

**BEFORE THE INVESTIGATIVE PANEL
OF THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**

In Re: Erin K. Reisenweber, a member of
The West Virginia State Bar

Bar No.: 9537
I.D. No.: 15-03-464

STATEMENT OF CHARGES



To: Erin K. Reisenweber, Esquire
c/o Stephen G. Jory, Esquire
Post Office Box 1909
Elkins, West Virginia 26241

YOU ARE HEREBY notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Lawyer Disciplinary Procedure, with regard to the following charges against you:

1. Erin K. Reisenweber (hereinafter "Respondent") is a lawyer practicing in Martinsburg, which is located in Berkeley County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on May 13, 2004. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

COUNT I
I.D. No. 15-03-464
Complaint of the Office of Disciplinary Counsel

2. After receiving an investigation report from the Office of Professional Responsibility (OPR) at the United States Department of Justice, pursuant to Rule 2.4(a) of the Rules of Lawyer Disciplinary Procedure, the Office of Disciplinary Counsel (ODC) docketed this complaint against Respondent.
3. Respondent is an Assistant United States Attorney, and has been employed in that capacity since 2007. Beginning in or about November of 2012, she began having an intimate relationship with a law enforcement officer. That clandestine relationship continued for approximately 22 months. During the relevant time period, Respondent handled a number of cases on behalf of the United States Attorneys Office (USAO) involving the law enforcement officer as a potential government witness.
4. In June of 2012, Respondent's employer reviewed her cellular telephone records and became concerned with the number of text messages between Respondent and the law enforcement officer over the course of a 12 month period. After receiving the appropriate authorization from the Executive Office, the USAO conducted a more thorough review of the messages and discovered that in addition to work related texts there were a large volume of romantic and sexually explicit texts. There was an extensive review conducted by the USAO for potential Rule 16 of the Federal Rules

of Criminal Procedure, *Brady*¹, *Giglio*² and Jencks Act material violations. The USAO determined that no Rule 16 or *Brady* violations occurred, but some of the text messages could potentially constitute *Giglio* or Jencks material violations.

5. After this review, the USAO consulted with the Department's National Criminal Discovery Coordinator and then by letter dated January 3, 2013, the United States Attorney for the Northern District advised the presiding District Court Judge of the investigation and its findings. The government advised that Court it did not believe disclosure to the defense was warranted because all the subject cases involved pleas of guilt.³ The Court did not issue a written decision, but orally agreed with the government's analysis and stated disclosure to the defense was not required.
6. On April 17, 2013, the USAO reported its findings and investigation to OPR who conducted another investigation that concluded by written report issued April 6, 2015.
7. OPR concluded that Respondent did not commit professional misconduct when she failed to disclose the relationship to the defense counsel involved, but that she

¹ *Brady v. Maryland*, 373 U.S. 83 (1963) (The government's withholding of evidence that is material to the determination of either guilt or punishment of a criminal defendant violates the defendant's constitutional right to due process.)

² *Giglio v. United States*, 405 U.S. 150 (1972) (Prosecution's failure to inform the jury that a witness had been promised not to be prosecuted in exchange for his testimony was a failure to fulfill the duty to present all material evidence to the jury, and constituted a violation of due process, requiring a new trial.)

³ None of these cases went to trial. Although the law enforcement officer did not testify at trial, he testified at hearings, including detention and plea hearings.

exercised extremely poor judgment when she failed to disclose the relationship to the Court in camera for a proper determination as to whether disclosure was required.

8. OPR further concluded that Respondent violated Rule 1.4 of the Rules of Professional Conduct by failing to disclose the relationship to her employer and that she acted in reckless disregard for her obligation to keep her client (the government) fully advised to make reasonable decisions.
9. OPR concluded that she violated the justice department's policy regarding the personal use of government equipment.
10. For her misconduct, after considering the aggravating and mitigating factors, including Respondent's expression of remorse and acceptance of responsibility, the OPR determined that a three-day suspension without pay was warranted.
11. The Department of Professional Misconduct reviewed the decision and affirmed OPR's findings on July 17, 2015.
12. OPR reported its findings to ODC on or about October 19, 2015, and a complaint was docketed by ODC on about October 30, 2015.
13. Respondent filed a timely response to the complaint and asserted that the matter was barred pursuant to Rule 2.14 of the Rules of Lawyer Disciplinary Procedure because government was aware of the misconduct since the April 27, 2013 report to OPR but failed to report the same to ODC within 2 years.

14. In her response, Respondent acknowledged that she failed to inform her employer-client of the relationship with an investigating agent and acknowledged this failure deprived her client of ability to make important, informed prosecutorial decisions. She also acknowledged that because of her position as an AUSA, that a higher standard applied to her and the relationship could have been prejudicial to the administration of justice. Respondent stated that after an extensive investigation, her supervisors and the district court concluded that no actual injury resulted from her misconduct.
15. Respondent, a minister of justice, is held to a higher standard had a clandestine relationship with the investigating agent on her cases and created a conflict of interest and/or a potential for a conflict of interest that she was ethically bound to disclose to her client. Her failure to disclose deprived her client from making informed decisions and as such her actions are in violation of Rule 1.4(b) and Rule 1.7(b) of the Rules of Professional Conduct,⁴ which provide as follows:

Rule 1.4. Communication.

* * *

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

⁴ Respondent's misconduct occurred prior to January 1, 2015. As such, the Rules in existence prior to this date control.

Rule 1.7. Conflict of Interest: General rules.

* * *

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

16. Because Respondent, who is a minister of justice, and is held to a higher standard, she had a duty to avoid involvement in a sexual relationship with the investigating agent on her cases and her failure to do so and her personal use of government property in violation of DOJ policy to further the same is in violation of Rule 8.4(d) of the Rules of Professional Conduct⁵, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

(d) engage in conduct that is prejudicial to the administration of justice;


* * *

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a

⁵ Respondent's misconduct occurred prior to January 1, 2015. As such, the Rules in existence prior to this date control.

violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

STATEMENT OF CHARGES ORDERED on the 30th day of May, 2017, and
ISSUED this 30th day of May, 2017.



Robby J. Aliff, Chairperson
Investigative Panel
Lawyer Disciplinary Board