

Inside the Office of Bar Counsel:

Sex, Lies and Bar Complaints

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It is the same old story. A distraught client consults a lawyer about an important legal matter. The lawyer counsels and consoles the client. The attorney-client relationship turns amorous, and during the course of the representation, the attorney and client engage in sexual relations. After the legal matter is resolved and the attorney-client/sexual relationship ends, the client files a bar complaint against the lawyer.

The bar complaint alleges that the lawyer took advantage of the client's extreme emotional vulnerability. The lawyer maintains the intimate relationship was consensual. The client claims the lawyer is lying and vice versa. During the course of the ensuing bar investigation, the highly indignant lawyer calls bar counsel, denouncing the bar's unwelcome intrusion into the lawyer's personal affairs and demanding to know where it is written that attorneys cannot have sex with clients.

The short answer is that there is no such rule. Virginia's *Rules of Professional Conduct* (RPCs) do not expressly prohibit attorneys from engaging in sexual relations with clients. The American Bar Association's Model Rules of Professional Conduct do not expressly address the issue either, although almost ten years ago the association's Ethics Committee issued an opinion concluding that lawyers would be well advised to refrain from engaging in sexual relationships with clients. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992). The American Bar Association recently debated adopting a rule prohibiting attorneys from engaging in sexual relations with clients, but the effort failed, in part, because in this post-Clinton era, delegates were unable to agree upon a definition of "sexual relations."

Several states, including California, Florida, Iowa, Minnesota, Utah and Wisconsin, have adopted rules prohibiting lawyers from having sexual relations with clients in certain circumstances. For example, Rule 8.4(g) of the Utah Rules of Professional Conduct states that it is professional misconduct for a lawyer to engage in sexual relations that exploit the lawyer-client relationship. For purposes of the Utah rule, "sexual relations" are defined as sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification or abuse. The rule establishes a rebuttal presumption that "[e]xcept for a spousal relationship or a sexual relationship that existed at the commencement of the lawyer-client relationship, sexual relations between a lawyer and a client shall be presumed to be exploitative."

The fact that Virginia does not have a rule explicitly barring sexual relations between attorneys and clients does not mean that the bar cannot prosecute a lawyer for sexually exploiting an attorney-client relationship. The pertinent RPCs are 1.7(b) and 8.4(b). 1.7(b) provides that a lawyer shall not represent a client if the lawyer's own interests may materially limit the representation of the client. 8.4(b) states that it is professional misconduct for a lawyer to commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

In addition to RPCs 1.7(b) and 8.4(b), where the lawyer is a prosecutor, sexual relations with a witness or defendant abridge RPC 1.11(a), which forbids a lawyer holding public office from accepting anything of value from any person when the lawyer knows, or it is obvious that, the offer is for the purpose of influencing the lawyer's action as a public official.

Virginia lawyers who engaged in sexual relations with clients or other parties with whom they had ongoing professional relationships have been publicly disciplined for violating the RPCs mentioned above and their counterparts under the Code of Professional Responsibility, which governed Virginia lawyers until December 31, 1999. See, e.g., *In the Matter of Janeen Deann Joslin*, VSB Docket No. 98-010-0202 (July 19, 1999) (former Assistant Commonwealth's Attorney suspended for five years, with four years suspended based upon compliance with certain terms and conditions, for engaging in a sexual relationship with the complaining witness in two sexual abuse cases that the Assistant Commonwealth's Attorney was prosecuting); *In the Matter of Everett Michael Myers*, VSB Docket No. 98-010-1787 (Feb. 18, 2000) (attorney suspended for two years for groping a prospective client and engaging in a sexual relationship with a young client whom the lawyer set up in an apartment and employed as a legal assistant while he represented her in divorce proceedings); *In the Matter of Zane Bruce Scott*, VSB Docket No. 99-102-0092 (Dec. 15, 2000) (former Assistant Commonwealth's Attorney disbarred for using his office to solicit and engage in sexual relationships with two defendants charged with felonies); *In the Matter of Sterling Weaver, Sr.*, VSB Docket No. 97-010-0846 (Nov. 17, 1997) (lawyer publicly reprimanded for engaging in sexual relations with a married client who wanted to reconcile with her estranged husband); and *In the Matter of George Alexander Weimer, Jr.*, VSB Docket Nos. 99-031-1009 and 00-031-0999 (Nov. 17, 2000) (attorney suspended from the practice of law for nine months for engaging in a sexual relationship with the wife of a client he represented in worker's compensation and real estate matters, and for engaging in a sexual relationship with the wife of another client he represented in a divorce).

Most bar complaints alleging that attorneys have engaged in professionally improper sexual relations are not as factually extreme as the cases cited above, but regardless of their gravamen, bar complaints involving sex, hurt feelings and recriminations are difficult for everyone involved—respondents, witnesses, prosecutors and adjudicators. Many sexual misconduct complaints devolve into swearing matches and are dismissed early in the disciplinary process either for lack of clear and convincing evidence or for lack of credible evidence. Private discipline is the outcome where the evidence is clear and convincing, but the sexual misconduct complained of is not egregious. Sometimes adjudicators do not agree upon the disposition of sexual misconduct cases. See, e.g., *Weaver*, VSB Docket No. 97-010-0846 (dissenting opinion advocates imposition of at least a six month suspension rather than a public reprimand, noting that "issues affecting the client were subordinate to lust").

Attorney-client relationships are founded on mutual trust. Evidence that a lawyer exploited client trust can vitiate a consent defense to a sexual misconduct complaint. How can a client, who is totally dependent upon a lawyer for legal representation, freely consent to a sexual encounter when the parties to the relationship do not have equal bargaining power? Moreover, can a client involved in a carnal relationship with a lawyer rely upon the lawyer to render sound legal advice? As the majority noted in *Weaver*, sex has a way of twisting both reality and otherwise sound judgment, compromising a lawyer's ability to function as

an objective and professional adviser. From the lawyer's standpoint, can a lawyer involved in an illicit sexual relationship with a client trust the client?

Fortunately, not every romantic interlude involving an attorney and a client produces a bar complaint. Nonetheless, while there is no rule prohibiting attorneys from mixing business with pleasure, the RPCs afford Virginia attorneys several excellent reasons to avoid sexual liaisons with clients. 