Rules 1.3(c), 1.8(b), and 1.7(a)(2) reflect the fundamental fiduciary obligation of a lawyer not to exploit a client's trust for the lawyer's benefit, which implies that the lawyer *should not* abuse the client's trust by taking sexual or emotional advantage of a client.

Again, while we agree with LEO 1853's reasoning, we believe the best position is that a lawyer "must not abuse the client's trust" by having sexual relations with a client during the professional engagement, unless the sexual relationship predated the professional engagement and the lawyer's representation of that client is not "materially limited" by the lawyer's personal relationship with that client. See Rule 1.7(a)(2).

The trend has been unequivocally moving in the direction of a clear and explicit prohibition of attorney-client sexual relations. The Roscoe Pound-American Trial Lawyers Foundation [American L. Code of Conduct Rule 8.8 (1980)]and the American Academy of Matrimonial Lawyers [Bounds of Advocacy Standard 2.16 (Am. Academy of Matrimonial Lawyers 1991)], both have express rules prohibiting attorney-client sexual relations. The medical profession has long prohibited sexual relations between doctor-patient. The American Psychiatric Association also prohibits sexual relations between psychiatrist-patient. American Psychiatrist Association Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry ß 2 (1994).

Like patients who visit health care professionals, clients retain lawyers often in times of desperate need, emotional turmoil and acute stress. During the professional relationship they reveal highly personal and sensitive information to their lawyer. The potential for abuse of the client's trust is very high.

As the Supreme Court of Ohio stated in *Disciplinary Counsel v. Sarver*, No. 2017-1081, slip op. (November 28, 2018) at 29: "[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." The Ohio Supreme Court noted further: "[t]he board's finding that J.B. freely engaged in a relationship with Sarver ignores the power imbalance between an indigent client and court-appointed defense counsel, and its finding that J.B. had not been prejudiced discounts the inherent harm that results when an attorney abuses the attorney-client relationship in pursuit of the attorney's own sexual gratification." *Sarver,* slip op. at 31.

As the Supreme Court of Colorado has explained, "a sexual relationship between lawyer and client during the course of the professional relationship is inherently and insidiously harmful." *People v. Boyer*, 934 P.2d 1361, 1363 (Colo.1997). The client may be psychologically and emotionally harmed by an exploitative sexual relationship regardless of the outcome of the legal case. *See Cleveland Metro. Bar Assn. v. Sleibi*, 144 Ohio St.3d 257, 42 N.E.3d 699 (2015) (noting that the attorney's sexual relationships with clients caused those clients emotional harm); *State ex rel. Nebraska State Bar Assn. v. Denton*, 258 Neb. 600 , 609 , 604 N.W.2d 832 (2000) (noting that the attorney's sexual relationship with his client "caused further psychological harm to a vulnerable client").

Finally, as the Ohio Supreme Court explained "[i]t is for all these reasons that Ohio has adopted a per se prohibition against an attorney's having a sexual relationship with a client when such a relationship did not exist before the attorney-client relationship was formed, and the professional conduct rules do not indicate that a lesser sanction should be imposed on the attorney when the relationship "appears" to be consensual or when the client's case does not seem to have been prejudiced." *Sarver, supra* at 30.