

IN THE SUPREME COURT OF OHIO

In re:

:

:

Kenneth Kelly McElroy
Attorney Reg. No. 0070478

11-1711

:

:

MOTION TO DISSOLVE AND/OR MODIFY SUSPENSION
(EXPEDITED REVIEW REQUESTED)

Respondent, Kenneth K. McElroy, pursuant to Gov. Bar R. V, Section 5a(C)(1), moves this Honorable Supreme Court of Ohio to Dissolve and/or Modify its Order, in the form of a stay, of Suspension of Respondent, entered October 13, 2011, for the following reasons:

STATEMENT OF FACTS

Respondent had formally resigned his license to practice law some time before the entry of his felony conviction on September 20, 2005. *Respondent was informed that the conviction would be reported to the Ohio Supreme Court.* Respondent fulfilled his obligations under the conviction and was granted early termination from probation on June 12, 2007.

After the conviction, Respondent struggled to maintain employment during this time, fully concentrating on making a living under drastically different circumstances. Respondent never in any way shape or form attempted to practice law for approximately **four years**. Sometime towards the end of 2009 or beginning of 2010, Respondent inquired as to the possibility of reinstating his license.

After specific questioning and inquiry as it relates to the issue at hand, Respondent was told that he could simply apply for reinstatement. There were no issues that were reported or indicated. Respondent applied accordingly and was granted reinstatement.

Upon re-entry into the practice of law most, if not all lawyers and judges, knew of Respondent's prior conviction. Respondent never tried to hide the fact, from either other attorneys or clients, that he was a subject of a conviction nearly six years prior. Respondent handled any and all of the responsibilities handed to him in a competent and professional fashion.

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The judge who entered Respondent's conviction taught a CLE class that Respondent attended, offered by the Cleveland Metropolitan Bar Association. The judge asked how Respondent was doing. This judge even commented on a re-entry program proposal that Respondent had sent to various judges and even indicated that he would be inclined to grant a motion to seal Respondent's conviction (which was opposed to by the prosecutor's office). Respondent, even though he strongly disagrees with the judge's decision to convict, views the sentencing judge and the judicial system, in general, in high esteem – that is why Respondent wants to be a part of it. Respondent has a perspective that can be very valuable in such a system. Society is not monolithic.

However, it became clear that certain persons who worked in prosecutorial capacities had a problem with Respondent practicing criminal law. Respondent refused to compromise his client's cases in any way shape or form. This raised the ire of at least one or two prosecutors. **(These statements in no way shape or form amount to any accusation that the Cleveland Metropolitan Bar Association acted in any arbitrary or capricious fashion).**

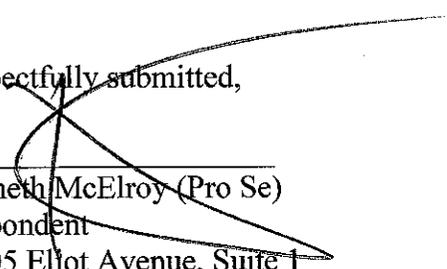
FACTORS TO CONSIDER

Respondent moves this Honorable Supreme Court of Ohio to Dissolve and/or significantly Modify any suspension imposed based on consideration of the following reasons:

1. Respondent willingly left the legal profession before his conviction, for at least **four years, after being informed that the Ohio Supreme Court WOULD be notified of such conviction at that time;**
2. Respondent has never had any previous disciplinary action;
3. Respondent has never then, nor now has ever posed any threat or any harm, what so ever, to the public;
4. Respondent has always been truthful and open about the conviction in question;
5. Respondent fully accepted and fulfilled his obligations in relation to the conviction and should be afforded the same opportunity to practice his trade, as other similarly situated people, absent arbitrary and capricious actions of persons who were fully aware of Respondent's past circumstances and sought to take advantage of the situation.
6. Respondent never realized any tangible personal gain or profits from the events in question (*Disciplinary Counsel v. Gittinger*, 125 Ohio St. 3d 467, 2010-Ohio-1830);

7. Respondent never engaged in any lengthy pattern of misconduct or cause any grave harm to others (*Disciplinary Counsel v. Margolis*, 114 Ohio St. 3d 165, 2007-Ohio-3607).

Respectfully submitted,



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Respondent
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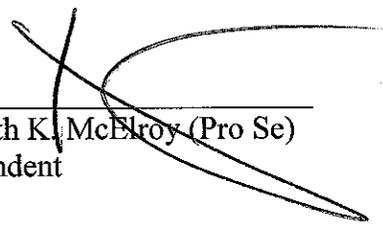
CERTIFICATE OF SERVICE

This is to certify that a copy of this MOTION TO DISSOLVE AND/OR MODIFY SUSPENSION was served by U.S. Mail, on the 14 day of October, 2011, to:

The Ohio Supreme Court
Clerk of Courts
65 South Front Street
Columbus, OH 43215-3431

Richard A. Dove
Board of Commissioners on Grievances and Discipline
65 South Front Street, Fifth Floor
Columbus, OH 43215

The Cleveland Metropolitan Bar Association
1301 East Ninth Street, Second Level
Cleveland, OH 44114
Attn: Office of Disciplinary Counsel



Kenneth K. McElroy (Pro Se)
Respondent

DOCKET INFORMATION

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Proceeding Date	Filing Date	Side	Type	Description	Image
06/12/2007	06/12/2007	N/A	JE	UPON RECOMMENDATION OF PROBATION DEPARTMENT AND DEFENDANT HAVING COMPLIED WITH ORDER OF COMMUNITY CONTROL SANCTIONS, SAID COMMUNITY CONTROL SANCTIONS ARE HEREBY TERMINATED EARLY. 06/12/2007 CPKLF	
06/12/2007 11:12:52					
05/03/2006	05/03/2006	D1	\$\$	PAYMENT ON ACCOUNT MADE ON BEHALF OF MCELROY/KENNETH/K IN THE AMOUNT OF \$502.00	
09/22/2005	09/22/2005	N/A	CS	COURT COST ASSESSED KENNETH K MCELROY BILL AMOUNT 502.00 PAID AMOUNT 0 AMOUNT DUE 502.00	
09/22/2005	09/22/2005	D1	DR	COURT REPORTER FEE	
09/22/2005	09/22/2005	D1	DR	SHERIFF FEES	
09/21/2005	09/21/2005	N/A	CS	RC 2743.70 REPARATION FEE	
09/19/2005	09/21/2005	N/A	JE	DEFENDANT IN COURT WITH ATTORNEY HARRY J C WITTBROD. COURT REPORTER PRESENT. ON A FORMER DAY OF COURT THE COURT RETURNED A VERDICT OF GUILTY OF FORGERY; FORGING IDENTIFICATION CARDS / 2913.31 - F5 AS CHARGED IN COUNT(S) 1 OF THE INDICTMENT. ON A FORMER DAY OF COURT THE COURT RETURNED A VERDICT OF GUILTY OF TAMPERING WITH RECORDS / 2913.42 - F3 AS CHARGED IN COUNT(S) 2 OF THE INDICTMENT. DEFENDANT ADDRESSES THE COURT. THE COURT CONSIDERED ALL REQUIRED FACTORS OF THE LAW. THE COURT FINDS THAT A COMMUNITY CONTROL SANCTION WILL ADEQUATELY PROTECT THE PUBLIC AND WILL NOT DEMEAN THE SERIOUSNESS OF THE OFFENSE. IT IS THEREFORE ORDERED THAT THE DEFENDANT IS SENTENCED TO 3 YEAR(S) OF COMMUNITY CONTROL, UNDER SUPERVISION OF THE ADULT PROBATION DEPARTMENT WITH THE FOLLOWING CONDITIONS: DEFENDANT TO ABIDE BY THE RULES AND REGULATIONS OF THE PROBATION DEPARTMENT. COURT ORDERS DEFENDANT TO BE SUPERVISED BY: REGULAR SUPERVISION UNIT DEFENDANT TO PERFORM COURT COMMUNITY WORK SERVICE FOR 250 HOURS. SUBMIT TO REGULAR DRUG TESTING ATTEND AA/NA/CA MEETINGS, 4 PER WEEK, PROVIDE PROOF OF MEETINGS TO THE	