

FILED

AUG 03 2016

BOARD OF PROFESSIONAL CONDUCT

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

In re: :

LORAIN COUNTY BAR ASSOCIATION:
LEGAL ETHICS AND GRIEVANCE
COMMITTEE :
c/o Lorain County Bar Association :
The Lawyer's Loft :
627 W. Broad Street :
Elyria, Ohio 44035 :

CASE NO. **16 - 032** 2 21

CERTIFIED COMPLAINT

Relator, :

-v- :

HEATHER B. WILSEY, ESQ. :
300 Fourth Street :
Elyria, Ohio 44035 :
Registration No. 0092809 :

Respondent. :

.....

NOW COMES Relator, Lorain County Bar Association Legal Ethics and Grievance Committee, by and through the undersigned Bar Counsel, and alleges that Respondent, Heather B. Wilsey (Registration No. 0092089), Attorney at Law, duly admitted and in good-standing to practice law in the State of Ohio, is guilty of the misconduct more fully described below.

INTRODUCTION

1. That Respondent, Heather B. Wilsey (“Respondent”), was admitted to the practice of law in the State of Ohio on December 17, 2014.

2. That Respondent is subject to the Code of Professional Responsibility; The Ohio Rules of Professional Conduct; and, the Ohio Supreme Court Rules for the Government of the Bar.

3. That Respondent has no prior Discipline from the Supreme Court of Ohio.

4. That Respondent’s status as an attorney in the State of Ohio is currently “Active.”

5. That on or about June 14, 2016 Respondent was arrested on the charge of Obstructing Official Business, a misdemeanor of the second degree, in violation of R.C. 2921.31, for an incident which occurred on June 9, 2016 wherein Respondent was involved in an alcohol-related traffic accident in Elyria, Ohio and allegedly gave a false police report to law enforcement officers in an effort to avoid a potential OVI arrest.

6. That on or about June 20, 2016 LCBA, by and through its Certified Legal Ethics and Grievance Committee (“The Committee”), opened an investigation (“The Investigation”) into the facts and circumstances surrounding the traffic accident along with Respondent’s pending criminal charge in the Elyria Municipal Court and assigned the matter to Attorney J. Anthony Rich (“Attorney Rich”), a member of The Committee, for investigation.

7. That on or around June 24, 2016 Attorney Rich sent Respondent notice of The Investigation and requested that she respond within twenty-one (21) days from the date of his letter of inquiry.

8. That on or around July 1, 2016 Attorney Rich sent Respondent's counsel of record in her criminal matter, Attorney Michael J. Kinlin ("Attorney Kinlin"), a letter advising that he could not communicate with him regarding The Investigation until Attorney Kinlin acknowledged representation of Respondent for purposes of The Investigation.

9. That on the same date Attorney Rich sent Respondent a second letter to clarify the legal effect of her response or non-response to The Investigation as it relates to any corollary law enforcement investigation.

10. That Attorney Rich further advised Respondent that her response was still required to be submitted within twenty-one (21) days of receipt of his original correspondence.

11. That on or around July 6, 2016 Attorney Kinlin acknowledged his representation of Respondent with respect to The Investigation and requested an extension of 120 days to respond to the matters raised in Attorney Rich's original letter of inquiry.

12. That on or around July 13, 2016 Attorney Rich replied to Attorney Kinlin and granted Respondent an extension to respond until the end of July, 2016.

13. That on or around July 20, 2016 Respondent, by and through counsel, formally agreed to waive a determination of probable cause.

14. That on July 25, 2016 at a regularly scheduled meeting of The Committee, affirmative votes were recorded finding probable cause that Respondent had committed multiple violations of the Ohio Rules of Professional Conduct and the Ohio Supreme Court Rules for the Government of the Bar.

15. That on July 26, 2016 Attorney Kinlin withdrew as counsel for Respondent with regard to the ongoing LCBA Investigation.

16. That the matter was assigned to Attorney D. Chris Cook, Bar Counsel to LCBA, for prosecution.

17. That on July 27, 2016 a copy of the Certified Complaint was served upon Respondent by Bar Counsel.

FACTUAL ALLEGATIONS

18. Relator incorporates and realleges the allegations contained in paragraphs 1-17 above as if fully rewritten herein.

19. That on or around June 9, 2016 at approximately 1:14 a.m. Officers Merrill and Kasperovich of the Elyria Police Department were detailed to the area of Fourth Street and East Avenue in Elyria, Ohio on a report of a single unit accident.

20. That upon arrival, Officer Kasperovich observed a white female, later identified as Respondent, and a white male identified as Attorney Kenneth J. Lewis ("Lewis") walking westbound on the south side of Fourth Street, away from the traffic accident scene.

21. That Officer Kasperovich stopped Respondent and Lewis who advised that they were in the vehicle at the time of the accident.

22. That Officer Merrill was on the scene of the accident and observed that a Grey, Acura TL was in the tree lawn on the south side of Fourth Street.

23. That Officer Merrill observed the vehicle to have heavy right side damage from the accident such that the rim and tire were destroyed.

24. That the extent of damage to the vehicle rendered it non-operable.

25. That Officer Merrill assisted in the traffic investigation and conducted a field interview with Lewis.

26. That Lewis advised Officer Merrill that he and Respondent had become intoxicated at a local bar, the Train Station, when they met an unknown black male who advised that he would drive Respondent and Lewis home.

27. That Lewis further advised Officer Merrill that he entered the back seat of the vehicle and that Respondent got into the front passenger seat of the vehicle.

28. That Lewis told Officer Merrill that the unknown black male then entered the driver's seat of the vehicle and pulled out the parking lot to travel southbound on East River Road.

29. That according to Lewis the unknown black male drove to Fourth Street and then turned westbound onto East Avenue at which time he traveled through the intersection and hit a utility pole on the north side of Fourth Street and continued to travel until he hit the left curb on Fourth Street.

30. That Lewis advised that the unknown black male, whom he described as wearing a red ball cap, dark colored shirt and camouflage shorts, ran from the scene in a southbound direction through the parking lot following the accident.

31. That Lewis further advised that at no time was he or Respondent driving the vehicle after they left the Train Station with the unknown black male.

32. That Officer Merrill also assisted with the field interview of Respondent who advised that she never drove the vehicle after it was parked at the Train Station.

33. That Respondent confirmed Lewis' same description of the suspect driver as a black male that ran southbound through the parking lot following the accident.

34. That Respondent further advised that she was aware of the suspect and would attempt to get him to return to the scene of the accident but that she was unsuccessful that evening.

35. That Respondent told the officers she would provide the suspect's name to the officers the next evening after she spoke to her girlfriend and requested that she be permitted to retrieve her cell phone from the vehicle.

36. That Respondent and Lewis were advised by the officers that they did not believe their version of the events and that the case would be investigated as an open hit-skip accident.

37. That Respondent and Lewis were advised that they would need to provide a written statement to complete the accident report and that the officers would speak to them at 10:00 p.m. on June 9, 2016 at the Elyria Police Department.

38. That Respondent and Lewis advised the officers that they would meet them at the police department and attempt to secure the unknown black male and have him come with them to the department.

39. That on June 9, 2016 at approximately 1:45 a.m. Officers VanWormer and Longacre of the Elyria Police Department were detailed to the Train Station to further investigate the accident.

40. That the Train Station maintained a video recording of the parties leaving the bar just prior to the motor vehicle accident.

41. That Officer Merrill met with Officer Longacre and reviewed the video recording.

42. That the video recording revealed that no black male had entered the vehicle but rather Wilsey had driven the vehicle away from the Train Station while she was highly intoxicated.

43. That the video recording further revealed that Respondent was the front-seat passenger in the vehicle.

44. That on June 9, 2016 Officer Merrill was contacted by Lewis who advised that he and Respondent could not come to the police department at 10:00 p.m. that evening to complete the accident report because he had to watch his children and had no means of getting to the department.

45. That, in turn, Officer Merrill advised Lewis to come to the police department on June 10, 2016 at 10:00 p.m.

46. That Lewis agreed that he and Respondent would come to the police department on June 10, 2016 at 10:00 p.m. to complete the accident report.

47. That on June 10, 2016 at 10:00 p.m. Lewis arrived at the Elyria Police Department alone and advised that Respondent was not coming to the department that evening.

48. That Lewis was given a blank OH-3 Traffic Report and provided a written statement.

49. That Officer Merrill reviewed the written statement provided by Lewis and observed that the statement did not honestly and accurately describe the facts surrounding the accident investigation.

50. That as a result, Lewis was arrested on the charge of Obstruction of Official Business, in violation of R.C. 2921.31.

51. That on June 14, 2016 Respondent was served with an arrest warrant on the charge of Obstruction of Official Business, in violation of R.C. 2921.31.

COUNT ONE
(ORPC 8.4(b) – *MISCONDUCT: ILLEGAL ACT THAT REFLECTS ADVERSELY ON LAWYER’S HONESTY OR TRUSTWORTHINESS*)

52. Relator incorporates and realleges the allegations contained in paragraphs 1-51 above as if fully rewritten herein.

53. That on or about June 14, 2016 Respondent was arrested on the charge of Obstruction of Official Business, a misdemeanor of the second degree, in violation of R.C. 2921.31.

54. That all as described above, the charge against Respondent stems from her involvement in an alcohol-related traffic accident in Elyria, Ohio wherein Respondent allegedly gave a false police report to law enforcement officers in an effort to avoid a potential OVI arrest.

55. That Respondent allegedly provided false and misleading information to law enforcement officers regarding a “black male driver” during the investigation of the motor vehicle accident in which she was admittedly involved.

56. That to impede and obstruct an official police investigation by providing false and misleading information to law enforcement personnel constitutes an *illegal* act that reflects adversely on Respondent’s honesty or trustworthiness.

57. That Respondent’s commission of an *illegal* act that reflects adversely on her honesty or trustworthiness constitutes a violation of ORPC 8.4(b).

COUNT TWO
(ORPC 8.4(c) – *MISCONDUCT: DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION*)

58. Relator incorporates and realleges the allegations contained in paragraphs 1-57 above as if fully rewritten herein.

59. That on or about June 14, 2016 Respondent was arrested on the charge of Obstruction of Official Business, a misdemeanor of the second degree, in violation of R.C. 2921.31.

60. That all as described above, the charge against Respondent stems from her involvement in an alcohol-related traffic accident in Elyria, Ohio wherein Respondent allegedly gave a false police report to law enforcement officers in an effort to avoid a potential OVI arrest.

61. That during her field interview with Officer Merrill, Respondent affirmatively represented that she never drove the vehicle involved in the accident at issue after it was parked at the Train Station.

62. That Respondent further affirmatively represented to Officer Merrill that the suspect driver of the vehicle was a black male matching the description provided by Lewis who ran southbound through the parking lot after causing the motor vehicle accident.

63. That Respondent's representations to Officer Merrill were dishonest, fraudulent and deceitful as the video-recording obtained from the Train Station revealed that, in fact, no black male had entered the vehicle but rather Respondent herself had driven the vehicle away from the Train Station while she was highly intoxicated.

64. That by fraudulently misrepresenting the details of the motor vehicle accident to Officer Merrill in the ensuing traffic investigation, Respondent engaged in conduct that constitutes a violation of ORPC 8.4(c).

COUNT THREE
(ORPC 8.4(d) – *MISCONDUCT: PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE*)

65. Relator incorporates and realleges the allegations contained in paragraphs 1-64 above as if fully rewritten herein.

66. That on or about June 14, 2016 Respondent was arrested on the charge of Obstruction of Official Business, a misdemeanor of the second degree, in violation of R.C. 2921.31.

67. That all as described above, the charge against Respondent stems from her involvement in an alcohol-related traffic accident in Elyria, Ohio wherein Respondent allegedly gave a false police report to law enforcement officers in an effort to avoid a potential OVI arrest.

68. That Respondent allegedly provided false and misleading information to law enforcement officers regarding a “black male driver” during the investigation of the motor vehicle accident in which she was admittedly involved.

69. That Respondent affirmatively represented to the officers that neither she nor Lewis ever drove the vehicle involved in the accident at issue after it was parked at the Train Station.

70. That Respondent further affirmatively represented to Officer Merrill that the suspect driver of the vehicle was a black male matching the description provided by Lewis who ran southbound through the parking lot after causing the motor vehicle accident.

71. That Respondent's representations to Officer Merrill were dishonest, fraudulent and deceitful as the video-recording obtained from the Train Station revealed that, in fact, no black male had entered the vehicle but rather Respondent herself had driven the vehicle away from the Train Station while she was highly intoxicated.

72. That as a result, Respondent impeded and obstructed an official police investigation by providing false and misleading information to law enforcement personnel.

73. That, all as alleged above, law enforcement personnel was harmed through the loss of time and resources by processing and investigating false allegations provided by Respondent in an effort to impede and obstruct an official police investigation.

74. That Respondent's misconduct in impeding and obstructing an official police investigation constitutes conduct prejudicial to the administration of justice and is a violation of ORPC 8.4(d).

COUNT FOUR

(ORPC 8.4(g) – MISCONDUCT: CONDUCT INVOLVING DISCRIMINATION PROHIBITED BY LAW BECAUSE OF RACE)

75. Relator incorporates and realleges the allegations contained in paragraphs 1-74 above as if fully rewritten herein.

76. That on or about June 14, 2016 Respondent was arrested on the charge of Obstruction of Official Business, a misdemeanor of the second degree, in violation of R.C. 2921.31.

77. That all as described above, the charge against Respondent stems from her involvement in an alcohol-related traffic accident in Elyria, Ohio wherein Respondent allegedly gave a false police report to law enforcement officers in an effort to avoid a potential OVI arrest.

78. That Respondent allegedly provided false and misleading information to law enforcement officers regarding a “black male driver” during the investigation of the motor vehicle accident in which she was admittedly involved.

79. That Respondent affirmatively represented to the officers that neither she nor Lewis ever drove the vehicle involved in the accident at issue after it was parked at the Train Station.

80. That Respondent further affirmatively represented to Officer Merrill that the suspect driver of the vehicle was a black male matching the description provided by Lewis who ran southbound through the parking lot after causing the motor vehicle accident.

81. That the video-recording obtained from the Train Station revealed that, in fact, no black male had entered the vehicle but rather Respondent herself had driven the vehicle away from the Train Station while she was highly intoxicated.

82. That Respondent's false and misleading representations to Officer Merrill in an official law enforcement investigation that the suspect was a black male who caused the accident in which she was the actual driver constitutes conduct involving discrimination prohibited by law because of race by a lawyer in her professional capacity and is a violation of ORPC 8.4(g).

COUNT FIVE

(ORPC 8.4(h) – *MISCONDUCT: ADVERSELY REFLECTS ON THE LAWYER'S FITNESS TO PRACTICE LAW*)

83. Relator incorporates and realleges the allegations contained in paragraphs 1-82 above as if fully rewritten herein.

84. That on or about June 14, 2016 Respondent was arrested on the charge of Obstruction of Official Business, a misdemeanor of the second degree, in violation of R.C. 2921.31.

85. That all as described above, the charge against Respondent stems from her involvement in an alcohol-related traffic accident in Elyria, Ohio wherein Respondent allegedly gave a false police report to law enforcement officers in an effort to avoid a potential OVI arrest.

86. That Respondent allegedly provided false and misleading information to law enforcement officers regarding a "black male driver" during the investigation of the motor vehicle accident in which she was admittedly involved.

87. That Respondent affirmatively represented that she never drove the vehicle involved in the accident at issue after it was parked at the Train Station.

88. That Respondent further affirmatively represented to Officer Merrill that the suspect driver of the vehicle was a black male matching the description provided by Lewis who ran southbound through the parking lot after causing the accident.

89. That Respondent's representations to Officer Merrill were dishonest, fraudulent and deceitful as the video-recording obtained from the Train Station revealed that, in fact, no black male had entered the vehicle but rather Respondent herself had driven the vehicle away from the Train Station while she was highly intoxicated.

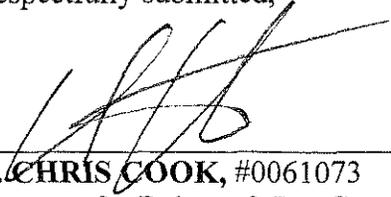
90. That as a result, Respondent impeded and obstructed an official police investigation by providing false and misleading information to law enforcement personnel.

91. That based on the dishonest, deceptive, and unlawful nature of Respondent's misconduct and the potential that Respondent's misconduct implicates substance abuse issues, Respondent has engaged in conduct that adversely reflects on her fitness to practice law and constitutes a violation of ORPC 8.4(h).

WHEREFORE, pursuant to Gov. Bar R V, Relator alleges that Respondent, Attorney Heather B. Wilsey, has violated the Ohio Rules of Professional Conduct and the Ohio Rules for the Government of the Bar.

As such, Relator respectfully requests that the Board proceed accordingly; certify this matter for prosecution; and allow this matter to progress forthwith.

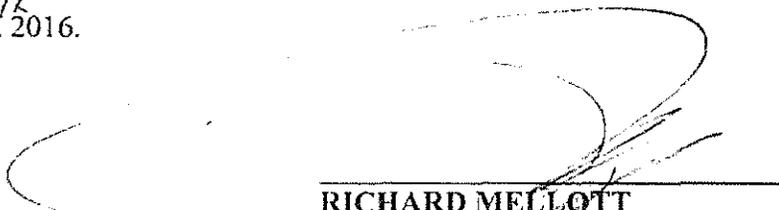
Respectfully submitted,



D. CHRIS COOK, #0061073
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Legal Ethics and Grievance Committee
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Lorain, OH 44052
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The undersigned, Richard Mellott, Chairman of the Lorain County Bar Association Legal Ethics and Grievance Committee, hereby certifies that Attorney D. Chris Cook, Bar Counsel, is duly authorized to represent Relator in the premises and has accepted the responsibility of prosecuting this complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such Certified Complaint *in re*: HEATHER B. WILSEY

Dated: July 28th, 2016.



RICHARD MELLOTT
LCBA Legal Ethics and Grievance
Committee

PROOF OF SERVICE

The undersigned represents that a copy of the foregoing Certified Complaint was served upon the following via Hand-Delivery and/or Regular U.S. Mail this 3rd day of August, 2016:

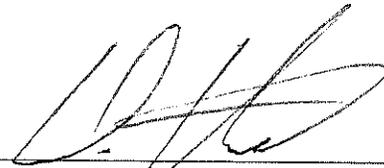
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Director of the Board
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Columbus, OH 43215-3431

Scott Drexel, Esq.
Supreme Court of Ohio
Office of Disciplinary Counsel
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Ohio State Bar Association
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Certified Grievance Committee
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Columbus, OH 43204

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Heather B. Wilsey, Esq.
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Respondent, *pro se*



D. CHRIS COOK

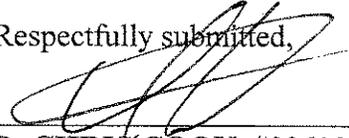
Attorney for Relator & Bar Counsel
Lorain County Bar Association
Legal Ethics and Grievance Committee

READ & APPROVED:



HEATHER B. WILSEY, ESQ.
Registration No. 0092809

Respectfully submitted,



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