

IN THE SUPREME COURT OF OHIO

IN RE: :
: :
Complaint Against: : :
: : Case No. 2016-0260
JOHN WESCHE HAUCK (#0023153) : :
: :
RESPONDENT : :
: : RELATOR'S ANSWER
CINCINNATI BAR ASSOCIATION, : :
: :
RELATOR : :

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE
BOARD OF PROFESSIONAL CONDUCT

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RELATOR’S ANSWER TO RESPONDENT’S OBJECTIONS TO THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE
BOARD OF PROFESSIONAL CONDUCT

STATEMENT OF FACTS

1. RESPONDENT’S HISTORY OF MISCONDUCT

Respondent, John W. Hauck, was admitted to the practice of law in Ohio on November 20, 1978.

On July 7, 2011, the Supreme Court of Ohio suspended Respondent for a period of 12 months with six months stayed on conditions. See *Cincinnati Bar Ass’n. v. Hauck*, 2011-Ohio-3281, 129 Ohio St.3d 209. (Relator’s Exhibit 20: Prior Discipline, July 7, 2011).

On November 1, 2011, Respondent received an attorney registration suspension. (Relator’s Exhibit 23: Supreme Court Letter of September 24, 2015).

On January 24, 2012, Relator, Cincinnati Bar Association, filed a motion to hold Respondent in contempt for violating the Court’s order of July 7, 2011. On March 5, 2012, Relator’s motion was granted; Respondent was found to be in contempt, the stay of the six-

month suspension was revoked, and he was ordered to serve the six-month suspension in its entirety. (Relator's Exhibit 21: Prior Contempt March 5, 2012).

On November 15, 2012, in response to an application he had filed on September 7, 2012, Respondent was reinstated from both the attorney registration suspension and the disciplinary suspension. (Relator's Exhibit 23: Supreme Court Letter of September 24, 2015).

Respondent was thus continuously suspended from the practice of law from July 7, 2011, until November 15, 2012.

2. CURRENT GRIEVANCE

In 2005, Richard Ellison was sentenced to six years of confinement in the penitentiary for aggravated burglary, kidnapping, and abduction of his mother, Jeanne Lee, and stepfather, Edmund Lee, III. (Relator's Exhibit 1: Ellison's Court of Appeals Decision from May 26, 2006).

On August 11, 2010, anticipating the release of Mr. Ellison, Mr. and Mrs. Lee obtained a Civil Protection Order from the Hamilton County Municipal Court. This Civil Protection Order prohibited Mr. Ellison from initiating any contact with Mr. and Mrs. Lee, including but not limited to telephone, fax, email, voicemail, delivery service, writings, or communication by other means, in person or *through another person*. (Emphasis added). The Civil Protection Order was to remain in effect for five years or until August 10, 2015. (Relator's Exhibit 3: Order of Protection of August 11, 2010).

Sometime in 2012, Respondent began a friendship with Mr. Ellison. During the five year period when the Civil Protection Order was in effect, Respondent agreed to help Mr. Ellison draft a letter ("The Letter") to send to Mr. and Mrs. Lee. From approximately September, 2013 to March, 2014, Mr. Ellison worked on The Letter, with Respondent making comments and

revisions. (Hearing Transcript at p.344, Relator's Exhibit 3: Letter from Hauck to Mr. Lee March 3, 2014).

At one point, Respondent and Mr. Ellison debated over the stationary to be used. Respondent insisted that he did not want his own letterhead stationary to be used. As a result, Mr. Ellison created a letterhead for this purpose, which displayed Respondent's name and "Attorney at Law." (Hearing Transcript at p. 62-63, Relator's Exhibit 3: Letter from Hauck to Mr. Lee March 4, 2014).

The Letter, using the above letterhead, was mailed on March 3, 2014 to Mr. Lee. Though prepared by Mr. Ellison, it was signed by Respondent. (Relator's Exhibit 3: Letter from Hauck to Mr. Lee March 3, 2014).

Before sending The Letter, Respondent was aware of the Civil Protection Order. The Letter specifically requested that Mr. and Mrs. Lee file a Motion to Cancel the Restraining Order. As stated above, from September, 2013 through March, 2014, Respondent made comments and revisions on The Letter before it was eventually sent. (Hearing Transcript at p. 116-117, Relator's Exhibit 3: Letter from Hauck to Mr. Lee March 3, 2014).

Upon receipt of The Letter, Mr. and Mrs. Lee contacted the Terrace Park Police Department. On March 13, 2014, a criminal complaint was filed against Mr. Ellison. The complaint alleged that Mr. Ellison violated the terms of the Civil Protection Order by "initiating contact with the protected person Jeanne Lee (mother) by written communication through another person (John W. Hauck) sent through the U.S. Postal Service." (Relator's Exhibit 2: Ellison's Violation of Civil Protection Order Case (Criminal Case); Relator's Exhibit 11: Criminal Affidavit against Ellison; and Relator's Exhibit 12: Criminal Complaint against Ellison).

Mr. Ellison was subsequently arrested on this charge. On March 31, 2014, Mr. Ellison was incarcerated for violating the Civil Protection Order. (Hearing Transcript at p.350-351; Relator's Exhibit 2: Ellison's Violation of Civil Protection Order Case (Criminal Case); Relator's Exhibit 11: Criminal Affidavit against Ellison; and Relator's Exhibit 12: Criminal Complaint against Ellison).

Respondent could also have been charged criminally for the violation of the Civil Protection Order, but instead was granted immunity. The Hamilton County Prosecutor's office granted Respondent immunity on the condition that Respondent would testify before the Hamilton County Municipal Court, pursuant to R.C. 2945.44. Ultimately, Mr. Ellison's case did not go to trial, and he entered a plea. Respondent was thus not compelled to testify. (Relator's Exhibit 18: Application for Immunity for Hauck, April 9, 2014; and Relator's Exhibit 19: Entry Granting Immunity to Hauck, April 9, 2014).

While Respondent claimed on several occasions that he was *not* acting as an attorney for Mr. Ellison, his conduct showed otherwise:

(a) Respondent permitted Mr. Ellison to use his personal letterhead captioned "John W. Hauck, Attorney at Law," for The Letter sent to Mr. and Mrs. Lee. (Hearing Transcript at p. 62-63; and Relator's Exhibit 3: Letter from Hauck to Mr. Lee March 3, 2014);

(b) While Mr. Ellison was being held at the Hamilton County Justice Center on the charge of violating the Civil Protection Order, Respondent used his attorney identification card to enter the jail to visit him. (Hearing Transcript at p.201, 215). Respondent also made frequent phone calls with Mr. Ellison while he was in jail. (Realtor Exhibit 9: (a-d) Jail Calls Transcripts; Hearing Transcript at p.201).

(c) After the prosecution issued a subpoena for Respondent to testify in the criminal case against Mr. Ellison, Mr. Ellison, through his public defender, asserted the attorney-client privilege existed between himself and Respondent. (Hearing Transcript at p.219-221 and p.415). Several justifications existed for the assertion of the privilege, including:

(1) The legal advice Respondent provided in contemplation of The Letter sent to Mr. and Mrs. Lee. (Relator's Exhibit 3: Letter from Hauck to Mr. Lee March 3, 2014);

(2) The fact that Respondent permitted Mr. Ellison to use his personal letterhead captioned "John W. Hauck, Attorney at Law," for The Letter sent to Mr. and Mrs. Lee. (Relator's Exhibit 3: Letter from Hauck to Mr. Lee March 3, 2014);

(3) Respondent's visits to the Hamilton County Justice Center. (Hearing Transcript at p.201); and

(4) The letters which Respondent sent to the Terrace Park Police Department. (Relator's Exhibit 6: Hauck's Letter to Sgt. Pruitt, March 21, 2014; Relator's Exhibit 6: Hauck's Letter to Sgt. Pruitt, March 25, 2014; and Relator's Exhibit 8: Hauck's Letter to Sgt. Pruitt, March 26, 2014).

(d) From March 21, 2014 through March 26, 2014, Respondent wrote three letters to Sergeant James Pruitt of the Terrace Park Police Department which addressed Mr. Ellison's case. Respondent characterized The Letter sent to Mr. and Mrs. Lee as being "harmless" and suggested to Sergeant Pruitt that an Ohio Revised Code section would have permitted Mr. and Mrs. Lee to modify the Civil Protection Order. (Relator's Exhibit

6: Hauck's Letter to Sgt. Pruitt, March 21, 2014; Relator's Exhibit 6: Hauck's Letter to Sgt. Pruitt, March 25, 2014; and Relator's Exhibit 8: Hauck's Letter to Sgt. Pruitt, March 26, 2014).

Based on the foregoing conduct, Respondent in fact acted as an attorney for Mr. Ellison. However, Respondent was not registered as an active attorney during the time he was counselling Mr. Ellison, or when he visited Mr. Ellison in jail. Respondent was required by Gov. Bar R. VI (1)(A) to register with the Supreme Court Office of Attorney Services on or before September 1, 2013, but he failed to do so. Respondent registered on April 14, 2014. (Relator's Exhibit 23: Supreme Court Letter of September 24, 2015).

On May 1, 2015, Respondent was examined by psychiatrist Douglas Beech, MD. After the examination Dr. Beech concluded:

Based on the review of the history and the current psychiatric examination, my opinion is that Mr. Hauck does not have manifestations of a cognitive disorder or traumatic brain injury that would render him unable to practice law. He does have some features of a personality disorder that affect his professional judgment. His religious and personal ethics/beliefs have affected and overridden his professional judgment (whether one views these beliefs as a part of a personality disorder or not). 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 Exhibit 10: Dr. Beech Report, March 26, 2015, at p.7)

ARGUMENT

PROPOSITION OF LAW I

The evidence of record supports the Board's finding that Respondent undertook representation of Mr. Ellison.

Respondent has claimed on several occasions that he did not undertake the representation of Mr. Ellison, that he was merely acting as a friend. However, a review of Respondent's conduct supports the Board's conclusion that Respondent was acting as an attorney.

In The Letter that was sent to Mr. and Mrs. Lee, Respondent permitted Mr. Ellison to use his personal letterhead captioned "John W. Hauck, Attorney at Law." (Hearing Transcript at p. 62-63, Relator's Exhibit 3: Letter from Hauck to Mr. Lee March 3, 2014).

While Mr. Ellison was being held at the Hamilton County Justice Center on the charge of violating the Civil Protection Order, Respondent used his attorney identification card to enter the jail and visit him. (Hearing Transcript at p.201 and p. 215).

After the prosecution issued a subpoena for Respondent to testify in the criminal case against Mr. Ellison, Mr. Ellison, through his public defender, asserted that an attorney-client privilege existed between himself and Respondent. (Hearing Transcript at p.219-221). During the disciplinary hearing, Mr. Ellison's public defender, Luis Suarez, testified to the attorney-client privilege that existed between Respondent and Mr. Ellison. Mr. Suarez stated:

Q. COMMISSIONER NOVAK: ...

You did a memorandum in support of the attorney/client privilege?

A. THE WITNESS: Yes, sir.

Q. COMMISSIONER NOVAK: And what was the basis of asserting that privilege?

A. THE WITNESS: It is my understanding from a reading of the law that the attorney/client privilege rests primarily in the mind of the defendant, the person who's -- you're saying was the client. And I believe from everything I had read and everything that was said to me and everything that I saw that Mr. Ellison -- or at least I could make a reasonable case that Mr. Ellison believed that Mr. Hauck had acted as his attorney prior to the date that we began this trial.

Id.

Further, from March 21, 2014 through March 26, 2014, Respondent wrote three letters to Sergeant James Pruitt of the Terrace Park Police Department which addressed Mr. Ellison's case. Respondent characterized The Letter sent to Mr. and Mrs. Lee as being "harmless" and suggested to Sergeant Pruitt that an Ohio Revised Code section would have permitted Mr. and Mrs. Lee to modify the Civil Protection Order. (Relator's Exhibit 6: Hauck's Letter to Sgt. Pruitt, March 21, 2014; Relator's Exhibit 6: Hauck's Letter to Sgt. Pruitt, March 25, 2014; and Relator's Exhibit 8: Hauck's Letter to Sgt. Pruitt, March 26, 2014)

The hearing panel found that Mr. Ellison was Respondent's client for the purposes of editing The Letter and adopting it as his own. Other facts also indicate that Mr. Ellison was Respondent's client. These facts include the letters written to the arresting officer, phone calls and jail visits Respondent made to Mr. Ellison, writing The Letter on Respondent's attorney letterhead and the content of the actual letter. (Findings of Fact Conclusions of Law, and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio, "Findings", ¶28-29)¹.

¹ Relator notes that the Court offers deference to the findings of hearing panels. The Court offered guidance on this in *Cincinnati Bar Assn. v. Statzer*, 2003-Ohio-6649, 101 Ohio St.3d 14, 800 N.E.2d 1117(Ohio 2013). The Court

PROPOSITION OF LAW II

The evidence of record supports the Board's conclusion of law that Respondent committed a criminal act by aiding and abetting Mr. Ellison in preparing and issuing The Letter in violation of a Civil Protection Order.

Respondent admits that though The Letter was largely composed by Mr. Ellison, it was fully accepted by Respondent and signed, as if it was his own writing. (Respondent's Objections to Findings of Fact, Conclusions of Law, and Recommendation of The Board of Professional Conduct, "Objections," p. 3). Respondent further admits that Mr. Ellison had told him about the Civil Protection Order before they began to draft The Letter. (Objections, p.4) Respondent had also been informed by Mr. Ellison that Mr. and Mrs. Lee, the recipients of the letter, were named as protected persons in the Civil Protection Order. (Objections, p.4). Respondent admits that he knew the Civil Protection Order was in effect for five years, beginning in 2010. (Objections, p.13).

Respondent admits that he does not dispute the findings of fact that he aided and abetted Mr. Ellison in writing The Letter and that it caused Mr. Ellison to be found guilty of a criminal violation. (Objections, p.7). Respondent aided Mr. Ellison in not only writing The Letter, but also by mailing it to Mr. and Mrs. Lee. (Findings, ¶3).

During the hearing, Kathleen Fischer, the assistant prosecuting attorney in Hamilton County, Ohio who prosecuted Mr. Ellison, testified about Respondent's aiding and abetting Mr. Ellison to commit a crime:

stated: "The panel observed the witnesses firsthand and thus possessed an enviable vantage point in assessing the credibility and weight of their testimony. For this reason, we ordinarily defer to a panel's credibility determinations in our independent review of professional discipline cases unless the record weighs heavily against those findings." *Id.* at ¶8. (Additional citations omitted).

Q. ...[D]o you have an opinion as to whether or not Mr. Hauck assisted or aided Mr. Ellison in violating the protection order? Do you have an opinion?

.....

A. I believe he's absolutely complicit and that's why he was given immunity, because I believe even before his testimony, we could have filed criminal charges against him for violation of a protection order.

(Hearing Transcript at p.161).

By helping Mr. Ellison to prepare The Letter and mail it to Mr. and Mrs. Lee, Respondent aided and abetted a criminal act in violation of Prof. Cond. R. 8.4(b). By assisting his client in violating the Civil Protection Order, Respondent engaged in conduct that was prejudicial to the administration of justice, in violation of Prof. Cond. R. 8.4(d).

PROPOSITION OF LAW III

Respondent's argument that the civil protection order statute R.C. § 3113.31 is unconstitutional has been waived and would anyway fail on the merits.

Respondent's third proposition of law should fail. During the pendency of the criminal case against Mr. Ellison in the Hamilton County Municipal Court, Respondent may or may not have had standing to challenge the constitutionality of the civil protection order statute. However, Respondent did not assert such a claim in the trial court that issued the civil protection order. Due to this failure to raise the argument before the trial court, Respondent waived his opportunity.

The Fourth District Court of Appeals has addressed this very issue: "The record contains no indication that the appellant raised any argument in the trial court concerning R.C. 3113.31's constitutionality. A party's failure to raise the issue of the constitutionality of a statute, which issue is apparent at the time of trial, constitutes a waiver of the issue." *Gooderham v. Patterson*,

4th Dist. Gallia No. 99 CA 01, 1999 WL 1034472, *5 (Nov. 9, 1999). (Citations omitted). See also: *State v. Koons*, 7th Dist. Columbiana No. 06-CO-43, 2007-Ohio-5242, ¶ 18, and *State v. Ealy*, 2nd Dist. Montgomery No. 20994, 2006-Ohio-414, ¶ 12.

In this disciplinary proceeding, however, Respondent did challenge the application of R.C. § 3113.31 to Mr. Ellison’s case. At the conclusion of the hearing herein, the parties were ordered by the hearing panel chair to brief the issue of the constitutionality of R.C. §3113.31, for the reason that Respondent had argued, in his defense, that he cannot be found to have violated the Rules of Professional Conduct if the violations are predicated on his disregard of a court order that is unconstitutional. (Hearing Transcript at p.536)

In its post-hearing brief, Relator, Cincinnati Bar Association, asserted that the hearing panel did not possess the requisite jurisdiction in order to rule on the constitutionality of the statute. The Ohio Constitution provides that: “The Supreme Court shall have original jurisdiction in the following: Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.” Ohio Const. Art. IV § 2 (B)(1)(g). Pursuant to this authority, this Court created the Board of Professional Conduct. Gov. Bar R. V (1)(A).

However, the Board’s jurisdiction and powers are limited to the purpose for which it was created.² The Board has the authority to make findings of fact, conclusions of law and

² Gov. Bar R. V (2)(A) Exclusive Jurisdiction: “Except as otherwise expressly provided in rules adopted by the Supreme Court, all grievances involving alleged misconduct by judicial officers or attorneys, proceedings with regard to the alleged mental illness, alcohol and other drug abuse, or disorder of a judicial officer or attorney, proceedings for the discipline of judicial officers, attorneys, persons under suspension or on probation, and proceedings for the reinstatement to the practice of law shall be brought, conducted, and disposed of in accordance with the provisions of this rule. The Board shall have authority to certify, recertify, and decertify grievance committees in accordance with Section 5 of this rule.”

Gov. Bar R. V (2)(B) Hearing Authority: “The Board shall receive evidence, preserve the record, make findings, and submit recommendations to the Supreme Court as follows:

recommendations to this Court, but only in regard to attorney or judicial professional misconduct. If Respondent wanted to challenge the constitutionality of R.C. § 3113.31, he should have done so when the underlying matter was in the Hamilton County Municipal Court.

The inherent limitations on the authority of administrative agencies have been addressed elsewhere. In *City of Washington v. Pub. Utilities Commission*, this Court stated: “The infirmity in this position is that the commission is without power to prescribe the form which shall be followed by legislative bodies authorized by law to legislate upon specific subjects. The commission is a board of special and limited jurisdiction, and has no power to exercise any jurisdiction beyond that expressly conferred by statute.” 99 Ohio St. 70, 72, 124 N.E. 46, 47 (1918). See also: *City of Cincinnati v. Public Utilities Commission*, 96 Ohio St. 270, 117 N. E. 381 (1917). The Public Utilities Commission is analogous to the Board of Professional Conduct in that both lack general jurisdiction, and instead are limited to the power that was conferred upon them when they were created. Therefore, because this Court has not specifically given the Board jurisdiction over determining constitutionality of criminal statutes, the Board lacked the jurisdiction to rule on this issue. The hearing panel chair agreed with that conclusion:

. . . [T]he authority of the Board and its panels is narrowly limited by the Ohio Supreme Court to those matters listed in Gov. Bar R. V(2)(A) and (B). Since these rules do not include the jurisdiction to rule on the constitutionality of state statutes, the relator’s argument is well-taken and respondent’s motion to dismiss must be denied. Since the motion fails on said basis, there is no need to

(1) Concerning complaints of misconduct that are alleged to have been committed by a judicial officer, an attorney, a person under suspension from the practice of law or a person on probation;
(2) Concerning the mental illness, alcohol and other drug abuse, or disorder of any judicial officer or attorney;
(3) Relating to petitions for reinstatement as an attorney;
(4) Upon reference by the Supreme Court of conduct by a judicial officer or an attorney affecting any proceeding under this rule, where the acts allegedly constitute a contempt of the Supreme Court or a breach of these rules but did not take place in the presence of the Supreme Court or a member of the Supreme Court, whether by willful disobedience of any order or judgment of the Supreme Court or the Board, by interference with any officer of the Supreme Court in the prosecution of any duty, or otherwise. This rule shall not limit or affect the plenary power of the Supreme Court to impose punishment for either contempt or breach of these rules committed in its presence, or the plenary power of any other court for contempt committed in its presence.”

address the issue whether or not the panel finds the CPO statute to be constitutional.”

See: Entry, filed December 17, 2015 in the Board of Professional Conduct. Copy included in the Appendix hereto.

If this Court determines that the constitutionality of the civil protection order statute, R.C. § 3113.31, is justiciable at this time on the record below, Relator submits that the statute is presumed to be constitutional. *Snell v. Snell*, 5th Dist. Richland No. 11 CA 64, 2012-Ohio-2159, ¶ 44. (Citations omitted). Additionally, Ohio courts have repeatedly upheld the constitutionality of the civil protection statute. In *State v. Ealy*, an appeal from a conviction and sentence for violating a civil protection order, the Second District Court of Appeals said: “We see no conflict, much less the void-for-vagueness defect Ealy argues.” 2006-Ohio-414, ¶ 10 (2nd Dist. Montgomery). Ealy made this argument based upon a comparison of RC § 2919.27 and RC § 3113.31(E). The Court went on to state: “...there is no basis to find that any parenting time provision authorized by R.C. 3113.31(E)(1)(d) was a part of the protection order the court had issued restraining Ealy. Therefore, he could not have been prejudiced by the constitutional defect alleged.” *Id.* at ¶ 11.

In *Calicoat v. Calicoat*, the Second District Court of Appeals determined that R.C. § 3113.31 was not void for vagueness. The Court stated: “Taken together, the elements of domestic violence as defined by R.C. 3113.31(A)(1) are sufficiently definite to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and to avoid the conduct the section prohibits, which is a threat of force that is by its nature reasonably sufficient to place another person in fear of immediate and serious physical harm. Therefore, R.C. 3113.31 is not void for vagueness.” 2009-Ohio-5869, ¶ 43 (2nd Dist. Miami). “Moreover, the protection of victims of domestic violence from further harm has as its purpose the protection of the public

welfare, which is a proper exercise of the police power conferred on the General Assembly by Section 1, Article II of the Ohio Constitution." *Id.* at ¶ 38

In *Snell v. Snell*, the Court was unpersuaded by an appellant's argument that R.C. § 3113.31 was unconstitutional because it "violated his rights to due process, equal protection, and other constitutional guarantees, and that the civil protection statutes are unconstitutionally vague." 2012-Ohio-2159, ¶ 43 (5th Dist. Richland). The Court said: "It is well-established in Ohio that statutes are presumed to be constitutional unless shown beyond reasonable doubt to violate a constitutional provision." *Id.* at ¶ 44. See also: *Fabrey v. McDonald Police Dept.* (1994), 70 Ohio St.3d 351, 352, 639 N.E.2d 31.

PROPOSITION OF LAW IV

The Board's recommended sanction of indefinite suspension is supported by evidence of record of Respondent's violations of the Rules of Professional Conduct.

The Board determined that Respondent has violated Prof. Cond. R. 1.1 (Competence); Prof. Cond. R. 5.5 (Practicing Under Suspension); Prof. Cond. R. 8.4(b) (Illegal Act); Prof. Cond. R. 8.4(c) (Deceitful Conduct); and Prof. Cond. R. 8.4(d) (Assisting in Violating the CPO). Additionally, as aggravating factors, the Board found that Respondent had prior discipline, committed multiple offenses, refused to admit the wrongful nature of his misconduct, and caused great harm to vulnerable people, including Mr. Ellison and Mr. and Mrs. Lee. (Findings, ¶40).

In recommending a sanction, Relator first considered two disciplinary cases with somewhat similar facts: *Akron Bar Assn. v. Markovich*, 2008-Ohio-862, 117 Ohio St.3d 313, 883 N.E.2d 1046, and *Stark Cnty. Bar Assn. v. Osborne*, 62 Ohio St.3d 77, 578 N.E.2d 455 (1991). Both of these cases involved attorneys who violated Civil Protection Orders and both

resulted in term suspensions. However, these cases did not offer any guidance regarding an attorney whose mental condition may be impaired. The hearing panel here compared *Markovich* and *Osborne* to the instant matter, and then noted:

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.

(Findings, ¶48)

In addition to the foregoing, during closing argument Relator referenced three cases that dealt with attorneys who had mental health issues. The first was *Cincinnati Bar Assn. v. Moore*, 143 Ohio St.3d 252, 2015-Ohio-2488, 36 N.E.3d 171 (2015). As in the instant case, the *Moore* case began with illegal acts that adversely reflected on honesty and trustworthiness. That respondent had committed several distinct acts of shoplifting. Respondent Moore had no previous disciplinary record, but submitted false statements during the investigation by the bar association. He refused to accept responsibility for his misconduct. This Court suspended him for two years with the second year stayed upon conditions, which include documentation from a medical professional stating that he is capable of returning to the competent, ethical, and professional practice of law. It was further ordered that he must petition this Court for reinstatement in accordance with Gov. Bar R. V (25).

The next case that Relator referenced during closing argument was *Disciplinary Counsel v. Frost*, 122 Ohio St.3d 219, 2009-Ohio-2870, 909 N.E.2d 1271. That case was “based on findings that she filed in court false accusations of bias and corruption against judges and a county prosecutor and also persisted in pursuing a baseless defamation suit.” *Id.* at ¶2. As in the

instant matter, Respondent Frost was found to have committed acts of dishonesty, and she failed to acknowledge the wrongfulness of her conduct. This Court noted that “[R]espondent seems unable to understand fundamental evidentiary and procedural rules, a problem manifested by her disjointed efforts to present her case before the hearing panel.” *Id.* at ¶39. She was indefinitely suspended, and, “because of our concerns that respondent’s misconduct may be a by-product of unaddressed mental-health issues,” the additional condition of proving mental fitness to return to the competent, professional, and ethical practice of law was imposed. *Id.* at ¶43.

The final case that Relator referenced involving mental health was *Akron Bar Assn. v. Catanzarite*, 119 Ohio St.3d 313, 2008-Ohio-4063, 893 N.E.2d 835. As the result of that respondent’s failure to comport himself, during both the grievance investigation and the underlying client matter, “relator’s counsel moved for a psychological examination to determine whether respondent suffered from a mental illness that substantially impaired his ability to practice law.” *Id.* at ¶23. The psychiatrist concluded that the respondent did not suffer from mental illness within the statutory definition, but “did find that respondent exhibited a maladaptive paranoid personality, and he suspected that this mental-health concern and possible alcohol abuse likely impede respondent’s ability to practice law within acceptable standards.” *Id.* at ¶43. This Court found that Respondent Catanzarite’s behavior was “not at all consistent with the reaction of a reasonable practitioner under the circumstances.” *Id.* at ¶44. He was suspended for one year with six months stayed; conditions included entering into an OLAP contract to obtain disability or dependency assistance as needed.

In closing, Relator’s counsel told the hearing panel that the standard that they were being called upon to apply may be articulated thusly: “[C]an Mr. Hauck be trusted with that type of

judgment that a reasonable practicing lawyer is forced to have in order to be trusted to be counseling clients on a daily basis?" (Hearing Transcript at p.506).

The hearing panel's recommended sanction was consistent with Relator's recommendation: a one-year suspension with no time stayed, an evaluation by OLAP and compliance with that program, and a requirement to petition for reinstatement pursuant to Gov. Bar R. V §25. Given the apparent nature of Respondent's behavior issues, Relator did not recommend a (non-medical) practice monitor, and neither did the hearing panel.

The Board adopted the findings of fact and conclusions of law of the panel, but increased the recommended sanction to an indefinite suspension, and participation in OLAP. The Board explained:

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.

(Findings, p.16)

CONCLUSION

Whether or not Respondent was acting as an attorney, Respondent's violation of the civil protection order was an illegal act, in violation of the Rules of Professional Conduct.

The counseling and legal advice which Respondent provided to Mr. Ellison were not to the standard which the Ohio Rules of Professional Conduct require. In fact, "...the panel was shocked at the lack of good judgement and absolutely poor advice that the respondent gave to Mr. Ellison in several areas." (Findings, ¶31). Respondent failed to thoroughly review the Civil Protection Order, and concluded, incorrectly, that it was a sealed record when it was not. In a critical lapse, Respondent failed to recognize that the Civil Protection Order prohibited Mr. Ellison from having or initiating any contact with Mr. and Mrs. Lee, including through another person. Respondent was complicit in the violation of the Civil Protection Order and his conduct was a causal factor in Mr. Ellison being arrested and incarcerated.

Wherefore, Relator respectfully requests that this Court impose the recommended sanction of an indefinite suspension upon Respondent, with the additional requirement of an evaluation by the Ohio Lawyers Assistance Program.

Respectfully submitted,

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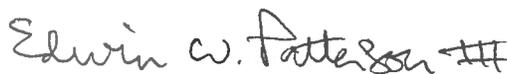
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Relator's Answer to Respondent's Objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Professional Conduct was emailed, on this 29th day of March, 2016 to the following:

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Appendix A

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

In Re: :
Complaint against: : **Case No. 2014-098**
John Wesche Hauck :
Respondent : **ENTRY**
Cincinnati Bar Association :
Relator :

FILED
DEC 17 2015
BOARD OF PROFESSIONAL CONDUCT

This matter was heard in Columbus, Ohio, on October 20 and 21, 2015, before a panel consisting of duly qualified members of the Board of Professional Conduct.

Upon the conclusion of the hearing, the parties were ordered by the Panel Chair to brief the issue of the constitutionality of Ohio Revised Code Section 3113.31, due to the respondent's argument in his defense that he cannot be found to have committed violations of the Rules of Professional Conduct when said violations are predicated on conduct in disregard of a court order that is unconstitutional. Answer; Hearing Tr. 535-537.

The parties timely filed their respective briefs. A supplemental brief untimely filed by the respondent, upon the objection of the relator, was stricken by the Panel Chair.

This matter is now before the panel on respondent's Motion to Dismiss, made in his Pre-Hearing Brief and renewed in his Post-Hearing Brief [entitled Motion to Dismiss of Respondent Hauck: Constitutional Issue].

Respondent's Argument

The respondent argues in his post-hearing brief that several of relator's allegations of his violation of certain Rules of Professional Conduct arise out of his actions in disregard of the terms of a Civil Protection Order issued by the Hamilton County Court of Domestic Relations on August 11, 2010 (the CPO) [Rel. Ex. 3], to respondent's friend¹ Richard Ellison pursuant to Ohio Revised Code Sect. 3113.31 (the CPO Statute), and that this statute is being applied in a manner prohibited by the Constitutions of the United States and the State of Ohio. Since the application of the statute is unconstitutional, he further argues, the CPO was invalid and therefore he cannot be found to have committed a violation of the Rules of Professional Conduct by acting in disregard of the CPO.

In support, he cites the Free Speech and Due Process Clauses of both Constitutions. He also provides the panel with a lengthy analysis of the General Assembly's intent when it enacted the CPO Statute and the authority granted to courts in the State of Ohio thereunder.

He concludes by arguing that the prohibition contained in the CPO forbidding contact in writing between Mr. Ellison, either directly or through another person, with the protected parties was invalid as a matter of law because there was no authority granted for that prohibition in the CPO Statute and, in the alternative, the prohibition applies to speech protected under both state and federal constitutions.

Therefore, he argues, he cannot be held responsible for violating any Rules of Professional Conduct arising out of the assistance he gave to his friend in violating the CPO as it was invalid because it was unconstitutional.

¹The panel, as part of its deliberation in this case, may be required to determine if Mr. Ellison was or was not a client of the respondent. Since that determination has not yet been made, the term "friend" is used herein as a matter of convenience.

Relator's Argument

The relator, in its response, first focuses on the threshold issue of whether or not the Board of Professional Conduct (the Board), and therefore this panel, has the authority to declare an act of the General Assembly unconstitutional.

Relator argues that the Board and this panel do not have such authority. Relator bases its argument on Gov. Bar R. V(2)(A) and (B), the rules which delineate the exclusive jurisdiction and hearing authority of the Board.

Nowhere in those provisions, relator argues, is the Board vested with the jurisdiction to rule on the constitutionality of any act of the Ohio General Assembly. Relator also cites examples of rulings by the Ohio Supreme Court providing guidance on the inherent limitations on the authority of administrative agencies similar to the Board.

Relator also argues that, even if the Board has the authority to rule on the constitutionality of the CPO Statute, Ohio courts have repeatedly upheld the constitutionality of this statute. In support of this argument, relator has cited *State v. Ealy*, 2006-Ohio-414; *Calicoat v. Calicoat*, 2009-Ohio-5869; *Snell v. Snell*, 2012-Ohio-2159; and *Fabrey v. McDonald Police Dept.* (1994), 70 Ohio St.3d 351.

Conclusion

The respondent seems to be of the opinion that the panel is vested with the same powers exercised by any trial court in the state of Ohio. This misapprehension, and a lack of understanding of the panel and board's role in the disciplinary process, was given voice several times in the course of the hearing held in this matter and in the briefs filed by the respondent. Resp. Pre-Hearing Brief, p. 12; Hearing Tr. 483, 525-526, 534-535; Resp. Motion to Dismiss, p. 7. The respondent's language used in each of these instances evidences a belief that the panel

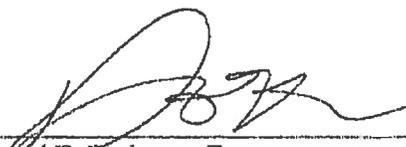
acts as a trial court, with the Board and the Court as forums for appeal, should the respondent disagree with the conclusions of the panel.

However, this is not the case. The panel is not vested with the same powers as a trial court in the state and, although the parties in a disciplinary action are advised that the panel functions “as an arm of the Supreme Court of Ohio” [Hearing Tr. 8] and that it expects “the ordinary cooperation and professionalism of counsel that would be given if the Supreme Court were conducting this hearing” [Hearing Tr. 10], the panel is decidedly not vested with the same authority as the Ohio Supreme Court in the adjudication of disciplinary matters.

Instead, the authority of the Board and its panels is narrowly limited by the Ohio Supreme Court to those matters listed in Gov. Bar R. V(2)(A) and (B). Since these rules do not include the jurisdiction to rule on the constitutionality of state statutes, the relator’s argument is well-taken and respondent’s motion to dismiss must be denied. Since the motion fails on said basis, there is no need to address the issue of whether or not the panel finds the CPO Statute to be constitutional.

Respondent’s motion to dismiss is hereby denied. The matter shall now proceed to the panel on the merits.

So Ordered.



David E. Tschantz, Esq.
Panel Chair

Appendix B

**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:

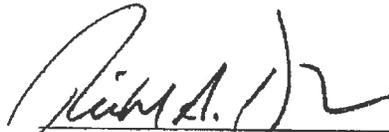
- Respondent shall undergo an evaluation by the Ohio Lawyers Assistance Program and promptly and fully comply with all recommendations made by that program.

{¶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