

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In re:

Case No. 2014-098

Complaint against

**John Wesche Hauck
Attorney Reg. No. 0023153**

Respondent

Cincinnati Bar Association

Relator

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

OVERVIEW

{¶1} This matter was heard on October 20 and 21, 2015 in Columbus before a panel consisting of William Novak, Jeff M. Davis, and David E. Tschantz, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent appeared at the hearing pro se. Richard J. Goldberg and Beth Silverman appeared on behalf of Relator.

{¶3} This case arose out of a letter signed by Respondent and sent on behalf of his client¹ to the client's mother. As a result of his actions, Respondent has been charged with violations of the Rules of Professional Conduct, as the client's mother had been granted a civil protection order which prohibited written communication between the mother and Respondent's client.

{¶4} Respondent was charged in the complaint with the following violations:

- Prof. Cond. R. 1.1 [competence];
- Prof. Cond. R. 5.5(a) [practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction];

¹ The term "client" is used here as a result of the panel's findings set forth in ¶¶28-30 of this report.

- Prof. Cond. R. 8.4(b) [an 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(d) [conduct that is prejudicial to the administration of justice].

{¶5} Based on its findings of fact, conclusions of law, and the evidence adduced at the hearing the panel finds, by clear and convincing evidence, that Respondent engaged in the professional misconduct outlined below. Upon consideration of the applicable aggravating and mitigating factors, case precedent established by the Supreme Court of Ohio, and the recommendation of Relator, the panel recommends the imposition of a one-year suspension with certain additional conditions upon reinstatement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent was admitted to the practice of law in the state of Ohio on November 20, 1978 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶7} Respondent has been suspended from practice of law twice in his career. The first suspension was the result of formal disciplinary action in the case entitled *Cincinnati Bar Assn. v. Hauck*, 129 Ohio St.3d 209, 2011-Ohio-3281. In that case, Respondent was suspended for a period of 12 months, with six months stayed as the result of actions which Respondent stipulated were violations of Prof. Cond. R. 1.15(a) [requiring a lawyer to hold property of clients separate from the lawyer's own property]; Prof. Cond. R. 1.15(b) [permitting a lawyer to deposit his or her own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges]; Prof. Cond. R. 1.4(c) [requiring a lawyer to inform the client in writing signed by the client if the lawyer does not maintain professional-liability insurance]; and Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

{¶8} In a later development in that case, Respondent was found in contempt of the Supreme Court for violating the Court's order and continuing to practice law during the period of his actual suspension. As a result, the stay was lifted and he served the entire 12-month suspension.

{¶9} The second suspension, which occurred while he was suspended in the above-cited case, was for failing to register as an attorney. *In re Hauck*, 2011-Ohio-5927.

{¶10} On November 15, 2012, Respondent was reinstated to the practice of law and all suspensions were terminated.

{¶11} In 2005, a man named Richard Ellison was sentenced to six years of confinement due to his conviction for aggravated burglary, kidnapping, and abduction. The charges and conviction were the result of an incident that occurred at the home of his mother, Jeanne Lee, and stepfather, Edmund Lee III, in Terrace Park, a suburb of Cincinnati, Ohio. In that incident, Ellison entered the Lees' home through its unlocked garage, disconnected the phone, waited three hours, and confronted them when they came home while possessing duct tape, two pairs of handcuffs, a hammer, and a change of clothing. He stated his purpose was to talk to them about long-standing family problems, but the confrontation resulted in Ellison causing injury to his stepfather and, at one point, grabbing the telephone out of his mother's hand as she attempted to dial 911. Relator's Ex. 1, p. 2.

{¶12} On August 11, 2010, in anticipation of Ellison's early release, Mrs. Lee obtained a civil protection order (CPO) from the Hamilton County Domestic Relations Court. This order prohibited Ellison from initiating any contact with the Lees, including, but not limited to, via telephone, fax, email, voicemail, delivery service, writings, or communication by any other means, in person or thorough another person (emphasis added). The CPO was effective for a five year

period or until August 10, 2015 and was served only on Mrs. Lee, Ellison, the Hamilton County Sheriff, and the Terrace Park Police Department. Relator's Ex. 3.

{¶13} Unbeknownst to Ellison until approximately late August 2015, his stepfather, Edmund Lee III, died on September 24, 2010. Respondent's Ex. 10; Hearing Tr. 400.

{¶14} In the fall 2012, Respondent met Ellison and the two became friends. Not long thereafter, the two began discussing a letter that Ellison stated he wanted to send to his estranged mother and stepfather for the purpose of reconciling with them. Relator's Ex. 4. These discussions began in April 2013 and progressed into the drafting of language beginning in early January 2014. Respondent not only provided advice to Ellison about the contents and wording of the letter, including a suggestion that Ellison ask the recipients to seek a cancellation of the CPO, he actively encouraged Ellison to complete the letter. Respondent's Ex. 1; Hearing Tr. 60-61, 341-344, 347, 401-402.

{¶15} Ellison, due to his very poor relationship with the Lees, believed that if he sent the letter with his return address on the envelope, the Lees would not even open it. Because of that belief, and because he was well aware that the CPO prohibited him from contacting the Lees directly, he asked Respondent for permission to use Respondent's letterhead stationery and signature so that it would appear that the letter was being sent by Respondent. When Respondent indicated he was reluctant to use his normal letterhead stationery, Ellison designed a special letterhead using Respondent's name and title for use with the letter. Respondent then agreed to send the letter utilizing that letterhead and further agreed to "adopt" it by signing it. Respondent also added a disclaimer advising the reader that he was acting as a friend to Ellison and not as Ellison's attorney. The letter was drafted by Ellison and edited by Respondent, but was written as

though it was a communication from Respondent. Respondent's Ex. 1; Relator's Ex. 4; Hearing Tr. 62-63, 65-66, 70-71, 122, 342-349, 399-402, 406, 412, 418-419, 454-455, 458-460, 479-481.

{¶16} The disclaimer inserted by Respondent into the letter reads as follows: "I should clarify that although I am an attorney, I'm not acting in that capacity here. I am writing strictly as a friend and Christian who wants to help." Relator's Ex. 4.

{¶17} Respondent testified, and his testimony was supported by the testimony of Ellison, that during these discussions and the drafting of the letter he was aware that Ellison was the subject of a CPO, but that he did not know and did not attempt to ascertain its contents. Respondent's Ex. 1; Hearing Tr. 57-60, 72, 394, 451-452, 466-467, 469-470, 473-474.

{¶18} However, other evidence was introduced at the hearing that tends to contradict this testimony. The transcript of a recorded telephone call between Ellison, who was incarcerated and awaiting arraignment at the time, and Respondent contains the following colloquy:

Ellison: Okay. Well, let me ask you something. Are you going to be willing to—I mean, you looked over the protection order. You didn't see any problem with it. Are you willing to let them know that basically you, as an attorney, had looked it over and didn't see any reason why we couldn't do what we did?

Respondent: Well, look, I don't want to get into the legalities. We [were] making a good faith, courteous attempt to communicate. It was me, not you, doing it, okay. When it comes to that time we can decide on what to say, but I'm willing to come in, speak on your behalf.

Relator's Ex. 9a, p. 5.

{¶19} Ellison also admitted under cross-examination that he relied on Respondent's knowledge of the law and the CPO in writing and sending the letter. Hearing Tr. 399-400, 402, 406, 422.

{¶20} The letter was dated March 3, 2014 and mailed by Ellison on or about March 6, 2014 to by-then-deceased Mr. Lee, with a copy also sent to Mrs. Lee. Relator's Ex. 4 & 5; Hearing Tr. 70, 349.

{¶21} Ellison was arrested approximately ten days later and charged with violating the terms of the CPO, a first degree misdemeanor. Relator's Exs. 11 & 12; Hearing Tr. 350. His bond was set at \$10,000 which he could not raise so he stayed in jail pending his trial in the Hamilton County Municipal Court. Relator's Ex. 9c.

{¶22} Respondent admitted at the hearing that it was "a grievous mistake" and "very poor judgment" to even send the letter. Hearing Tr. 67.

{¶23} Even though Respondent assisted and encouraged Ellison in drafting and sending the letter, he was granted immunity by the Hamilton County Common Pleas Court so that he could be compelled by the court to testify against Ellison. Relator's Ex. 19. A Hamilton County Assistant Prosecutor, Kathleen Fischer, testified at the hearing in this matter that the assistance given by Respondent to his client in violating the CPO constituted complicity and that criminal charges could have been filed against him had he not been granted immunity. Hearing Tr. 161.

{¶24} Using his attorney identification card, Respondent visited Ellison twice while he was incarcerated and awaiting arraignment and trial, and also spoke to him at least twice by telephone during that period. Respondent testified that his purpose in doing so was to determine whether or not he could represent Ellison. Respondent stopped visiting and talking to Ellison on the phone once he realized he could not represent Ellison. Relator's Ex. 9; Hearing Tr. 353-354, 408, 461, 470-471.

{¶25} During the trial preparation phase of the case against Ellison, Respondent wrote three letters to the arresting officer ostensibly on behalf of Ellison. However, he did so without Ellison's prior approval. Relator's Ex. 6-8; Hearing Tr. 420-421.

{¶26} Respondent was not registered as an attorney with the Supreme Court of Ohio during the period September 1, 2013 through April 14, 2014, but was never suspended as a result of his failure to register. Respondent testified at the hearing and filed a notice of registration with the Board on November 16, 2015 in which he asserted that his failure to timely register for the biennium beginning on September 1, 2013 was due to the failure of the Office of Attorney Services to advise him (1) that his registration was due, and (2) to remind him when the registration and requisite fee had not been received that he had not timely registered for the biennium. Hearing Tr. 45-48.

{¶27} Relator filed a response to Respondent's notice of registration agreeing with his assertions therein.

Prof. Cond. R. 1.1—Competence

{¶28} In regard to the first allegation that a violation of Prof. Cond. R. 1.1, the panel finds, as an initial matter, that Ellison was Respondent's client for the purpose of editing the letter and then through his "adoption" of the letter as his own. While Respondent claims he was not technically "representing" Ellison, it is undisputed that he was furnishing Ellison with his time and advice. The oft-quoted statement by President Abraham Lincoln, "A lawyer's time and advice are his stock in trade," is applicable to this analysis. In the editing and polishing of the letter, Respondent devoted both time and advice to Ellison's cause. In the opinion of the panel, this is enough to establish an attorney-client relationship, because the evidence showed that Ellison was

not utilizing Respondent's advice as a lay person, he was relying on Respondent's knowledge and skills as an attorney.

{¶29} In addition, there are other indicia of the existence of that relationship. The letters to the arresting officer, the jail visits and telephone calls to Ellison, the use of attorney-at-law letterhead on the letters, and the contents of the letter itself all lend weight to the panel's conclusion that Ellison was Respondent's client for the purpose of applying Prof. Cond. R. 1.1.

{¶30} The panel is not convinced and rejects Respondent's argument that this relationship is somehow converted to a matter of a nonlawyer writing to someone on behalf of a friend through Respondent's use of the disclaimer he placed in the letter. In the opinion of the panel, Respondent cannot have it both ways. He cannot seek to utilize the "stature" of an attorney-at-law title to give a letter he has signed more credibility in the mind of the reader and at the same time claim that he is writing as just a friend and not as an attorney. Respondent's use of a letterhead that holds him out as an attorney at law, in the opinion of the panel, properly labels Respondent's role in this matter. The panel finds, clearly and convincingly, that he was an attorney interacting with and representing a client when he edited and encouraged the writing of the letter and then signed and gave it to Ellison for transmittal to the Lees.

{¶31} Having found that the respondent had an attorney-client relationship with Mr. Ellison, the panel now turns to the competency of the advice he gave to his client. In this area of the case, the panel was shocked at the lack of good judgment and absolutely poor advice that the respondent gave to Mr. Ellison in several areas.

{¶32} First as Respondent admitted, he exhibited extremely poor judgment in advising his client to send the letter. When fully briefed by Ellison on the severe problems in his client's relationship with his mother Mrs. Lee, including the existence of the recently obtained CPO, the

panel is convinced that the only reasonable course of action Respondent could have taken was to (1) review the CPO, (2) conclude that the contact proposed by Ellison was prohibited, and (3) advise his client not to send the letter.

{¶33} Second, Respondent and Ellison both stated at the hearing in this matter that Respondent knew of the existence of the CPO, but both men also claimed that Respondent did not read it at any time before the letter was mailed to the Lees. Assuming that this assertion is true, the panel has great difficulty in understanding why Respondent did not ask to see it, review it, and give Ellison appropriate advice on the letter in light of the clear prohibitions contained therein. An attorney exercising sound judgment would certainly have asked to review the contents of the CPO for no less purpose than to ensure that he himself was not aiding his client in violating it and thereby risking a criminal charge of complicity.

{¶34} However and third, the panel does not believe Respondent's and Ellison's assertions that Respondent failed to review the CPO. Instead, it finds the dialogue between Respondent and Ellison referenced in ¶18 above to be credible. This dialogue clearly indicates that Respondent reviewed the CPO and still believed that it was appropriate to send the letter. The panel also believes that the request contained in the last paragraph of the letter asking the Lees to modify the CPO lends additional weight to the supposition that Respondent reviewed the CPO prior to signing and transmitting the letter.

{¶35} Based on these three factors, the panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.1.

Prof. Cond. R. 5.5—Practicing Under Suspension

{¶36} In regard to the second allegation that a violation of Prof. Cond. R. 5.5(a), the panel finds, by clear and convincing evidence, that Respondent in giving advice to his client and representing his client's interests to the Lees therein while not in good standing with the Supreme Court of Ohio violated Prof. Cond. R. 5.5(a). The panel is sympathetic to Respondent's argument that he was not given proper notice of his need and subsequent failure to register. However, the panel is mindful of Gov. Bar R. VI, Section 4(A), which reads as follows: "Each attorney admitted to the practice of law in Ohio or registered for corporate status shall keep informed of the registration requirements, deadlines, and fees. An attorney's failure to receive notice that a registration and fee are due or notice of noncompliance shall not affect any action taken under this rule." Since this rule clearly places the responsibility for knowing and maintaining registration status on the attorney in order to be able to practice law, the panel believes that it must therefore find a violation of Prof. Cond. R. 5.5(a).

Prof. Cond. R. 8.4 Violations

{¶37} In regard to the third allegation of a violation of Prof. Cond. R. 8.4(b), the panel finds, by clear and convincing evidence, that Respondent violated this rule by committing an illegal act in assisting his client in the violation of the prohibition of the CPO by sending the letter. In the opinion of the panel, the fact that Respondent was neither charged nor convicted of any crime arising out of the sending of the letter is immaterial. The evidence adduced at the hearing clearly and convincingly persuaded the panel that Respondent could have been charged and convicted of several illegal acts in connection with his role in sending the letter.

{¶38} In regard to the fourth allegation of a violation of Prof. Cond. R. 8.4(c), the panel finds, by clear and convincing evidence, that Respondent violated this rule by attempting to

deceive the Lees through signing his name to the letter and allowing his letterhead to be used when it was, in fact, Ellison's letter to them. The panel rejects the argument made by Respondent that "adopting" the letter by signing his name to it and printing it under his letterhead was tantamount to any other lawyer signing a letter written by his or her employee to a client. In this matter while Respondent admittedly encouraged, edited, and polished the letter, the testimony was overwhelming that the letter was an attempt by Ellison to circumvent the prohibitions of the CPO and Respondent was complicit in that effort. As such, Respondent violated Prof. Cond. R. 8.4(c) in his attempt to deceive the Lees.

{¶39} In regard to the fifth allegation of a violation of Prof. Cond. R. 8.4(d), the panel finds, by clear and convincing evidence, that Respondent violated this rule by assisting his client in the violation of the prohibitions contained in the CPO. In so doing, in the name of friendship and without knowing the attitudes of the parties protected under the CPO, Respondent substituted his judgment for the judgment of the Hamilton County domestic relations court to the point that he felt it necessary and appropriate to disregard the written order of the court.

MITIGATION, AGGRAVATION, AND SANCTION

{¶40} With regard to the factors in aggravation that may be considered in favor of a more severe sanction for professional misconduct listed in Gov. Bar R. V, Section 13(B), the panel finds, by clear and convincing evidence, that Respondent has been previously disciplined, has committed multiple offenses, has refused to admit the wrongful nature of all of his misconduct, and has caused great harm to vulnerable people, including his client Ellison, who spent 90 days in jail as a direct result of Respondent's misconduct, and members of the Lee family.

{¶41} Although invited to do so by Relator in its closing argument at the hearing, the panel declines to find the additional aggravating factors of engaging in a pattern of misconduct and possession of a dishonest and selfish motive.

{¶42} With regard to the factors in mitigation that may be considered in favor of a less severe sanction for professional misconduct listed in Gov. Bar R. V, Section 13(C), the panel finds, by clear and convincing evidence, that there is an absence of a dishonest and selfish motive, Respondent made full and free disclosure to the Board and to Relator, displayed a cooperative attitude, and presented evidence of good character. The panel also accords some mitigating weight in regard to the violation found of Prof. Cond. R. 5.5(a) based the lack of notice to Respondent that his biennial registration was due and, when he failed to register, that his registration was past due.

{¶43} Respondent made no recommendation as to an appropriate sanction for the panel to report to the Board.

{¶44} Relator recommended that Respondent receive a 12-month suspension upon the following conditions:

- Respondent shall undergo counseling with a mental health professional during the suspension period who shall render regular reports.
- Respondent be granted reinstatement only upon petition.

{¶45} The panel reviewed the parties' recommendation in light of the findings of fact, conclusions of law, factors in mitigation/aggravation, and precedent established by the Supreme Court of Ohio. In regard to case precedent, Relator cited two cases for the panel's consideration.

{¶46} The first case cited by Relator is *Akron Bar Assn. v. Markovich*, 117 Ohio St.3d 313, 2008-Ohio-862. In that case, the respondent was found to have, among a total of 13 violations in seven different cases, assisted a client in violating a civil protection order and thereby violating

former DR 1-102(A)(5) [conduct prejudicial to the administration of justice] and former DR 1-102(A)(6) [conduct adversely reflecting on the lawyer's fitness to practice law]. Markovich had no previous disciplinary offenses, made restitution, acknowledged his wrongdoing, and submitted evidence of good character. Markovich also had the aggravating factor of multiple offenses. The Supreme Court imposed a 12-month suspension, with six months stayed with the condition of an 18-month monitored probation upon reinstatement.

{¶47} The second case cited by Relator is *Stark Cty. Bar Assn. v. Osborne*, 62 Ohio St.3d 77 (1991). In that case, the respondent was found to have assisted his client in deliberately violating the terms of a restraining order and the Court found the respondent's claim that he misunderstood the terms of the order incredible. The respondent was found to have violated former DR 1-102(A)(5) [analogous to Prof. Cond. R. 8.4(d)] and former DR 7-106(A) [analogous to Prof. Cond. R. 3.4(c)]. The respondent in that case also had the aggravating factor of prior offenses. While the Board recommended a six-month suspension, the Court disagreed and imposed a 12-month suspension.

{¶48} As a final matter, the panel was considerably troubled by what was succinctly described by Relator in closing argument: "The big thing is that he failed to appreciate why sending this letter, regardless of [the existence of] the Civil Protection Order, was inappropriate." Hearing Tr. 503.

{¶49} The language of the letter itself lends weight to Relator's argument. The panel, while noting that Respondent's goal of assisting in the reconciliation of mother and son was laudable, believes that mailing the letter could only be seen by a reasonable person as making matters worse and actually making the goal of reconciliation less attainable. The panel finds the language therein offensive and accusatory and believes that it was not written in terms that fostered

the goal of reconciliation. But, Respondent failed to appreciate how the words of the letter would be perceived by its readers and counseled his client that it was appropriate to send.

{¶50} Respondent, it appears to the panel, believes that there is a higher moral authority that, on occasion, may require him to violate the Rules of Professional Conduct. Dr. Douglas Beech, MD conducted an independent examination of Respondent at Relator's request and upon order of the panel chair. Dr. Beech testified at the hearing that for Respondent: "Helping [Mr. Ellison] was a higher priority than following the rules." Hearing Tr. 289. The doctor also testified that in his opinion Respondent possesses two frames of reference: one that is a knowledgeable, smart, rational one grounded in reality; and another that is based on his individual belief about what is right and wrong. Hearing Tr. 237-238. The doctor wrote in his report the following:

His religious and personal ethics/beliefs have affected and overridden his professional judgment. While these ethics have guided much sincere and benevolent behavior throughout his life, they have also been an integral part of his misconduct.

Relator's Ex. 10.

{¶51} Respondent also provided critical testimony in this area:

I'm in a different universe, a different plane. Hearing Tr. 131.

I probably have certain proclivities, certain inner tendencies that kind of direct me in a way that puts more emphasis on humanistic things and spiritual things than strictly legal things. Hearing Tr. 133.

So there's a problem sometimes in the moral and personal objectivities overcoming what is the rule of law in other ways. Hearing Tr. 482.

I am literally operating on a different—in a different universe from the rest of the world. Hearing Tr. 522.

* * * you can look at it different ways, depending on what universe you're operating in. * * * And maybe I'm too close to the line. Like I said, I'm drawing fine lines and in danger of going over those lines. So it disturbs me also that my moral

tendencies may bring me too close to the line of what's appropriate and not appropriate. Hearing Tr. 524.

{¶52} The panel is convinced that Respondent's moral convictions will continue to override his professional judgment and our profession's required adherence to the Rules of Professional Conduct. He fails to see what most Ohio lawyers understand. The Ohio Rules of Professional Conduct are in place as sound guidance in keeping practicing lawyers out of trouble and not for the purpose of trapping lawyers or forcing them to make difficult moral and ethical decisions.

{¶53} Based on the foregoing, the panel recommends that the Board forward the recommendation of a one-year suspension, with the following condition, to the Court with its favorable endorsement:

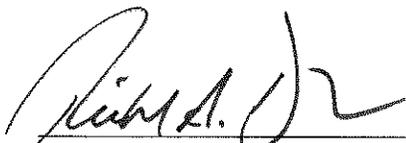
- Respondent shall undergo an evaluation by the Ohio Lawyers Assistance Program and promptly and fully comply with all recommendations made by that program.

{¶54} Respondent shall be required to petition for reinstatement pursuant to Gov. Bar R. V, Section 25.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on February 12, 2016. The Board adopted the findings of fact and conclusions of law of the panel. Following discussion, the Board amended the sanction recommended by the panel and recommends that Respondent, John Wesche Hauck, be indefinitely suspended from the practice of law in Ohio, with reinstatement subject to the condition set forth in ¶53 of this report, and that he be ordered to pay costs of these proceedings. The Board's recommendation is based on its conclusion that a longer period of actual suspension, coupled with a petition for reinstatement, is necessary to protect the public as a result of Respondent's prior discipline, the misconduct in which Respondent engaged herein, the findings from the independent examination conducted by Dr. Beech, and Respondent's testimony.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.



RICHARD A. DOVE, Director