

Scurry in the district court proceedings beginning in July 2011.

4. On October 14, 2011, Scurry, through counsel, filed a motion to suppress the evidence from the wiretap of Scurry's phone. His co-defendants also filed motions to suppress the evidence from the wiretaps of their phones and, in the case of some of them, also to suppress the evidence from the wiretaps of their co-defendants' phones.

5. On June 25, 2012, Scurry, through counsel, joined in the motions of three of his co-defendants to suppress, and adopted the response of a fourth co-defendant.

6. On August 3, 2012, the district court denied the motions filed by Scurry and his co-defendants to suppress the evidence from the various wiretaps.

7. Shortly before the trial was to begin, Scurry and his co-defendants accepted plea offers.

8. Respondent represented Scurry in negotiating the plea offer and at the September 10, 2012 hearing before the district court when he entered his plea of guilty.

9. Scurry's plea agreement included the condition that he had reserved the right to appeal the district court's order denying his motion to suppress the evidence from the wiretap of his phone. Pursuant to the plea agreement, Scurry could withdraw his plea only if the United States Court of Appeals for the D.C. Circuit reversed the district court's decision denying his motion to suppress.

10. Some of Scurry's co-defendants entered plea agreements that preserved a broader right to appeal. They could withdraw their pleas if the D.C. Circuit overturned the denial of the motions to suppress the evidence from the wiretaps of not only their phones, but also other co-defendants' phones.

11. On September 10, 2012, Scurry pleaded guilty to conspiracy to distribute and possession with the intent to distribute cocaine and conspiracy to launder money gained from a drug distribution scheme.

12. The district court later sentenced Scurry to 12 years of imprisonment, followed by five years of supervised release.

13. Scurry and four of his co-defendants appealed the district court's denial of their motions to suppress.

14. Respondent represented Scurry in filing the notice of appeal on December 3, 2012, which was the day he was sentenced.

15. On December 17, 2012, the D.C. Circuit appointed Respondent to represent Scurry in his appeal.

16. On March 27, 2013, Scurry filed a *pro se* request asking the D.C. Circuit to appoint him new counsel "due to conflicts of interest." Scurry claimed that Respondent had coerced him into signing a proffer of evidence and plea agreement and that her co-counsel had provided ineffective assistance of counsel.

17. On March 29, 2013, Respondent filed a motion to withdraw, which the D.C. Circuit granted on July 25, 2013.

18. The D.C Circuit appointed new counsel to represent Scurry. Scurry's new counsel filed a joint brief with the four co-defendants who appealed, arguing that all the wiretap evidence should have been suppressed. Scurry's counsel did not raise an ineffective assistance of counsel claim.

19. On April 8, 2016, the D.C. Circuit reversed the district court's order denying the motions to suppress evidence from the wiretaps of two of Scurry's co-defendants, finding that the wiretap orders authorizing the wiretaps were invalid on their face because they did not identify the high-level Justice Department official who approved the wiretap applications.

20. The D.C. Circuit, however, affirmed the denial of Scurry's motion to suppress the evidence from the wiretap of his phone.

21. On remand, the government dismissed the charges against the two defendants who prevailed on appeal. The government also dismissed the charges against the two other co-defendants because the authorization for the wiretaps of their phones were based on evidence from one of the wiretaps the Court found was improper and therefore subject to suppression. This meant that of the five defendants who appealed, only Scurry remained in the case.

22. On October 5, 2016, Scurry filed a *pro se* motion to dismiss the charges against him.

23. Shortly after Scurry filed his motion, he talked to Respondent who agreed to represent him in his efforts to challenge his conviction.

24. Respondent did not discuss with Scurry his previous claims that she and her co-counsel had provided ineffective assistance of counsel and she had coerced him to plead guilty.

25. Respondent also failed to advise Scurry that a likely or viable way to challenge his guilty plea and conviction would be to raise ineffective assistance of counsel, which she could not do so without creating a conflict of interest.

26. On December 19, 2016, Scurry filed a *pro se* motion asking the district court to re-appoint Respondent and her co-counsel as his counsel. The district court granted the motion and appointed them counsel under the Criminal Justice Act.

27. On March 23, 2017, Respondent and her co-counsel filed a motion under 28 U.S.C., § 2255 to vacate Scurry's plea on the ground that it was not voluntarily and intelligently entered because he was "induced" to plead guilty to a conspiracy to distribute more than 280 grams of cocaine based on evidence collected from the wiretaps of his co-defendants' phones which the D.C. Circuit ruled was inadmissible.

28. The government opposed Scurry's § 2255 motion and his motion to dismiss.

29. On August 22, 2018, the district court denied the § 2255 motion and Scurry's *pro se* motion to dismiss, finding that Scurry's guilty plea was valid.

30. On September 10, 2018, Scurry filed a *pro se* appeal.

31. On December 23, 2019, the D.C. Circuit appointed Respondent as his

counsel for the appeal.

32. In representing him on appeal, Respondent did not discuss with Scurry that she had or might have a conflict of interest in representing him given his previous claim that she and her co-counsel had coerced him to plead guilty.

33. Respondent also did not discuss with Scurry that an ineffective assistance of counsel claim was a likely and viable way to challenge the voluntary and intelligent nature of his plea.

34. Respondent argued on appeal that Scurry's plea was not knowing and voluntary because it was induced by inadmissible wiretap evidence.

35. Scurry, while represented by Respondent, had not reserved in his plea agreement the right to challenge the denial of the motions to suppress evidence from the wiretaps of his co-defendants' phones, including those in which Scurry's communications were captured. Scurry reserved only the right to challenge the denial of his motion to suppress the evidence from the wiretap of his own phone.

36. The D.C. Circuit rejected Scurry's argument that by wrongly evaluating the admissibility of evidence, his guilty plea was rendered involuntary. The court went on to state that this was not "the end of the story" because the "foundational presumption that the decision to plead guilty rested on competent legal advice from counsel."

37. The D.C. Circuit found that "the only legally viable avenue for challenging the plea apparent on this record would have been for [Respondent] to

argue that her own and/or her husband's representation of Scurry in the decision to plead guilty was constitutionally ineffective."

38. The D.C. Circuit found that Respondent had not obtained an informed waiver from Scurry and therefore reversed and remanded the matter to the district court for the appointment of conflict-free counsel to represent Scurry in the § 2255 proceedings.

39. Respondent's conduct violated the following Rules of the District of Columbia Rules of Professional Conduct:

a. Rule 1.7(b)(4), in that without her client's informed consent, Respondent represented Scurry in his § 2255 proceeding and subsequent appeal notwithstanding that her professional judgment was or reasonably could have been adversely affected by her own interests; and

b. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

Respectfully submitted,

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Disciplinary Counsel



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VERIFICATION

I verify under penalty of perjury that the foregoing is true and correct.

Executed on May 26, 2022.



Julia L. Porter
Deputy Disciplinary Counsel

D. Procedures

(1) **Referral to Hearing Committee** -- When the Board receives the Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

(2) **Filing Answer** -- Respondent must respond to the Specification of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.

(3) **Content of Answer** -- The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.

(4) **Mitigation** -- Respondent has the right to present evidence in

mitigation to the Hearing Committee regardless of whether the substantive allegations of the Specification of Charges are admitted or denied.

(5) **Process** -- Respondent is entitled to fifteen days' notice of the time and place of hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board has promulgated Board Rules relating to procedures and the admission of evidence which are applicable to these procedures. A copy of these rules is being provided to Respondent with a copy of this Petition.

WHEREFORE, the Office of Disciplinary Counsel requests that the Board consider whether the conduct of Respondent violated the District of Columbia Rules of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

OFFICE OF DISCIPLINARY COUNSEL

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