

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

09/16/2025

Clerk of the
Appellate Courts

IN RE: WESLEY SHELMAN SPEARS, BPR NO. 009291

An Attorney Licensed to Practice Law in Tennessee
(Hartford, Connecticut)

No. M2025-01036-SC-BAR-BP

ORDER OF RECIPROCAL DISCIPLINE

This matter is before the Court pursuant to Tenn. Sup. Ct. R. 9, § 25, upon a Notice of Submission filed by the Board of Professional Responsibility ("Board") containing a certified copy of a Memorandum of Decision entered April 3, 2025, by the State of Connecticut Superior Court, Judicial District of Waterbury in the *Office of Chief Disciplinary Counsel v. Wesley S. Spears*, Docket No. UWY-CV-24-6081813-S (Exhibit A), imposing a one (1) year suspension, consecutive to the two (2) year suspension Mr. Spears is currently subject to in *Office of Chief Disciplinary Counsel v. Wesley S. Spears*, Docket No. CV-22-6160733-S.

On July 15, 2025, this Court entered a Notice of Reciprocal Discipline requiring Mr. Spears to inform this Court within thirty (30) days of receipt of the Notice why reciprocal discipline should not be imposed in Tennessee pursuant to Tenn. Sup. Ct. R. 9, § 25.4 or, in the absence of a response demonstrating the grounds set forth in Tenn. Sup. Ct. R. 9, § 25.4, the Supreme Court of Tennessee will impose a discipline with identical terms and conditions based upon the Memorandum of Decision entered by the State of Connecticut Superior Court, Judicial District of Waterbury. This Court received no response from Mr. Spears.

After careful consideration of the record in this matter, the Court finds, based upon the particular facts of this case, that none of the elements in Tenn. Sup. Ct. R. 9, § 25.4, exist. Accordingly, it is appropriate to enter an Order of Reciprocal Discipline.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT:

- (1) Wesley Shelman Spears shall be suspended for a period of one (1) year, consecutive to the two (2) year suspension Mr. Spears is currently subject to in *Office of Chief Disciplinary Counsel v. Wesley S. Spears*, Docket No. CV-22-6160733-S, and shall comply with the terms and conditions set forth in the Memorandum of Decision entered in the *Office of Chief Disciplinary Counsel v. Wesley S. Spears*, Docket No. UWY-CV-24-6081813-S.
- (2) Pursuant to Tenn. Sup. Ct. R. 9, § 31.3, Mr. Spears shall pay to the Clerk of this Court the costs incurred herein within ninety (90) days of the entry of this Order, for all of which execution may issue if necessary.
- (3) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.
- (4) The Board of Professional Responsibility shall cause notice of this discipline to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

PER CURIAM



RECORDATION OF FILING

Docket Number: **UWY-CV-24-6081813-S (Transferred from HHDCV246194849S)**

Case Caption: **OFFICE OF CHIEF DISCIPLINARY COUNSEL v. SPEARS, WESLEY S.**

<u>Entry Number</u>	<u>Document Name</u>	<u>Document Description</u>
109.00	MEMORANDUM OF DECISION	Courts final decision

Documents issued by the State of Connecticut Superior Court may be signed or verified electronically in the manner prescribed by the E-Services Procedures and Technical Standards. Any document with such an electronic signature or verification has the same validity and status as a document with a physical (pen-to-paper) signature. A pen-to-paper signature does not always appear on a document, and the signer of the document will not always be a judge. For more information, see Section I.E. of the State of Connecticut Superior Court E-Services Procedures and Technical Standards (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), Section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

File Date: **Apr 3 2025**
Electronic Transaction Recorded: **Apr 3 2025 3:00PM**
Number of Document Pages: **1**

A document that is electronically received by the clerk's office for filing after 5:00 PM on a day on which the clerk's office is open or that is electronically received by the clerk's office for filing at any time on a day on which the clerk's office is closed shall be deemed filed on the next business day on which such office is open.

Retain this page with the document for verification of entry number and filing date.

Fee Required:

Fee Paid:

Payment Date:

Payment Method:

Payer Name:

Signer Name:

Exhibit

A

State of Connecticut
Superior Court
Judicial District
Of

Waterbury

Certified Copy
Seal Affixed

By Adam LaBare

Adam LaBare T.L. Clerk

UWY CV 24 6081813 S : SUPERIOR COURT
OFFICE OF CHIEF DISCIPLINARY COUNSEL : J. D. OF WATERBURY at WATERBURY
WESLEY S. SPEARS : APRIL 3, 2025

MEMORANDUM OF DECISION

In this matter, the Office of Chief Disciplinary Counsel (petitioner) has filed a one count presentment against Attorney Wesley S. Spears (respondent). The allegations arise out of Grievance Complaint #23-0215, Crystal Rodriguez v. Wesley S. Spears. Having considered the evidence, including the testimony of witnesses and full exhibits, the court, by clear and convincing evidence, finds as follows:

The respondent, Wesley S. Spears, juris number 305297, was admitted to the bar of the State of Connecticut on October 14, 1986. The respondent has a disciplinary history consisting of a reprimand, issued on December 8, 2000 in Grievance Complaint #97-0874 for violations of Rules 1.8(e) and 4.4 of the Rules of Professional Conduct (Trial Exhibit #3); and a two year suspension, issued on September 25, 2023 by the Superior Court (Cobb, J.) for violations of Rules 3.1, 3.3 (a)(1), 8.2 (a), 8.4 (3) and 8.4 (4) of the Rules of Professional Conduct (Trial Exhibit #4).

The facts in this matter are simple and uncontroverted. On or about November 26, 2021, the complainant, Crystal Rodriguez, retained the respondent, Spears, to represent her in a contentious child custody matter against the father of her children. At the time she retained the respondent, the complainant was the victim of domestic violence at the hands of the father of her children. Due to the level of discord and strife between the father of her children and herself, the respondent was under a great deal of stress and anxiety at that time. The Respondent even acknowledged this fact in his retainer letter (Trial Exhibit #1) by noting, "I realize that until this situation stabilizes, you are under a great deal of stress."

Upon being retained, the respondent commenced his representation of the complainant in the underlying contested family court matter. In connection with said representation, a Mandatory Resolution Plan Date meeting with the Family Relations Office was scheduled by the court for October 7, 2022 at 11:00 AM. On October 6, the night before the Mandatory Resolution Plan Date meeting, commencing at 11:49 PM, the respondent sent a series of inappropriate and offensive text messages (Trial Exhibit #2 – reproduced below) to the complainant:

10-06-2022

11:49 PM You like old people
11:50 PM Send me a picture of you

10-07-2022

12:06 AM A sexy one
12:07 AM Can I take you shopping for a nice outfit tomorrow
12:15 AM A nude one would be perfect [sic]
12:16 AM Please forgive me

Responding to these texts, the complainant texted:

12:16 AM This is very inappropriate of you, I thought you were better than that.
You're fired.

The respondent replied:

12:17 AM Come on sorry
12:17 AM I will not do it again
12:18 AM I read you wrong
12:20 AM Just forget it
12:20 AM Please
12:57 AM Can you answer I have worked hard for you!
12:58 AM You need to forgive me!
12:59 AM I miss understood [sic] you when you said you would go to my reunion
07:28 AM Please call
09:18 AM Please call there is no court today we are waiting for Judges [sic] decision

As noted above, the facts which gave rise to the complaint and formed the basis of the decision of the reviewing committee of the Statewide Grievance Committee in its decision in complaint

#23-0215 are not in dispute. In his testimony at trial, the respondent freely admitted and acknowledged sending the texts. He further apologized to the complainant and the court for sending the texts, acknowledged that the texts were inappropriate and expressed his remorse for having done so.

While the respondent acknowledged and apologized for sending the texts, by way of defense, he also attempted to provide some context and explanation for having sent the texts. On cross examination by the respondent, the complainant acknowledged that the respondent secured a favorable disposition of the contested family court matter for her. In his own testimony and during argument, the respondent also asserted that he is a good and skillful lawyer and secured a very favorable outcome for the complainant in the underlying contested family matter.

By way of further explanation for his apparent lapse in judgment in sending the texts, the respondent testified that at some time prior to sending the texts, he told the complainant about his impending 50th high school reunion and raised the possibility that the complainant might accompany the respondent to the reunion. He further testified that at the time he sent the inappropriate texts, he was out to dinner with a group of classmates celebrating their impending 50th class reunion and that it was a question by one of his dinner companions at the celebratory gathering which prompted the respondent to ask the complainant to send a photo. The dinner companion had asked, "What does she look like?"

None of the respondent's claims in mitigation of his conduct on the night in question can explain, provide context for, or justify the conduct which forms the basis of this presentment. Securing a favorable outcome for a client does not grant a lawyer a license to engage in conduct outside of the Rules of Professional Conduct. Being in the midst of a celebratory gathering with friends does not excuse or authorize inappropriate conduct by a lawyer. In such circumstances, a lawyer should be even more vigilant that his conduct complies with ethical norms and standards.

On its face, the conduct which forms the basis of this presentment constitutes a violation of Rule 8.4 (4). There can be no doubt that asking for a nude photo of a trusting and vulnerable client is professional misconduct and is prejudicial to the administration of justice. Such conduct constitutes a devastating violation of the trust a client has placed in her attorney. Such was the case in this matter.

At the very time that the respondent sent the texts in question, he knew it was wrong. When he asked for a "nude" photo, the respondent was well aware of the fact that his client was under a great deal of stress and anxiety, due to the nature of the proceedings for which the respondent was retained. The complainant was very vulnerable at that time, a fact acknowledged by the respondent, and had placed her faith and trust in the respondent to represent her interests in a competent, professional and responsible way. By sending the texts in question, late at night, on the evening before a scheduled court appearance, the respondent put the complainant in an even more vulnerable and precarious position. By engaging in such conduct, the respondent breached and exploited the complainant's trust in him. The respondent's assertion in one of the texts that he "read you wrong" and "miss understood" [sic] her is no safe harbor. Such claims seem to suggest that there might have been some circumstance under which requesting a nude photo of a client might be permissible or at least defensible. There can never be such a circumstance.

On August 19, 2024, a reviewing committee of the Statewide Grievance Committee issued its decision in complaint #23-0215 finding that the respondent's conduct as noted above, constituted violations of Rule 8.4(4) and 1.8(j) of the Rules of Professional Conduct. The Reviewing Committee ordered that the respondent be presented to the Superior Court for such discipline as deemed appropriate by the Court.

The court having fully heard the matter, finds, by the clear and convincing evidence, that the undisputed conduct of the respondent in this matter constitutes a clear violation of Rules of Professional Conduct. The trial exhibits referenced herein, the testimony of the complainant and

the testimony of the respondent, all of which the court finds to have been credible, lead the court to conclude that the respondent has clearly violated 8.4(4) by engaging in conduct that is prejudicial to the administration of justice.

Rule 1.8(j) specifically provides that "A lawyer shall not have *sexual relations* with a client unless a consensual sexual relationship existed when the client-lawyer relationship commenced." The evidence presented does not support a finding that the respondent here had "sexual relations" with the complainant. The term "sexual relations" is generally construed to imply some type of physical sexual contact or touching. There is no such allegation in this matter and therefore no explicit facts upon which the court could find a violation of Rule 1.8(j). Nonetheless, the proscriptions of this rule are certainly implicated by the conduct in which the respondent engaged in this matter even though there is no allegation of actual sexual relations. The Official Commentary to Rule 1.8 j notes that "...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 asking for a nude photograph of the complainant, the respondent leveraged and exploited his trusted fiduciary relationship with the complainant and necessarily adversely impacted her trust and confidence in the respondent. While such conduct and facts may not support a finding of an explicit violation of Rule 1.8 (j), said facts as found by the court do constitute conduct prejudicial to the administration of justice and form the basis of the court's finding, by clear and convincing evidence, of a violation of Rule 8.4(4).

In a presentment proceeding, the petitioner has the burden of establishing misconduct by clear and convincing evidence. *State v. Perez*, 276 Conn. 285, 307, 885 A.2d 178 (2005). A disciplinary hearing is not the trial of a criminal or civil action or suit, but an investigation by the court into the conduct of one of its own officers. *Burton v. Mottolese*, 267 Conn. 1, 20-21, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S.Ct. 2422, 158 L.Ed.2d 983 (2004). "Attorney disciplinary

proceedings are adversary and quasi-criminal in nature, and, as such, the subject attorneys are entitled to due process of law. . . . Procedural due process is a required constitutional right adhering to those attorneys who are subject to disciplinary action so that they are not unjustly deprived of their reputations or livelihoods." (Citation omitted) *Statewide Grievance Committee v. Gifford*, 76 Conn. App. 454, 461, 820 A.2d 309 (2003).

An attorney "as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. His admission is upon the implied condition that his continued enjoyment of the right conferred is dependent upon his remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in the enjoyment of his professional privilege may and ought to be declared forfeited." *State v. Peck*, 88 Conn. 447, 450, 91 A. 274 (1914). "An attorney must conduct himself or herself in a manner that comports with the proper functioning of the judicial system." (Citation omitted; internal quotation marks omitted.) *Notopoulos v. Statewide Grievance Committee*, 277 Conn. 218, 232, 890 A.2d 509, cert. denied, 549 U.S. 823, 127 S.Ct. 157, 166 L.Ed.2d 39 (2006).

"[I]f a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." (Citation omitted; internal quotation marks omitted.) *Statewide Grievance Committee v. Shluger*, 230 Conn. 668, 675, 646 A.2d 781 (1994).

Connecticut courts have utilized the American Bar Association's Standards for Imposing Lawyer Sanctions as a guide for assessing appropriate discipline, and the Connecticut Supreme Court has approved this approach. *Burton v. Mottolese*, supra, 267 Conn. 55. The standards provide that the court, after a finding of misconduct, should consider "(1) the nature of the duty violated; (2) the attorney's mental state; (3) the potential or actual injury stemming from the attorney's

misconduct; and (4) the existence of aggravating or mitigating factors." A.B.A., Standards for Imposing Lawyer Sanctions (1986) Standard 3.0, p. 25; see also *Id.*

Listed as aggravating factors are "(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution and (k) illegal conduct, including that *involving* the use of controlled substances." A.B.A., Standards for Imposing Lawyer Sanctions (2001) standard 9.22, pp. 354-55; see also *Id.*

Listed as mitigating factors are "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely; (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (l) remorse; [and] (m) remoteness of prior offenses." A.B.A., Standards for Imposing Lawyer Sanctions (2001) standard 9.32, pp. 355-56; see also *Burton v. Mottolese*, *supra*, 267 Conn. 55-56.

In applying these standards, having made the requisite finding of misconduct in this matter, the court first considers the nature of the duty implicated. On these facts, the respondent owed a

duty to his client, the complainant, to handle her matter in a competent, faithful and professional manner. The Preamble to the Rules of Professional Conduct sets forth other duties that lawyers have and that the respondent had in this matter. The Preamble provides in pertinent part that "...a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service."

Turning to the respondent's mental state, the ABA Standards recognize three mental states – "intent, knowledge, and negligence."

"Intent" is the most culpable mental state, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.*

"Negligence" is the failure to be aware of a substantial risk that circumstances exist or that a result will follow, and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

In this matter there can be no doubt that the respondent here acted with "intent." He was of clear mind and in a stable mental state at the time he engaged in the conduct which forms the basis of this complaint. Indeed, by his own words in the texts he sent to the respondent, he acknowledged the wrongfulness of his conduct and asked for forgiveness. Notwithstanding the admission of the wrongfulness of his conduct, the evidence discloses, and the court finds that the respondent acted knowingly and intelligently and with the clear intent to accomplish a particular result when sending the texts in question.

The potential or actual injury stemming from the respondent's misconduct is clear – the complainant, in the midst of a highly contested and stressful child custody case with the father of her children, had placed her trust and confidence in her lawyer, the respondent. The complainant was under the impression that she had a scheduled court event in that child custody case within hours of receiving the offending texts. By refusing the entreaties of the respondent for a photo, she feared the possibility of appearing in court the next morning without legal representation. Leveraging his trusted position by requesting such a photo of the complainant, aggravated and exacerbated the complainant's fear and anxiety and created a heightened risk of potential or actual injury to the complainant and her child custody case.

Finally, the court turns to aggravating and mitigating factors in assessing the appropriate discipline. With respect to aggravating factors, as noted above, the respondent has a disciplinary history consisting of a reprimand, issued on December 8, 2000 in Grievance Complaint #97-0874 for violations of Rules 1.8(e) and 4.4 of the Rules of Professional Conduct (Trial Exhibit #3); and a two year suspension, issued on September 25, 2023 by the Superior Court (Cobb, J.) for violations of Rules 3.1, 3.3 (a)(1), 8.2 (a), 8.4 (3) and 8.4 (4) of the Rules of Professional Conduct (Trial Exhibit #4).

The respondent's admitted conduct in requesting a nude photo of the complainant evidenced a dishonest or selfish motive. A further aggravating factor is the acknowledged vulnerability of the complainant at the time the respondent engaged in the offensive conduct. The respondent's extensive experience in the practice of law and the simple fact that he knew the wrongfulness of his conduct at the time he engaged in it are further aggravating factors.

Turning to mitigating factors, the court finds that the respondent was generally cooperative throughout the disciplinary proceedings. The respondent did express his remorse at the time the texts were sent but at that time suggested that he had sent the texts because he "read her wrong" and "miss understood" [sic] the complainant. The respondent in his testimony at trial, unequivocally expressed his remorse at having sent the texts. He apologized both to the court

and the complainant at that time. The respondent further made a full and free disclosure at trial of the wrongfulness of his conduct.

While the court acknowledges and welcomes the respondent's admissions and apologies in this matter, the conduct is so egregious as to warrant the imposition of a serious and meaningful sanction. The complainant here placed her faith and trust in the lawyer she retained to represent her in a contentious contested child custody matter. At the time she retained the respondent and throughout his representation of the complainant, the complainant was fearful that she might lose custody of her children. Her stress and vulnerability were acknowledged by the respondent at the time he was retained. At a most stressful and vulnerable time in her life, the person in whom the complainant placed her faith and trust violated that faith and trust in the most demeaning, offensive and inappropriate manner. The conduct of the respondent warrants significant response from the court.

Accordingly, the court orders that the respondent be suspended for a period of one year, consecutive to the suspension which was imposed by the Superior Court (Cobb, J.) in CV-22-6160733-S (Trial Exhibit #4).

The Office of the Chief Disciplinary Counsel shall notify the chief clerks of all judicial districts and Probate Court administration of the respondent's suspension which suspension is consecutive to the suspension the respondent is currently subject to in CV-22-6160733-S (Trial Exhibit #4).

The respondent shall comply with Practice Book Section 2-47B (Restrictions on the Activities of Deactivated Attorneys).

The respondent shall continue to cooperate with the Trustee appointed under the terms of the order of suspension in OCDC V. Spears CV-22-6160733-S (Trial Exhibit #4) and said Trustee is appointed as Trustee in this matter as well.

The respondent's failure to comply with this order shall be considered misconduct and may subject the respondent to additional discipline.

Any application for reinstatement shall be made pursuant to the provisions of Practice Book 2-53.

412186
CARROLL, JTR