

FILE NO. A12-2124

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against CLARK CALVIN GRIFFITH, II,  
a Minnesota Attorney,  
Registration No. 175638.  
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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION  
FOR DISCIPLINE**

The above-captioned matter came before the undersigned Referee pursuant to the parties' stipulation of fact.

After two pre-trial hearings the parties agreed that this matter could be submitted to the undersigned Referee on stipulated facts. The only issue to be decided was a recommendation as to appropriate discipline after receipt of written argument from the parties. Those arguments were received on April 18, 2013.

The findings and conclusions made below are, thus, based solely upon the admissions in the stipulation of fact.

Based upon the evidence as outlined above, and upon all of the files, records and proceedings herein, the Referee makes the following:

**FINDINGS OF FACT**

1. In 2011 respondent was employed by William Mitchell College of Law (WMCL) as an adjunct professor, teaching a class in sports law. Respondent remained an adjunct professor with WMCL through at least February 2, 2012, but after December 31, 2012, his duties were limited to serving as M.D.'s field supervisor as set forth below.

2. M.D. was a student in respondent's sports law class during the fall semester of 2011. During that class, respondent said that he had previously assisted

students with getting internships and with getting into the field of sports law generally. M.D. wished to enter into the practice of sports law and recognized respondent as someone who was influential in that field.

3. On at least one occasion while M.D. was a student in respondent's class, respondent made a statement about M.D.'s physical appearance that made M.D. feel uncomfortable. Despite this, given her desire to go into the field of sports law, M.D. continued with the class and explored the idea of doing an independent clinic in sports law.

4. After conclusion of the fall semester, M.D. sought and obtained permission from WMCL to participate in an independent clinic in sports law during the spring semester of 2012. In Independent Clinics, students may earn credit by participating in lawyering experiences outside the formal clinical courses offered. To gain credit, students must present a detailed educational plan containing educational objectives, a description of the field work, and a proposed method of evaluation. To participate in an Independent Clinic, students are required to work with a professor as their field supervisor. M.D. submitted to WMCL a Sports Law Independent Externship Proposal that identified respondent as her proposed field supervisor.

5. During conversations with respondent about setting up the Independent Clinic, respondent and M.D. exchanged phone numbers. After this exchange, respondent left M.D. a phone message instructing her not to call him at his office because "it makes my wife nervous to have young or attractive law students calling."

6. It was agreed that respondent would serve as M.D.'s field supervisor for the Independent Clinic and that they would have weekly meetings to plan assignments.

7. Prior to the first weekly meeting on January 10, 2012, M.D. mentioned that WMCL encouraged students to follow a mentor attorney around for a day to see what their practice is like. Respondent told her that he could not do that because his wife would kill him.

8. At the second weekly meeting on January 17, 2012, respondent again made comments about M.D.'s appearance that made her uncomfortable.

9. On January 17, 2012, M.D. sent an email to the WMCL Dean of Students asking to meet with him regarding "some concerns" that she had. The "concerns" referenced in that email were M.D.'s concerns about the comments respondent had been making. The dean of students replied that he was not available to meet until the following week.

10. On January 24, 2012, respondent and M.D. met at a restaurant in St. Paul. This meeting was the third meeting of weekly meetings that were contemplated by the supervision requirements of M.D.'s Independent Clinic plan.

11. At the January 24, 2012, restaurant meeting, respondent engaged in verbal and physical conduct and communications of a sexual nature that were not welcomed by M.D. and heightened her feelings of discomfort with respondent.

12. After conclusion of the January 24 meeting in the restaurant, respondent engaged in additional verbal and physical conduct and communications of a sexual nature that were not welcomed by M.D. and that subsequently resulted in his being criminally charged with indecent exposure as more fully set forth below.

13. M.D. immediately reported this incident to friends of hers and, the next day, to WMCL.

14. On January 25, 2012, at around 1:00 p.m., respondent left M.D. a voice mail telling her that "last night was awesome" and that "any hint of this and I will be shot." That same day, at 3:53 p.m., respondent sent M.D. a Twitter message that read, "Wow and did you talk to Stead?" Stead was an executive at the Minnesota State High School League.

15. On January 25, 2012, at 5:11 p.m., WMCL left a voice mail message and sent an email to respondent telling him that a complaint concerning his behavior with a student had been filed. The email scheduled a fact-finding meeting with respondent for

February 1 and stated, "In the meantime please do not have any contact by any means with [M.D.] and please do not enter the William Mitchell campus or grounds without prior permission."

16. Despite being instructed by WMCL to have no contact with M.D., respondent sent personal Twitter messages regarding the January 24 incident. These messages include the following:

- On January 26, 2012, at 11:13 a.m., respondent sent the message, "If it was you, I apologize deeply. Tell me if it was." M.D. responded to this message at 1:43 p.m., stating, "It was me. The other night was horrible. It [sic] me extremely uncomfortable."
- On January 26, 2012, at 2:00 p.m., respondent sent the message, "I am very sorry. It is my fault. Instead of a complaint to the school, you need only tell me. Now I risk life, marriage, career and reputation and the hurt my daughters would suffer is too horrible to consider. I don't think you want to do that. Please rescind the complaint and I promise to be gentleman in all ways as well as doing what I can to help you. I'M REALLY ashamed by this and couldn't live with myself if the complaint became known, I am having a hard time now. Clark." M.D. responded to this message at 2:06 p.m., stating, "I understand you're having a hard time, but what about me? You made me touch you with your pants down while people were driving by and walking their dog behind the car!? How do I get over that?" While respondent admits sending the message set forth above, he denies that he pulled his pants down as stated in M.D.'s response to his message. He does admit, however, that he unzipped his pants, exposed his penis to M.D., and then took M.D.'s hand and forced her to touch his penis.

- On January 26, 2012, at 2:30 p.m., respondent sent the message, "I am really sorry. Please don't make it worse. I am having a hard time as well. We will get over this if we keep it contained. I'd like to talk to you about this so I can properly express my sorrow and shame." M.D. responded to this message at 2:33 p.m. by replying, "I just can't talk to you about this now."
- On January 26, 2012, at 2:35 p.m., respondent sent the message, "OK, I understand but for both our sakes we must rescind the complaint. Let me know when you want to talk."
- On January 26, 2012, at 3:22 p.m., WMCL sent an email to respondent stating, "We have been made aware that you contacted [M.D.] via Twitter at 1:13 p.m. today. As indicated in our email yesterday we informed you to have no contact with [M.D.] by any means which includes all electronic mediums. We respectfully ask that you honor our request until we have an opportunity to meet with you to conduct a fact-finding and make a decision on the complaint."
- On January 27, 2012, respondent sent the message, "I just got a call from the GC at the U about the NCAA apparently. If the NCAA calls HR at Mitchell, WE are both finished as I was serious about a job because I think you are a smart and decent person. Can we use direct messages via Twitter for security reasons?"
- On February 3, 2012, at 8:59 a.m., respondent sent the message, "Did you file a criminal complaint? Why are you trying to destroy me? I would never do that to you." M.D. responded, "Of course I did! You took your hand and made me touch your exposed penis in the middle of the street!!! I know you're busy thinking about you, but you honestly think what you did is okay?"

- On February 5, 2012, M.D. sent a message to respondent stating, "Stop trying to contact me in any way. I don't want to talk to you." Respondent replied, "I am trying to figure out why you are trying to kill me as the charge will kill me. It won't do you any good either."

17. WMCL conducted an investigation and, on February 2, 2012, terminated respondent's employment with them. In the letter notifying respondent of his termination, respondent was instructed to have no contact with M.D. by any means, including by electronic mediums.

18. On March 21, 2012, respondent was criminally charged in Ramsey County District Court with indecent exposure, a misdemeanor, in violation of Minn. Stat. § 617.23, subdiv. 1(1).

19. On June 12, 2012, respondent entered an Alford plea to the criminal charge.

20. On July 26, 2012, respondent was adjudicated guilty of indecent exposure and sentenced on the criminal charge. He was sentenced to one day in the Ramsey County Correctional Facility with credit for time served, fined \$581, and placed on supervised probation for one year. The conditions of his probation include that he attend a sex offender program and/or treatment per the direction of the probation department, that he attend Judge Stephenson's Men's Group, that he remain law-abiding, that he have no same or similar violations, including petty violations, and that he have no contact with M.D. The State agreed to a stay of imposition for one year and, if the conditions of probation are followed, the plea will be vacated and the case dismissed.

21. Respondent, as M.D.'s adjunct professor and unpaid field supervisor in the independent clinic, was in a position of power and authority vis-à-vis M.D. In interacting with M.D., respondent was acting in the professional capacity of a lawyer.

22. Respondent's misconduct of a sexual nature as set forth above substantially interfered with the course of M.D.'s legal education at WMCL.

### **CONCLUSIONS OF LAW**

Respondent's conduct in making unwelcome comments about M.D.'s appearance, his unwanted physical contact with M.D. and his continued communications to M.D. after being instructed to have no further contact with her, all while in a position of power and authority over M.D., violated Rule 8.4(b), (d), and (g), Minnesota Rules of Professional Conduct (MRPC).

### **AGGRAVATING FACTORS**

1. Respondent committed multiple violations of the MRPC.
2. Respondent took advantage of the victim while in a position of authority.
3. Respondent's misconduct included illegal conduct.

### **RECOMMENDATION FOR DISCIPLINE**

Based on the foregoing findings and conclusions, the undersigned recommends:

1. That Respondent Clark Calvin Griffith, II, be suspended from the practice of law for 90 days and that the reinstatement hearing requirement of Rule 18 (a) – (e), Rules on Lawyers Professional Responsibility (RLPR), be waived.
2. That in addition to the requirements for reinstatement under Rule 18 (f) the Respondent will be required to show proof of satisfactory compliance with the terms of his probation in Ramsey County.
3. That Respondent should be required to comply with Rule 26, RLPR.
4. That Respondent should be required to pay costs, disbursements and interest pursuant to Rule 24, RLPR.

Dated May 3, 2013

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Paul A. Nelson, Referee

### MEMORANDUM

The Director and the Respondent have agreed on the facts underlying this disciplinary proceeding. They do not agree on what is an appropriate sanction for the admitted ethical violations. The Director seeks an indefinite suspension from the practice of law for a minimum of six months and that the Respondent be required to petition for reinstatement pursuant to Rule 18 of the RLPR. The Respondent takes the position that the conduct here was a single, isolated incident, short in duration and that any public discipline is not warranted.

The recommended discipline, based solely upon the stipulated facts and the law as it appears from the numerous reported cases, is neither of the positions advocated by the parties.

As restated in *In re Holker* 730 N.W.2d 768 (Minn. 2007), the Supreme Court set out a four step analysis for determining the appropriate sanction:

1. Nature of the misconduct
2. Cumulative weight of the disciplinary violations
3. Harm to the public
4. Harm to the legal profession

Nature of the misconduct:

Both parties cite and discuss in detail *In re Peters* 428 N.W.2d 375 (Minn. 1988). In *Peters*, the dean of the William Mitchell Law School (the same school where Respondent was employed) received a public reprimand in 1988 for numerous incidents of sexual harassment against four named women. A review of the facts and the law as it existed then was covered extensively by both parties. Suffice it to say, the current awareness of the nature of sexual harassment has changed in the 24 years since it was decided.

Here, although it was one victim and one brief course of conduct, the actions of the Respondent not only constituted sexual harassment but also a criminal act to which the Respondent entered a plea of guilty. That takes it beyond the facts and the era of *Peters* to a more serious level justifying public discipline.

This case also goes beyond *Peters* in another important aspect. After the initial harassing acts and criminal incident the Respondent committed a further ethical violation by repeatedly contacting the victim, even after being specifically directed not to do so by WMCL. The Respondent attempted to dissuade the victim from pursuing a complaint in the manner outlined in the stipulation. Vague threats were a part of that separate violation. Because of this conduct, a suspension is warranted.

#### Cumulative weight:

The Director notes that the Respondent does not have any prior discipline and that he cooperated in the proceeding. Thus, there is no cumulative prior history as noted in many reported disciplinary cases. However, the actions here constitute at least two separate violations; the initial harassment and criminal act followed by the attempt to dissuade the victim from proceeding. Had there not been the second act, the recommended discipline would be different.

#### Harm to the Public and the Profession:

Even though neither the general public nor any clients were directly harmed the embarrassment and trauma to the victim is obvious. Respondent's actions diminishes the profession as a whole and the integrity of the disciplinary process.

#### Remorse:

The Director argues at some length that the Respondent shows no apparent remorse or understanding of the nature of his misconduct. The stipulation of fact and the entire record does not allow a finding on remorse one way or the other. The Respondent, in the stipulation, fully acknowledges the underlying facts and that they constitute ethical violations. He also entered a plea of guilty in the criminal matter, albeit under an Alford plea. This is some evidence that the Respondent understands the nature of his misconduct.

#### Suspension and reinstatement:

The recommendation herein is for a suspension of 90 days together with a waiver of the reinstatement process under Rule 18 (a)-(e). As noted before, this is the only disciplinary action against Respondent. He has admitted his actions and has been placed on supervised probation in Ramsey County under a stay of imposition of sentence. The offense was indecent exposure, a misdemeanor and not criminal sexual conduct. It is noteworthy and is worth reiterating the terms of that sentence. The probationary conditions that he has to obey, and presumably is following now, are as follows:

1. That he attend a sex offender program and/or treatment per the direction of the probation department.
2. That he attend Judge Stephenson's Men's Group.
3. That he remain law-abiding.
4. That he have no same or similar violations, including petty violations.
5. That he have no contact with M.D.

The State agreed to a stay of imposition for one year and, if the conditions of probation are followed, the plea will be vacated and the case dismissed.

Successful discharge from the probation should be a condition for his reinstatement.

The Respondent's actions and criminal proceeding was apparently the subject of media scrutiny. His reputation has presumably suffered significantly. To add an additional period of suspension and to require a full reinstatement hearing would not measurably add to the primary goal of lawyer discipline, that of protecting the public.

A final observation is in order. Counsel for Respondent, in his argument for a more lenient sanction, discussed at some length the case of *In re Nolen* 724 N.W.2d 14 (Minn. 2006). He asserts that the Board's recommendation for a public reprimand for the Hennepin County prosecutor charged and convicted of felony cocaine possession constitutes a "double standard" when a suspension is sought here. Certainly, the difference in sanctions sought is striking. However, the facts of *Nolen* are not before this Referee but Respondent's are.

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