

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN THE MATTER OF:

ATTORNEY CARL J. GABRIELSE.

Administrative Order
No. 16-AD- 032

**MEMORANDUM OF DECISION & ORDER
DENYING REINSTATEMENT APPLICATION**

I. INTRODUCTION

This matter is before the Court on the application of Attorney Carl J. Gabrielse for reinstatement as a member of the bar of this Court, following his recent reinstatement as a member of the State Bar of Michigan. Chief Judge Jonker assigned the matter to the undersigned Panel of three judicial officers for hearing and decision. Administrative Order No. 16-AD-010. The Panel conducted a hearing in Kalamazoo, Michigan, on March 10, 2016, at which Mr. Gabrielse appeared without counsel.

II. BACKGROUND

The record in the State Court and before this Panel both establish that on November 3, 2009, while serving as an assistant city prosecutor for the City of Holland, Michigan, Mr. Gabrielse made a plea agreement with a criminal defendant in exchange for sexual favors. Moments later, he consummated that agreement in the jury room of the Ottawa County Court House by engaging

in sexual intercourse with the defendant and, shortly thereafter, altering the Uniform Traffic Citation in the State Court file in a manner consistent with the illicit plea bargain.

According to documents relating to *People v. Gabrielse*, File No. 09-34181-FH (Circuit Court for Ottawa County, Michigan), Mr. Gabrielse pled guilty to two felony counts related to the same incident, the first for Criminal Sexual Conduct – Third Degree, and the second, Misconduct in Office.¹

Felony convictions have profound consequences for all defendants, including (and perhaps especially) members of a licensed profession, such as Mr. Gabrielse. For example, in addition to serving five months in jail and the automatic (interim) suspension of his law license under MCR 9.120(B)(1), Mr. Gabrielse lost his license to practice law for three years, commencing on February 25, 2011.

He also lost the privilege of appearing in federal court: on April 5, 2010, after learning of Mr. Gabrielse's felony convictions and his suspension from the State Bar of Michigan, the United States District Court for the Western District of Michigan entered a reciprocal discipline order pursuant to W.D. Mich. LCivR 83.1(m)(i), and W.D. Mich. LCrimR 57.1(m)(i), suspending him from practicing before this Court.²

Following his release from jail, and while his license remained suspended, Mr. Gabrielse reportedly worked as a paralegal, ostensibly as a liaison between Holland businessman Scott Bosgraaf and various attorneys representing Mr. Bosgraaf and his related entities.

¹ Pursuant to Mr. Gabrielse's plea agreement, the State Court permitted him to withdraw his guilty plea on the first count, substituting a plea of guilty to Gross Indecency Between Male and Female, a change that evidently permitted him to avoid the indignity of registering as a sex offender.

² For convenience, the Panel will refer to W.D. Mich. LCivR 83.1(m)(iii)(B), rather than W.D. Mich. LCrimR 57.1(m)(iii)(B). The language of the two rules overlaps.

On March 7, 2014, shortly after the expiration of the suspension of his law license, Mr. Gabrielse filed a petition to regain his license, which the Attorney Grievance Commission opposed. In June, 2014, a Kent County panel of the Attorney Discipline Board conducted a two-day hearing and, in a split decision rendered on October 17, 2014, concluded that Mr. Gabrielse was fit to resume the practice of law in Michigan.

After the Attorney Grievance Commission's unsuccessful appeal of the Kent County panel's decision, the Attorney Discipline Board reinstated Mr. Gabrielse's law license, effective January 6, 2016. That same day, he filed an application for reinstatement in this Court, supported by an Affidavit of Reinstatement as our local rules require. In response to the Court's request, Mr. Gabrielse supplied voluminous documentation and hundreds of pages of transcripts from the proceedings before the Attorney Discipline Board and its local panels, in addition to police reports and a transcript of his guilty plea allocution in Ottawa County Circuit Court.

The undersigned members of the Panel have carefully reviewed the entire record and the candid, and occasionally painful, sworn testimony that Mr. Gabrielse presented on March 10, 2016, and unanimously finds that Mr. Gabrielse has failed to establish his eligibility for reinstatement to the bar of this Court in accordance with W.D. Mich. LCivR 83.1(m)(iii)(B).

III. ANALYSIS

The Panel's decision, like the decision of the Attorney Discipline Board, is guided by court rules governing the admission and discipline of attorneys, informed by the judgment and unique experiences of individual panel or board members, all of whom share the goal of protecting the public and the integrity of the legal profession. In serving as gatekeeper to the federal bar, this Panel's task is similar, but not identical, to the role that the Attorney Discipline Board played with

respect to the State Bar of Michigan in response to Mr. Gabrielse's successful petition for reinstatement before that body.

Naturally, the Court strives for comity with sister courts and related agencies, especially within Michigan, but as Mr. Gabrielse conceded on the record during the hearing on March 10, 2016, the Attorney Discipline Board's decision to reinstate his law license in Michigan does not preclude the Panel from reaching a contrary decision. The standards governing admission to practice in state and federal court, while similar, are not identical, and reasonable minds charged with similar tasks may reach conflicting decisions. Indeed, the split decision of the Kent County Hearing Panel filed on October 17, 2014, as well as the Board Opinion of the Attorney Discipline Board filed December 29, 2015, both make this point. In reaching a contrary conclusion, this Panel expresses no disrespect for the considered opinions just mentioned.

In our Court, the decision to reinstate Mr. Gabrielse's privilege of practicing here is governed by local rules which require him to establish the following, by "clear and convincing" evidence:

- (1) the attorney has complied with the orders of discipline of this Court and all other disciplinary authorities;
- (2) the attorney has not practiced in this Court during the period of disbarment or suspension and has not practiced law contrary to any other order of discipline;
- (3) the attorney has not engaged in any other professional misconduct since disbarment or suspension;
- (4) the attorney has the moral qualifications, competency and learning in the law required for admission to practice law before this Court; and
- (5) the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

See W.D. Mich. LCivR 83.1(m)(iii)(B). Although acknowledging that all five elements apply,

the Panel agrees with Mr. Gabrielse's suggestion at the March 10, 2016 hearing that the second and fifth elements have particular significance in his case, given the work he performed for the Bosgraaf entities after serving his sentence but before the Attorney Discipline Board restored his license, and given the egregious nature of the crimes he committed.

With respect to the conduct of Mr. Gabrielse while suspended from the practice of law, the Panel is not persuaded by clear and convincing evidence that the applicant has refrained from the practice of law, a concern arising from his post-incarceration relationship with the Bosgraaf entities. Mr. Gabrielse explained that prior to this engagement, he sought the advice of Marcia Proctor, a well-regarded legal ethicist, to determine the extent to which his service to the Bosgraaf entities might be consistent with the prohibition against practicing law during the suspension. Also, he credibly testified before this Panel that the members of the bar with whom he worked on the Bosgraaf matters were aware of the limits on his authority and respected those limits by, in effect, supervising him as a paralegal professional. It would also appear that Mr. Bosgraaf had been advised of the limits.

Nevertheless, at least one email exchange, referred to at the hearing as Exhibit 7,³ shows that Mr. Gabrielse gave legal advice to Mr. Bosgraaf on pending litigation, outside the supervision of any counsel. The communication includes procedural, strategic, and substantive legal advice on intervention, summary proceedings, and the doctrine of *res judicata*, as well as the relationship between at least two pending proceedings. It is not farfetched to infer that the email generated additional communications regarding the advice, or to infer that other, less-documented instances of such communication occurred. Mr. Gabrielse stated that he regretted sending the email,

³ The e-mail from Carl Gabrielse to Scott Bosgraaf, dated July 25, 2011, regarding "HTSTS," is included within Exhibit F to Petitioner's Pre-Hearing Documents in this Court, and was evidently identified as Exhibit 7 when submitted to the Kent County Panel of the Attorney Discipline Board in June, 2014.

explaining that his animus against opposing counsel likely interfered with his judgment in that instance. Regardless of the explanation, the document fatally undercuts Mr. Gabrielse's argument that he respected the limits imposed on him under the Attorney Discipline Board's suspension order.

The Panel also notes that, despite an initial consultation with Ms. Proctor, Mr. Gabrielse did not consult with the State Bar authorities before undertaking his new role with the Bosgraaf entities to determine, in advance, whether his services would offend the State Bar's prohibition against the practice of law. During the hearing, he argued that his reliance on Ms. Proctor's advice, based on the hypothesized role described to her before the commencement of his employment by Mr. Bosgraaf, was a sufficient safeguard against the unauthorized practice; the record, however, does not show that he continued consulting with Ms. Proctor *after* his employment commenced and, presumably, after the scope of his role became more clear.

The Panel readily acknowledges that the contours of the unauthorized practice of law are frequently difficult to discern, but this ambiguity does not justify "pushing the envelope" as Mr. Gabrielse did while working for the Bosgraaf entities. By working for Mr. Bosgraaf and his companies in a supposedly paraprofessional role, Mr. Gabrielse subjected himself (and his supposed non-client) to the risks of pushing too far, indeed over the line. For example, communications (such as those reflected in Exhibit 7) which Mr. Bosgraaf might have assumed were privileged or otherwise protected from disclosure have since been disclosed, and it appears from the reports of the litigation with First Financial that Mr. Gabrielse's involvement exposed the Bosgraaf entities to the expense and embarrassment of discovery-related litigation over his role and its effect on the attorney-client or other privileges.

Given the burden of proof applicable to this reinstatement proceeding, the Panel is unable

to conclude that Mr. Gabrielse complied fully with the suspension order, notwithstanding the Attorney Discipline Board's contrary conclusion on this point. *See* W.D. Mich. LCivR 83.1(m)(iii)(B)(1) and (2) (requiring proof of compliance with orders of discipline and forbidding unauthorized practice of law).

Much of the Panel's questioning during the March 10, 2016 hearing focused on the impact of Mr. Gabrielse's proposed reinstatement on the integrity of the legal profession and the standing of the federal bar in the eyes of the public. This probably came as no surprise to him, because his crimes occurred in a court house, while using his authority as a prosecutor, and involved alteration of a document upon which a member of the judiciary would naturally rely. In other words, the crimes are anathema to the reputation of the profession not just because of the impact on the criminal defendant who succumbed to the coercion, but also because the conduct involved abuse of public trust reposed in him as an officer of the court, generally, and as a prosecutor in particular. The venue of the crimes—within the jury room of the Ottawa County Court House—underscores the extent of Mr. Gabrielse's breach of both public and private trust. Mr. Gabrielse agreed that severe excoriation of the person who committed these crimes is understandable and warranted, but he argued that, through his rehabilitative journey, he is no longer that person. The Panel, however, has its doubts.

Indeed, Mr. Gabrielse's closing comments regarding his victim's supposed consent to sexual intercourse—notwithstanding the coercive setting of post-arraignment plea negotiations between a prosecutor and an unrepresented criminal defendant in the court house—betray a persistent failure or inability to understand the nature of his offense against the defendant, against the administration of justice, and against the legal profession. *See* W.D. Mich. LCivR 83.1(m)(iii)(B)(5).

Moreover, without intending to denigrate the efficacy of accountability partners, psychological and pastoral care, spousal support, internet filters, and community awareness, the Panel remains concerned that reinstatement may be subversive of the public interest,” *id.*, despite the several safeguards that Mr. Gabrielse has put in place in his private life to deter him from similar misconduct in the future. For example, it is significant that Mr. Gabrielse is a sole practitioner and therefore without direct professional accountability in the workplace, where he will inevitably come into contact with clients, employees, and others potentially vulnerable, should he relapse into old behaviors. Installing a glass partition in one’s office is simply window dressing without the watchful eyes of a professional peer on the other side of the pane.

Moreover, there is a substantial risk that the public may perceive his reinstatement as another of a series of courtesies extended to a fallen lawyer by other lawyers—members of the same “club” with their hands on the levers of government. *See, e.g., supra* at n. 1. That risk, which the Panel must consider under W.D. Mich. LCivR 83.1(m)(iii)(B)(5), is not mitigated by arguments, evident in the record, that Mr. Gabrielse has “paid his debt” in jail, or by otherwise suffering the stigma of conviction. The legal profession is, largely, self-regulated, which means that lawyers must hold other lawyers to higher standards than might otherwise apply to the ordinary citizen. This burden is part of the price to be paid for the privilege of practicing law or, at least in this case, appearing in federal court. Clearly, serving a criminal sentence cannot support restoration of the lawyer’s franchise in a system, like ours, so dependent on the public’s trust and respect for the profession.

IV. CONCLUSION & ORDER

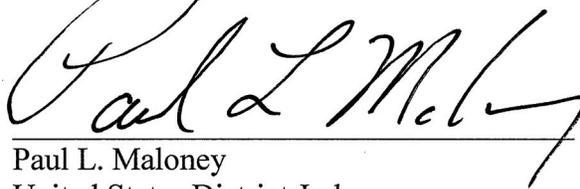
The “redemption” that Mr. Gabrielse described during the hearing, and that is supported

by other evidence in the record, will undoubtedly serve him and his family well in their private lives. Nevertheless, the Panel doubts that his commendable struggle against his personal shortcomings would ever justify restoration of public trust in him as holder of a license to practice in federal court, given the gravity and nature of his crimes. Of course, the Panel need not, and does not, decide that Mr. Gabrielse will never be admitted as a member of the bar of this Court. It suffices to say, based on the record as a whole, that Mr. Gabrielse has not established by clear and convincing evidence his fitness as a member of the bar of the United States District Court for the Western District of Michigan.

Accordingly, **IT IS ORDERED** that the application of Carl J. Gabrielse for reinstatement as a member of the bar of this Court is DENIED.

FOR THE COURT:

Date: March 17, 2016



Paul L. Maloney
United States District Judge

Date: March 17, 2016



Raymond S. Kent
United States Magistrate Judge

Date: March 17, 2016



Scott W. Dales
United States Bankruptcy Judge