

BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO

14-1736

In Re:	:	Case No. 2013-052
Complaint against	:	
Rosel Charles Hurley III Attorney Reg. No. 0083288	:	Findings of Fact, Conclusions of Law, and Recommendation to the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Cleveland Metropolitan Bar Association	:	
Relator	:	

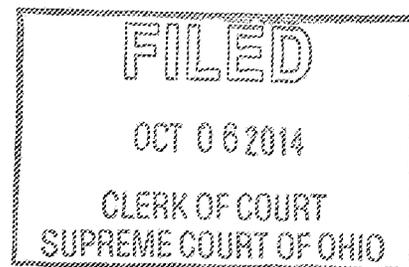
**OVERVIEW**

{¶1} This matter was heard on June 11, 2014 in Cleveland before a panel consisting of Sharon Harwood, David Tschantz, and Judge John Wise, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Respondent appeared pro se. Anne Walton Keller and Heather M. Zirke appeared on behalf of Relator.

{¶3} On March 14, 2013, the Supreme Court of Ohio suspended Respondent for an interim period based upon the felony convictions. *In re Hurley*, 134 Ohio St.3d 1491, 2013-Ohio-924.

{¶4} The single count complaint arises from Respondent's guilty pleas to unauthorized use of property, aggravated menacing, and telephone harassment.



{¶5} Respondent, at the time these events occurred, was a prosecutor in the Cuyahoga County Prosecutor's Office and going through a divorce.

{¶6} For various stated reasons, Respondent used the computers in the prosecutor's office to access OHLEG to check on his spouse and children. Respondent did so without authorization or authority. Respondent's actions resulted in an indictment for five counts of unauthorized use of property. The aggravated menacing and telephone harassment charges arise from threatening phone calls made to his spouse.

{¶7} Relator and Respondent submitted stipulated facts, exhibits, mitigating and aggravating factors, and recommended sanction.

{¶8} Relator and Respondent agreed and stipulated that Respondent's conduct violated the following:

- Prof. Cond. R. 8.4(b) [illegal act that reflects adversely on the lawyer's honesty or trustworthiness];
- Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and
- Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

{¶9} At the hearing, Relator withdrew the charge of a violation of Prof. Cond. R. 8.4(h), and the panel recommends that this charge be dismissed.

{¶10} Based on the parties' stipulations and prior precedent, the panel recommends that Respondent be suspended from the practice of law for a period of two years, with credit for time served under his interim felony suspension imposed March 14, 2013. The panel also recommends that in order to be reinstated to the practice of law, Respondent must be evaluated by OLAP with regard to any potential mental health or substance abuse problems and be compliant with all conditions, restrictions, and terms imposed by OLAP pursuant to that evaluation; and complete sufficient hours of continuing legal education and any other conditions

necessary for Respondent to be in compliance with the requirements of the Office of Attorney Services.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶11} Respondent was admitted to the practice of law in the state of Ohio on May 12, 2008 and is subject to the Rules for the Government of the Bar of Ohio and the Ohio Rules of Professional Conduct.

{¶12} Respondent began working for the Cuyahoga County Prosecutor's Office as an attorney in 2011. Hearing Tr. 49.

{¶13} In 2010, Respondent's wife approached Respondent about a divorce. Respondent's wife asked Respondent to leave the home, which he did. Stipulation 4.

{¶14} On July 5, 2011, Respondent filed a petition for dissolution of his marriage. The matter was later converted to a contested divorce, which has since been resolved. Stipulation 5.

{¶15} Respondent resorted to alcohol and seclusion to cope with the loss of his family and dissolution of his marriage. Stipulation 6.

{¶16} Respondent, while working in the prosecutor's office, accessed the Ohio Law Enforcement Gateway ("OHLEG") system on numerous occasions in order to obtain information about his wife and children.

{¶17} Respondent also said he needed a Social Security number for one of his children for insurance purposes but was evasive about why he could not get that information from another source.

{¶18} Respondent accessed the OHLEG system 30 to 40 times within a six month period. Hearing Tr. 16.

{¶19} Respondent's unauthorized use of OHLEG was reported by the Cuyahoga County Prosecutor's Office to the Ohio Bureau of Criminal Investigations. Stipulation 7.

{¶20} Respondent made harassing phone calls to his wife and threatened her with physical harm. Respondent's wife reported these actions to the Cleveland Police Department. Stipulation 8.

{¶21} Although Respondent stipulates to threatening his wife, his testimony at the hearing was evasive and confusing. He attributed his charge of aggravated menacing to a confrontation with his former spouse's boyfriend. However, the charging documents indicate it was based on threatening phone calls to his spouse. Upon questioning, Respondent responded he did not read the charges closely, he just wanted to get it behind him. Hearing Tr. 65-66.

{¶22} On October 26, 2012, the Cuyahoga County Grand Jury returned a seven count indictment against Respondent, charging him with five counts of unauthorized use of property, felonies of the fifth degree; one count of aggravated menacing, a misdemeanor of the first degree; and one count of telecommunications harassment, a misdemeanor of the first degree. Stipulation 9.

{¶23} The offenses contained in the indictment occurred over a six month period from October 18, 2011 to April 15, 2012. Stipulation 10.

{¶24} On January 22, 2013, Respondent entered a plea of guilty to all counts in the indictment. Stipulation 11.

{¶25} On February 25, 2013, the Cuyahoga County Court of Common Pleas entered its conviction of Respondent on all counts. Stipulated Ex. 1.

{¶26} Respondent was sentenced to one year of community control sanctions and ordered to pay a fine of \$5,000. Stipulation 13.

{¶27} Respondent was administered a drug test and alcohol assessment through the Cuyahoga County Court of Common Pleas Probation Department. Respondent's drug test results were negative, and no alcohol treatment was recommended. Stipulation 14.

{¶28} On March 1, 2013, Respondent self-reported his conviction to the Office of Disciplinary Counsel. Stipulation 15.

{¶29} On November 1, 2013, Respondent was also suspended for failing to register as an attorney for the 2013 to 2015 biennium. Stipulation 17.

{¶30} Respondent indicated that he failed to register because he was already suspended and did not believe he was supposed to register. It was his belief, that he should not register while suspended. Respondent admits he did not ask anyone if he was still required to register. Hearing Tr. 53-54.

{¶31} On December 18, 2013, Respondent was evaluated by Paul A. Caimi, JD, LCDC-III of the Ohio Lawyers Assistance Program, Inc. (OLAP). In summary, Caimi's diagnosis for Respondent is alcohol dependence. Caimi also noted a significant psychiatric history and referred Respondent for a psychiatric evaluation. Caimi's recommendation was that Respondent should attend an intensive outpatient program for alcohol dependence at the Veterans Administration or similar facility. Respondent should attend at least three AA meetings per week. Stipulated Ex. 2.

{¶32} The panel notes that prior to Respondent's contacting the VA and being evaluated by them, he failed to attend any AA meetings or participate in an intensive outpatient program as required by his OLAP contract.

{¶33} On February 13, 2014, Respondent was evaluated by Clyde Gene Davis of Cleveland VA Medical Center. Stipulated Ex. 3.

{¶34} A review of the VA assessment report reveals that the only testing done by Dr. Davis was a questionnaire submitted to and filled out by Respondent. There was no follow-up to the questionnaire to test or verify the honesty and/or accuracy of Respondent's answers. The assessment is based solely upon the unverified responses of Respondent.

{¶35} Respondent reports that he is no longer abusing alcohol and he now has a more positive outlook on life. Stipulation 18.

{¶36} In general, Respondent testified that now that the stress of the divorce is over and with help from counseling with his church, if he had an alcohol problem, it no longer exists. Hearing Tr. 57.

{¶37} Based upon the joint stipulations as to facts, rule violations, exhibits, mitigation, aggravation, and the testimony at the hearing, the panel finds by clear and convincing evidence that Respondent violated the following: Prof. Cond. R. 8.4(b) and Prof. Cond. R. 8.4(c).

{¶38} Relator withdrew the alleged violation of Prof. Cond. R. 8.4(h) and that charge should be dismissed.

#### **AGGRAVATION, MITIGATION, AND SANCTION**

{¶39} The purpose of a disciplinary sanction is not to punish the individual, but rather to protect the public, the courts, and the legal profession. *Disciplinary Counsel v. Dann*, 134 Ohio St.3d 68, 73, 2012-Ohio-5337. When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties Respondent violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743. The panel must also weigh evidence of the aggravating and mitigating factors listed in BCGD Proc. Reg. 10(B). *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251.

{¶40} The panel finds the following aggravating factors: Respondent had a dishonest motive when he illegally accessed the OHLEG system in order to obtain information about his wife; Respondent was in a position of public trust as an assistant prosecuting attorney with the Cuyahoga County Prosecutor's Office at the time of his criminal and ethical misconduct; and Respondent has prior discipline.

{¶41} The panel finds the following mitigating factors: Respondent fully cooperated in the disciplinary proceedings; Respondent self-reported his conviction to the Office of Disciplinary Counsel; other penalties and sanctions have been imposed in that Respondent was criminally convicted of the misconduct and was ordered to serve probation, pay a fine of \$5,000, and is compliant with all conditions of probation; and he has acknowledged his wrongful conduct.

{¶42} At the hearing, Respondent, upon request of the panel, agreed to provide evidence that OLAP had released him from their program but has failed to do so. The panel has concerns about Respondent's varied admissions and denials to OLAP and the VA on whether he had an alcohol abuse problem. His compliance or lack of compliance with treatment and evaluation plans is also an area of concern. As stated above, the assessment done by the VA was based solely upon the unverified responses of Respondent, and the panel places little value on the assessment for those reasons.

{¶43} Prior to being evaluated by the VA, Respondent was evaluated by OLAP and Respondent signed a contract agreeing to attend three AA meetings per week, which he admits he failed to do.

{¶44} Respondent and Relator stipulated to the applicability of *Disciplinary Counsel v. Whitfield*, 132 Ohio St.3d 284, 2012-Ohio-2708.

{¶45} *Whitfield* is factually similar to the present case in that Respondent was serving an interim suspension based upon a felony conviction at the time of his grievance proceedings. However, in *Whitfield*, the respondent committed a crime of violence, aggravated assault, by striking another man in the head with a glass bottle, causing serious injuries.

{¶46} *Whitfield* was also under an interim suspension from the practice of law based on the felony conviction, as was Respondent.

{¶47} Respondent, in the present matter, committed a nonviolent felony offense. Arguably, Respondent's conviction on the misdemeanor offense of aggravated menacing was an act of violence. However, based on the facts in this matter, it was a domestic threat without actual physical violence.

{¶48} In *Whitfield*, the Supreme Court found that *Whitfield* violated Prof. Cond. R. 8.4(h) and suspended *Whitfield* for two years from the practice of law, but credited him for time served under his interim felony suspension. The Court also conditioned the period of suspension upon an extension of his OLAP contract for an additional two years and his compliance with the treatment recommendations of his mental health professionals

{¶49} The panel found two other cases instructive. *Disciplinary Counsel v. Schmidt*, 134 Ohio St.3d 557, 2012-Ohio-5712 and *Disciplinary Counsel v. Engel*, 132 Ohio St.3d 105, 2012-Ohio-2168.

{¶50} In *Schmidt*, the respondent was the county treasurer and an attorney. During working hours on county time, *Schmidt* had one of his county employees perform secretarial services related to his private law practice. Further, he used the treasurer's office fax machine to send documents relating to his private practice. *Schmidt* pled guilty to criminal charges arising out of that conduct. Most relevant to Respondent's grievance is *Schmidt*'s guilty plea to

unauthorized use of property. The distinction between Schmidt's conduct and Respondent's conduct lies in the fact that Respondent was knowingly accessing confidential information for personal use, whereas Schmidt was transmitting personal work product over a fax machine. The panel finds the violation of the public trust is far more severe in Respondent's case.

{¶51} The Court found that Schmidt violated Prof. Cond. R. 8.4(h) and imposed a sanction of a twelve-month suspension from the practice of law, with the suspension stayed on condition that he commit no further misconduct.

{¶52} Finally, the panel looks to *Engel*. *Engel* is a somewhat factually complex case, but for purposes of this review, we focus on his misdemeanor convictions for disclosing confidential information. Engel was chief legal counsel to DPS. DPS and the inspector general's office had a poor working relationship. Both conducted confidential investigations. Due to staffing issues, the inspector general's office would use DPS's Highway Patrol employees to conduct investigations, without the knowledge or consent of the DPS director.

{¶53} Engel had concerns about his ability to protect those borrowed employees or account for their work product. Engel suspected that there were leaks from the DPS personnel conscripted by the inspector general to the media. There were no procedures in place to resolve interdepartmental disputes or to discover the source of the leaks. Because DPS had a policy stating employees had no right to privacy emails on the state email system, Engel had filters put on the system to capture DPS employee emails sent to and from media outlets, as well as emails sent to DPS employees by the inspector general's office. Through these filters, DPS captured confidential communications about civil and criminal investigations the inspector general was conducting with other governmental agencies. The filter then sent copies of these confidential emails to persons who were not authorized to receive them, including Engel. The reckless

disclosure of confidential information from the inspector general's office is a misdemeanor offense. Engel plead guilty to three third degree misdemeanor counts of disclosing confidential information. He received a 30-day suspended jail sentence and a \$750 fine on each count. Engel was found to have violated Prof. Cond. R. 8.4(d) and (h). The Court sanctioned Engel with a six-month suspension from the practice of law in Ohio. The Court in its rational stated:

\* \* \* We find, however, that his distribution of confidential information about pending law-enforcement and ethics investigations to those who were not authorized to receive such information - while he served as chief legal counsel for DPS - worked to undermine public trust not only in the legal system, but in state government as a whole. Unlike Taft, who was found to have violated the prohibition against a lawyer's engaging in conduct that adversely reflects on his fitness to practice law with his inadvertent failure to comply with financial-disclosure laws, Engel acted recklessly and stipulated that his conduct adversely reflected on his fitness to practice law and that it was prejudicial to the administration of justice. For these reasons, we find that a greater sanction is warranted. Accordingly, we suspend Joshua Adam Engel from the practice of law in Ohio for six months. \* \* \*

*Disciplinary Counsel v. Engel*, 132 Ohio St.3d 105, 2012-Ohio-2168, ¶13.

{¶54} Although both Engel and Respondent accessed confidential information without authority, Engel acted out of concern, albeit recklessly, for his employer. Respondent acted out of a purely selfish motive. The panel finds Respondent's conduct to be a more egregious violation than Engel's.

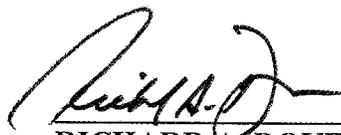
{¶55} Based upon the findings of fact, conclusions of law, aggravating and mitigating factors, and a review of prior precedent, the panel recommends that Respondent be suspended from the practice of law for a period of two years, with credit for time served under his interim felony suspension imposed on March 14, 2013. The panel also recommends that in order to be reinstated to the practice of law, Respondent must be evaluated by OLAP with regard to any potential mental health or substance abuse problems and be compliant with all conditions, restrictions, and terms imposed by OLAP pursuant to that evaluation. He also shall complete

sufficient hours of continuing legal education and any other conditions necessary for Respondent to be in compliance with the requirements of the Office of Attorney Services.

**BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 3, 2014. The Board adopted the findings of fact and conclusions of law of the panel. The Board amended the sanction recommended by the panel to include a recommendation that, upon reinstatement, Respondent be ordered to serve a two-year period of probation. The Board then adopted the amended recommendation of the panel and recommends that Respondent, Rosel Charles Hurley III, be suspended from the practice of law for a period of two years with credit for time served under the interim felony suspension imposed by the Supreme Court on March 14, 2013. The Board further recommends that Respondent's reinstatement to the practice of law be subject to the conditions set forth in ¶55 of this report and that, upon reinstatement, Respondent be required to serve a two-year period of probation pursuant to Gov. Bar R. V, Section 9 for the purpose of monitoring his continued compliance with the requirements of his OLAP contract. The Board recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**

  
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RICHARD A. DOVE, Secretary