

[Cite as *HSH Investigations, L.L.C. v. Stark Cty. Sheriff's Office*, 2021-Ohio-3246.]

HSH INVESTIGATIONS LLC	Case No. 2021-00285PQ
Requester	Judge Patrick M. Sheeran
v.	<u>DECISION AND ENTRY</u>
STARK COUNTY SHERIFF'S OFFICE	
Respondent	

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{¶1} Requester HSH Investigations, LLC (HSH) objects to a Special Master's Report and Recommendation in this public-records case. HSH's objections are not well-taken for reasons set forth below.

### **I. Background**

{¶2} On May 25, 2021, HSH filed a complaint alleging Respondent Stark County Sheriff's Office (Sheriff's Office) denied HSH public records in violation of R.C. 149.43(B). The Court appointed a Special Master who referred the case to mediation. After mediation failed to resolve all disputed issues between the parties, the case was returned to the docket of the Special Master. The Sheriff's Office moved for a Civ.R. 12(B)(6) dismissal and alternatively moved for a summary judgment under Civ.R. 56.

{¶3} On July 6, 2021, the Special Master issued a Report and Recommendation (R&R). The Special Master recommends denying the Sheriff's Office's motion to dismiss. (R&R, 2.) The Special Master further "recommends the court find that HSH has failed to establish by clear and convincing evidence that the Sheriff's Office violated R.C. 149.43(B) with respect to its request for records related to criminal investigations and prosecution" and "recommends that costs be assessed to requester." (R&R, 7.)

{¶4} On July 19, 2021, HSH filed written objections to the R&R. The Sheriff's Office opposes HSH's objections, and it asks the Court to adopt the R&R in its entirety and enter an order dismissing HSH's complaint.<sup>1</sup>

## II. Law and Analysis

### A. Legal Standard

{¶5} R.C. 2743.75(F)(2) governs objections to a special master's report and recommendation. Under R.C. 2743.75(F)(2), either party "may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk and sending a copy to the other party by certified mail, return receipt requested. \* \* \* If either party timely objects, the other party may file with the clerk a response within seven business days after receiving the objection and send a copy of the response to the objecting party by certified mail, return receipt requested. The court, within seven business days after the response to the objection is filed, shall issue a final order that adopts, modifies, or rejects the report and recommendation."

### B. Discussion

{¶6} HSH's objections are not well-taken for several reasons.

{¶7} First, Connie Mayhugh—who filed written objections on behalf of HSH Investigations—does not appear to be able to lawfully prosecute HSH's objections before the Court. HSH represents to the Court that it is a limited liability company (LLC). Since HSH is a limited liability company, HSH therefore may be represented in an Ohio court only by a licensed attorney. *See Disciplinary Counsel v. Kafele*, 108 Ohio St.3d 283, 2006-Ohio-904, 843 N.E.2d 169, ¶ 18; *Ohio State Bar Assn. v. Ross*, 154 Ohio St.3d 328, 2018-Ohio-4247, 114 N.E.3d 179, ¶ 1, citing *Kafele, supra*. In the

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<sup>1</sup> Respondent Stark County Sheriff's Office's response in opposition was served by "electronic and/or Regular U.S. Mail, postage prepaid," according to a proof of service accompanying the response. The response does not comport with R.C. 2743.75(F)(2)'s procedural requirements. *See* R.C. 2743.75(F)(2) (providing that "[i]f either party timely objects, the other party may file with the clerk a response within seven business days after receiving the objection and *send a copy of the response to the objecting party by certified mail, return receipt requested*" (emphasis added)).

objections, however, Mayhugh does not identify herself as an Ohio licensed attorney. And a review of the docket shows that the Court has not granted permission for Mayhugh to appear pro hac vice. Because Mayhugh does not appear to be a licensed Ohio attorney or an attorney who has been granted permission to appear pro hac vice in this Court, Mayhugh may not prosecute HSH's objections in this instance. See *generally Cleveland Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, ¶ 22, citing *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650 (1934), paragraph one of the syllabus. ("[a]ny definition of the practice of law inevitably includes representation before a court, as well as the preparation of pleadings and other legal documents, the management of legal actions for clients, all advice related to law, and all actions taken on behalf of clients connected with the law").<sup>2</sup>

{¶8} Second, HSH's objections are not accompanied by proof of service that certifies that HSH sent a copy of the objections to the other party by certified mail, return receipt requested, as required by R.C. 2743.75(F)(2). Thus, even if Mayhugh lawfully could prosecute HSH's objections, HSH's objections fail to comply with R.C. 2743.75(F)(2)'s procedural requirements. See *Justice v. Lutheran Social Servs.*, 10th Dist. Franklin No. 92AP-1153, 1993 Ohio App. LEXIS 2029, at \*6 (Apr. 8, 1993) ("[w]hile one has the right to represent himself or herself and one may proceed into litigation as a pro se litigant, the pro se litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and the adherence to court rules. If the courts treat pro se litigants differently, the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel"); see also *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352,

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<sup>2</sup> Whether Connie Mayhugh has engaged in the unauthorized practice of law is not an issue for this Court to determine. See *Greenspan v. Third Fed. S. & L. Assn.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567, ¶ 16 ("the Supreme Court of Ohio has exclusive jurisdiction over the practice of law in Ohio, including the unauthorized practice of law"); see also Gov.Bar R. VII, Section 2 (jurisdiction and powers of the Board on the Unauthorized Practice of Law of the Supreme Court). Compare R.C. 2743.03(A) (jurisdiction of the Ohio Court of Claims).

2003-Ohio-6448, 800 N.E.2d 25, ¶ 10, quoting *Sabouri v. Ohio Dept of Job & Family Servs.*, 145 Ohio App. 3d 651, 654, 763 N.E.2d 1238 (2001) (“[i]t is well established that *pro se* litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel”).

{¶9} Third, HSH’s contention that its public-records request is being denied based on “speculation” that HSH was hired to acquire public records by Daemon Ford (an incarcerated person) is unpersuasive. In the objections HSH acknowledges that HSH and Ford have a “contractual agreement.” And in the R&R the Special Master found that

the Sheriff’s Office has shown by clear and convincing evidence that HSH was in privity with and the designee of a person who is incarcerated pursuant to a criminal conviction. There is no evidence in the record that either HSH or its client Daemon Ford complied with R.C. 149.43(B)(8) to obtain the mandatory finding of the sentencing judge prerequisite to any public records request for investigatory records on Mr. Ford’s behalf. The special master concludes that the Sheriff’s Office was not required to allow HSH to inspect or copy records of any criminal investigation.

(R&R, 6.)

{¶10} Thus, regardless of HSH’s motivation for seeking records in this case, the law is clear that it must comply with R.C. 149.43(B)(8). And, as the Special Master noted in the paragraph quoted above, it is clear that HSH has failed to do so.

{¶11} Finally, HSH’s apparent reliance on the federal Freedom of Information Act (FOIA) is unavailing in this instance. See *State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 32 (“FOIA does not apply to nonfederal agencies or officers”); see also 5 U.S.C. 551(1) and 552(f).

{¶12} The Court holds that, notwithstanding HSH's objections, the Special Master has identified the pertinent issues and reached the correct legal determination in the R&R based on the ordinary application of statutory law and case law, as they existed at the time of the filing of the complaint.

### **III. Conclusion**

{¶13} The Court OVERRULES HSH's objections. The Court adopts the Special Master's R&R. In accordance with the Special Master's recommendation, the Court DENIES the Sheriff's Office's motion to dismiss. Judgment is rendered in favor of the Sheriff's Office. Court costs are assessed to HSH. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK E. SHEERAN  
Judge