

ORIGINAL

No. 2011-1711

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## In The Supreme Court of Ohio

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IN RE: KENNETH KELLY MCELROY

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### RELATOR CLEVELAND METROPOLITAN BAR ASSOCIATION'S MOTION IN OPPOSITION TO RESPONDENT'S MOTION TO DISSOLVE AND/OR MODIFY SUSPENSION

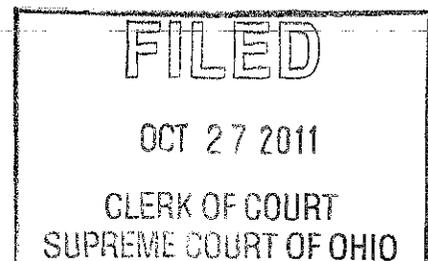
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KENNETH K. MCELROY (0070478)  
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Cleveland, OH 44104  
Phone: 216.355.1565  
Facsimile: 216.916-4910

*Respondent*

HEATHER M. ZIRKE (0074994)  
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*Attorney for Relator  
Cleveland Metropolitan Bar Association*



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## **In The Supreme Court of Ohio**

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IN RE: KENNETH KELLY MCELROY

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### **RELATOR CLEVELAND METROPOLITAN BAR ASSOCIATION'S MOTION IN OPPOSITION TO RESPONDENT'S MOTION TO DISSOLVE AND/OR MODIFY SUSPENSION**

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#### **I. INTRODUCTION**

On September 20, 2005, Respondent Kenneth K. McElroy, Ohio Supreme Court Attorney Registration No. 0070478, was convicted of forgery, a felony of the fifth degree, and tampering with records, a felony of the third degree, in the Court of Common Pleas of Cuyahoga County. (See, Journal Entry of Conviction, Court of Common Pleas of Cuyahoga County, Case No. CR-05-465174-A, attached as Exhibit A.) Respondent was sentenced to Community Control and ordered to (1) perform 250 hours of community work service, (2) submit to regular drug testing, (3) attend 4 meetings per week at Alcoholics Anonymous (AA)/Narcotics Anonymous (NA)/or Cocaine Anonymous (CA), and (4) maintain verifiable employment.

On October 10, 2011, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio certified to this Court a copy of Respondent's judgment entry of conviction. On October 13, 2011, pursuant to Gov. Bar R. V(5)(A)(4), the Court imposed on

Respondent an interim felony suspension. On October 17, 2011, Respondent filed a Motion to Dissolve and/or Modify Suspension, pursuant to Gov. Bar R. V(5a)(C)(1).

## II. COUNTERSTATEMENT OF FACTS

### A. Respondent Never Self-Reported His Felony Conviction.

In his Motion to Dissolve and/or Modify Suspension, Respondent acknowledged that he did not report his felony conviction to any disciplinary authority. Respondent defends his failure to properly disclose his conviction by asserting that someone else assured him the conviction would be reported. Due to Respondent's failure to report his conviction, Relator, Cleveland Metropolitan Bar Association, did not learn about Respondent's conviction until on or around September 21, 2011.

### B. Respondent Never Formally Resigned His License to Practice Law.

Respondent claims that he formally resigned his license to practice law in Ohio and ceased to practice until he was reinstated in late 2009 or early 2010. However, the records of the Office of Attorney Services of the Supreme Court indicate that Respondent never formally relinquished his license to practice law. (See, Attorney Discipline and Sanction History Report, attached as Exhibit B.) The only discipline that appears in the records of the Office of Attorney Services is the felony suspension that is the subject of these proceedings. However, Relator has learned that on September 1, 2005, Respondent took "Inactive" status with the Supreme Court. He became "Active" again on February 18, 2009. Information obtained from the Cuyahoga County Clerk of Courts shows that Respondent resumed the practice of law shortly thereafter in April 2009 when he undertook the representation of at least two clients in criminal matters. (See, Report from Cuyahoga County Clerk of Courts, attached as Exhibit C.) Therefore, it appears that Respondent may have been under a self-imposed break from the practice of law for a period

of about three and one half years. Respondent's statements in his Motion to Dissolve and/or Modify Suspension that he refrained from practicing law for at least four years are inaccurate. Given that Respondent was never under a suspension by this Court as a result of his felony conviction, it is appropriate that he remain suspended for an interim period.

### **III. LAW AND ARGUMENT**

Respondent has filed his Motion to Dissolve and/or Modify Suspension pursuant to Gov. Bar R. V(5a)(C)(1), which is not applicable to Respondent's case. Gov. Bar R. V(5a)(C)(1) provides:

“The respondent may request dissolution or modification of the order of suspension by filing a motion with the Supreme Court...The motion shall include a statement and all available evidence as to why the respondent no longer poses a substantial threat of serious harm to the public.”

This provision follows the requirements for an interim remedial suspension under Gov. Bar R. V(5a). Relator does not believe Gov. Bar R. V(5a)(C)(1) is applicable to Respondent's felony suspension. The only provision for reinstatement after a felony conviction is found under Gov. Bar R. V(5)(D)(1)(a) and requires a certified copy of a judgment entry reversing the conviction of the offense. Here, Respondent has not provided a certified judgment entry to show that his conviction has been reversed.

Even if the Court finds that Gov. Bar R. V(5a)(C)(1) is applicable to Respondent's felony suspension, Relator does not believe Respondent has provided this Court with sufficient evidence that he is not a threat to the public. Respondent's convictions for forgery and tampering with records amount to disciplinary rule violations under the Code of Professional

Responsibility, which was in effect at the time of Respondent's conviction, namely DR 1-102(A)(3)(engaging in illegal conduct involving moral turpitude), and DR 1-102(A)(4)(engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent has not provided any information about the facts which led to conviction. Furthermore, the conditions of Respondent's community control (i.e., weekly meetings at AA/NA/CA) suggest that there may be alcohol and/or substance abuse issues that must be discussed within the course of a disciplinary investigation. Until Relator has had an opportunity to conduct a full inquiry into Respondent's felony conviction, Respondent should remain under an interim suspension to ensure that the public is protected.

Although there has been a delay in bringing Respondent's felony conviction to the attention of the Court, Relator believes it was Respondent's duty to self-report his misconduct. DR 1-103(A) states:

“A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.”

Because Respondent had unprivileged knowledge about his crimes, which amounted to violations of DR 1-102(A)(3) and DR 1-102(A)(4), Respondent should have reported his misconduct to Relator or to the Office of Disciplinary Counsel. Due to Respondent's failure to ensure that his misconduct was timely reported, Relator did not learn about Respondent's felony charges until they were reported by a third party, five years after the conviction.

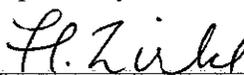
Although Gov. Bar R. V(5)(A)(2) states that the judge entering the judgment shall transmit a certified copy of the judgment entry of conviction to the Board and to the Office of Disciplinary Counsel, Gov. Bar R. V(5)(A)(3) allows for notification of a judgment entry of

conviction to reach the Board and the Supreme Court from any source. Even if Respondent relied on someone else to report his felony conviction, Respondent had a duty under DR 1-103(A) to report his own misconduct.

**IV. CONCLUSION**

Respondent's present assertion that he voluntarily resigned his law license prior to his felony conviction is an effort to characterize a self-imposed break from the practice of law as formal discipline and is an attempt to evade long-overdue disciplinary sanctions. Relator believes this court should deny Respondent's Motion to Dissolve and/or Modify Suspension. Respondent should remain under the felony suspension until the conclusion of the disciplinary process.

Respectfully submitted,



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*Attorney for Relator*

*Cleveland Metropolitan Bar Association*

**CERTIFICATE OF SERVICE**

A copy of the foregoing Relator Cleveland Metropolitan Bar Association's Motion in Opposition to Respondent's Motion to Dissolve and/or Modify Suspension was served via regular mail this 26 day of October 2011, upon the following:

KENNETH MCELROY  
10205 Eliot Avenue, Suite 1  
Cleveland, OH 44104

*Respondent*



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HEATHER M. ZIRKE (0074994)  
Cleveland Metropolitan Bar Association

*Attorney for Relator  
Cleveland Metropolitan Bar Association*



35694810

# IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO  
Plaintiff

KENNETH MCELROY  
Defendant

Case No: CR-05-465174-A

Judge: PETER J CORRIGAN

INDICT: 2913.31 FORGERY; FORGING IDENTIFICATION  
CARDS  
2913.42 TAMPERING WITH RECORDS

## JOURNAL ENTRY

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 SUPERVISING OFFICER.  
OBTAIN / MAINTAIN VERIFIABLE EMPLOYMENT, PROVIDE PROOF OF EMPLOYMENT TO THE PROBATION  
DEPARTMENT.

VIOLATION OF THE TERMS AND CONDITIONS MAY RESULT IN MORE RESTRICTIVE SANCTIONS, OR A PRISON  
TERM OF 6 YEAR(S) AS APPROVED BY LAW.

THE DEFENDANT IS ORDERED TO PAY A SUPERVISION FEE IN THE SUM OF \$ 200.00.

DEFENDANT IS TO PAY COURT COSTS.

09/19/2005

CPSAM 09/19/2005 15:08:24

FILED  
2  
2005 SEP 21 A 152

*[Handwritten Signature]*  
Judge Signature  
Date *9/20/05*

THE STATE OF OHIO Cuyahoga County	} SS.	I. GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL		
<i>Sentence</i>		
NOW ON FILE IN MY OFFICE.		
WITNESS MY HAND AND SEAL OF SAID COURT THIS <i>19</i>		
DAY OF <i>September</i> A.D. 20 <i>05</i>		
GERALD E. FUERST, Clerk		
By <i>[Signature]</i>		Deputy



*Cost*

SENT  
09/19/2005

## Attorney Discipline and Sanction History

Disciplinary sanctions entered against an attorney pursuant to **Gov. Bar R. V** and administrative suspensions entered against an attorney pursuant to **Gov. Bar R. VI** and **Gov. Bar R. X**, are displayed here.

Please click the link below for more information.

### Attorney Discipline Explained

Registration

Number: **0070478**

**Kenneth Kelly McElroy**

Disciplinary Action

Effective Date

Supreme Court Case Number

**Felony Suspension**

**10/13/2011**

**GEN-2011-1711**

[Return to Details](#)

Disciplinary sanctions and administrative sanctions entered against an attorney by the Supreme Court pursuant to **Gov. Bar R. V, VI, and X**, (including suspensions for failing to comply with continuing legal education and attorney registration requirements), are displayed here. (Please note that disciplinary sanctions dated prior to 1957 may have been imposed by Ohio courts other than the Supreme Court of Ohio.) The information does not include grievances that may have been filed against an attorney because grievances are generally confidential unless a formal complaint is filed and probable cause determined. The list also does not include disciplinary matters that were dismissed by the Board of Commissioners on Grievances and Discipline or the Supreme Court or that currently are pending against an attorney but not yet decided by the Supreme Court.

Disciplinary information is added to the attorney's record by the office of Attorney Services and will appear the next business day.

If an attorney has a CLE Suspension, CLE Reinstated, Attorney Registration Suspension, Attorney Registration Reinstatement or Attorney Registration Suspension Vacated, please contact the **office of Attorney Services** at 614.387.9320.

If you have further questions, please contact the **office of Attorney Services**.

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Questions or Comments: **Office of Attorney Services**, 614.387.9320



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## CUYAHOGA COUNTY COURT OF

## COMMON PLEAS

DATE: 10/19/2011  
 Search Results  
 TIME: 02:40PM  
 CMSR152

Cases Assigned to Court Party  
 PAGE:1

Start Date End Date

ATTORNEY: KENNETH K MCELROY

(0070478)

Case Number	Filing	Assigned Judge	Plaintiff
CA-10-095872	10/20/2010		IN RE: B.B.
CA-11-096382	02/04/2011		KOMATSU FINANCIAL
LIMITED PARTNERSHIP WEST SIDE MATERIALS INC. ET AL			STATE OF OHIO
CR-00-399442-ZA	10/06/2000	JOSE` A VILLANUEVA	STATE OF OHIO
CHRISTIAN G ALLEN			STATE OF OHIO
CR-01-415813-B	10/26/2001	PEGGY FOLEY JONES	STATE OF OHIO
JOAN PEREZ			STATE OF OHIO
CR-02-421126-ZA	02/01/2002	JOSE` A VILLANUEVA	STATE OF OHIO
CHRISTIAN ALLEN			THE STATE OF OHIO
CR-09-523091-A	04/10/2009	NANCY MARGARET RUSSO	THE STATE OF OHIO
JACQUELINE C STERRETT			THE STATE OF OHIO
CR-09-523282-A	04/16/2009	NANCY MARGARET RUSSO	THE STATE OF OHIO
JACQUELINE STERRETT			THE STATE OF OHIO
CR-10-538047-A	05/28/2010	DANIEL GAUL	THE STATE OF OHIO
JAMES SMITH			THE STATE OF OHIO
CR-10-538472-A	06/09/2010	DANIEL GAUL	THE STATE OF OHIO
HERSCHEL ROBERTS			THE STATE OF OHIO
CR-11-547419-A	02/18/2011	RONALD SUSTER	THE STATE OF OHIO
CONRAD FITTS			THE STATE OF OHIO
CR-11-549548-A	04/23/2011	CAROLYN B FRIEDLAND	THE STATE OF OHIO
GLENN BECKWITH			THE STATE OF OHIO
CR-11-550835-A	05/31/2011	STUART A FRIEDMAN	THE STATE OF OHIO
ANTONE A LAWSON			THE STATE OF OHIO
CR-11-551029-B	06/06/2011	CAROLYN B FRIEDLAND	THE STATE OF OHIO
BRANDON MATHIS			ANTONIO BROWN
CV-02-487280	11/21/2002	BURT W GRIFFIN	BEAL BANK, S.S.B.
MARK LIME			MELANIE ARONSON ETAL
CV-03-501506	05/19/2003	JOHN D SUTULA	LAFLEUR BELCHER
CHARLES E. DAVIS, ET AL			RHONDA D. TREMBLE ETAL
CV-05-563032	05/17/2005	JOSEPH D RUSSO	KOMATSU FINANCIAL
JAMES S. GERRICK ETAL			PARTNERSHIP,
CV-10-718044	02/10/2010	JOHN P O'DONNELL	JACQUELINE CHASE
CARACO PHARMACEUTICAL LABS. LTD.			KIM PHIFER
CV-10-718045	02/10/2010	BRIDGET M MCCAFFERTY	
PROGRESSIVE INS. ETAL			
CV-10-723780	04/09/2010	BRIAN J CORRIGAN	
LIMITED		WEST SIDE MATERIALS, INC., ET AL	
CV-10-741830	11/19/2010	BRIAN J CORRIGAN	
METROHEALTH SYSTEM		ET AL	
CV-10-743723	12/16/2010	JOHN P O'DONNELL	

EXHIBIT

GEICO INSURANCE - ET AL.		
CV-11-757417	06/13/2011	MAUREEN CLANCY
DEBORAH B. ROBINSON		
DR-87-182605	11/17/1987	JOHN W GALLAGHER
ROBERT W SMITH		
DR-97-252017	02/03/1997	TIMOTHY M FLANAGAN
AMBER E LACEY		
DR-99-270011	10/08/1999	KATHLEEN O'MALLEY
DON D CRUMP		
DR-02-289488	11/05/2002	ANTHONY J RUSSO
EDWIN L RUMPH		
DR-03-290778	02/03/2003	CHERYL S KARNER
DAMON MILLS		
DR-11-336380	04/25/2011	LESLIE ANN CELEBREZZE
MELISSA DENISE MYERS	(BERRY)	WILLIAM MYERS
DR-11-338302	09/07/2011	KATHLEEN O'MALLEY
BRIAN T SULLIVAN		
DV-10-331826	06/01/2010	ROSEMARY GRDINA GOLD
ROBERT BASS		
DV-11-336780	05/23/2011	ROSEMARY GRDINA GOLD
WALI KAMAL		
JL-11-466694	09/27/2011	
DEBORAH B. ROBINSON		
		FIA CARD SERVCICES, N.A.
		DAMILIA S SMITH
		NEVILLE O LACEY
		ERICA P NKA WAY CRUMP
		JAMIE L RUMPH
		RACHEL D. MILLS
		SANTINA R CURRY-SULLIVAN
		MELANIE BASS
		BARBARA WATSON
		FIA CARD SERVICES, N.A.

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