

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, : Case No. 06-738
Relator, : (BCGD Case No. 05-044)
v. :
Thomas J. Manning, :
Respondent. :

**OBJECTIONS OF RESPONDENT TO FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDATION OF BOARD OF COMMISSIONERS ON GRIEVANCES
AND DISCIPLINE; RESPONSE TO SHOW CAUSE ORDER; BRIEF IN SUPPORT**

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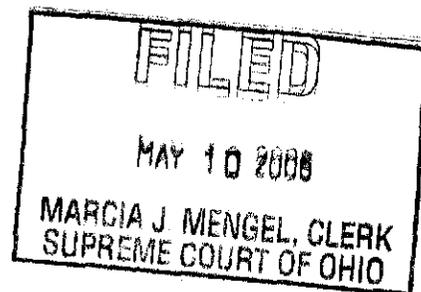


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Now comes Respondent, Thomas J. Manning, by and through counsel, and doe hereby submit the following objections to the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline ("Board"), which was filed on or about April 13, 2006. Respondent submits the following brief in support of said objections, and also in response to the Order to Show Cause issued by this Court on April 21, 2006.

STATEMENT OF FACTS

Respondent submits that he is comfortable with the factual findings of the Board, with the exception of paragraph 10 of said findings. The Board's wording in that paragraph is contradictory to paragraphs 14 and 15 of the Agreed Stipulations which were filed with the Board on November 30, 2005, and a copy of which is attached to the Board's decision. Respondent would further stress to this Court that there was no harm to the clients because of Respondent's misconduct, as shown by the Board's conclusion of law that Respondent did not violate DR 7-101(A)(3).

OBJECTIONS OF RESPONDENT

THE BOARD ERRED BY NEITHER CITING NOR TAKING INTO CONSIDERATION THE MITIGATION EVIDENCE SUBMITTED AT THE HEARING ATTESTING TO RESPONDENT'S GOOD CHARACTER AND REPUTATION

BCGD Proc.Reg. 10(B)(2) states, in pertinent part:

(2) Mitigation. The following shall not control the Board's discretion, but may be considered in favor of recommending a less severe sanction:

...

(e) character or reputation.

This Court has repeatedly acknowledged and recognized the high degree of importance of evidence demonstrating a respondent's good character and reputation as a mitigating factor in considering the sanction to be imposed. *E.g. Disciplinary Counsel v. Runyan* (2006), 108 Ohio St.3d 43, 840 N.E.2d 623. From even a cursory review of this Court's disciplinary case law, the submission of such evidence by a respondent and its consideration by the Board is noted by this Court in its decisions. The existence of such evidence is always acknowledged. In the instant case Respondent, pursuant to an agreed stipulation with Relator at his hearing before the panel, submitted three letters into evidence attesting as to his good character and reputation. The letters were marked as Exhibits 10, 11, and 12. One letter was from Mike Flor, a former client of Respondent. The second letter was from Montgomery County Common Pleas Judge A.J. Wagner, and the third letter was from Chris Albrekton, Assistant Executive Director of the Dayton Bar Association. All three letters are provided herein as Appendix pages 17-19 for the Court's review.

However, the Board's decision makes no reference to any of these three letters. Paragraphs 22 through 29 of the decision, located on pages 7 and 8, set forth all aggravating and mitigating factors found to be present, but the evidence of Respondent's good character and reputation are not mentioned at all. Nothing in the entirety of the decision conveys any impression that this evidence was considered in the Board's decision-making process. Respondent has been prejudiced by the fact that this evidence was not cited, and apparently not considered by the Board. Clearly, it is significant that a sitting common pleas judge has written the Board positively attesting as to Respondent's character and reputation. It should be even more significant that the Dayton Bar Association, which has its finger on the pulse of the local legal community, is well aware of the reputation of local attorneys, and has a certified grievance

committee to monitor the ethical behavior of its member attorneys, unequivocally stated its support for Respondent and his practice. Ms. Albrektson's letter stated as follows:

"I have received many calls from clients thanking us for referring them to Mr. Manning. These clients found him to be extremely knowledgeable and helpful with their legal situation."

...

"I am eagerly awaiting the time when Mr. Manning will be able to be an active member of the LRS panel. His attitude and method of professionalism in the legal community is something to which all attorneys should aspire."

Mr. Flor's letter was of the same tenor and content.

In addition, Respondent made the Board aware that he is a member of the Greater Dayton Volunteer Lawyers Project, where he handles numerous *pro bono* civil and domestic relations cases per year, accepts domestic relations cases through the Montgomery County appointed counsel program, and has been a member of the Dayton Bar Association Bar Exam & Qualifications Committee and Fee Dispute Resolution Committee. None of this positive evidence was mentioned by the Board in its decision.

Respondent asks this Court to find that the Board erred by neither considering nor mentioning this evidence in its decision, and that it further erred by not finding this evidence to be a mitigating factor in Respondent's favor. Respondent further asks this Court to evaluate this evidence and consider it in favor of a lesser sanction than the two-year actual suspension advocated by the Board.

THE BOARD FURTHER ERRED BY NOT TAKING INTO CONSIDERATION ANY OF THE CASELAW CITED BY RESPONDENT IN HIS POST-HEARING BRIEFS

During the first week of January 2006, following the December 15, 2005 hearing, Respondent and Relator filed post-hearing briefs. Respondent also filed a reply to Relator's brief on January 19, 2006. Respondent cited a wealth of cases to the Board in support of his positions,

thus providing examples that the Relator's recommendation was inappropriate. Indeed, one case very closely on point with Respondent's, *Toledo Bar Assn. v. Hickman* (2005), 107 Ohio St.3d 295, 839 N.E.2d 24, had been decided by this Court just days before the briefs were filed. Yet not one mention was made in the Board's decision of any of the cases cited by Respondent. As with Respondent's mitigation evidence, it appears that the Board did not consider any of this case law. Respondent asks this Court to find that the Board erred in so doing, and to consider same in support of his argument below that the Board's recommendation is excessive and that a lesser sanction is warranted.

THE SANCTION RECOMMENDED BY THE BOARD IS UNDULY HARSH AND IS NOT COMMENSURATE WITH THE MISCONDUCT, THE AGGRAVATING AND MITIGATING FACTORS, AND THE DISCIPLINARY RULE VIOLATIONS

At the heart of this matter is Respondent's stipulated violation of DR 1-102(A)(4). Relator sought a two-year actual suspension, while Respondent sought stayed suspension, with monitoring if appropriate. The Board recommended a two-year actual suspension. Respondent submits that the Board's recommendation is unduly harsh and not commensurate with the circumstances in this case.

In support of their advocated sanction, Relator cited the panel to three cases: *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 658 N.E.2d 237; *In Re Vivas* (1999), 692 N.Y.S.2d 742, a New York case; and *Disciplinary Counsel v. Insley* (2004), 104 Ohio St.3d 424, 819 N.E.2d 1109. Of these, only *Fowerbaugh* should be of any relevance to this Court.

In *Fowerbaugh*, this Court held that an attorney who had committed a violation of DR 1-102(A)(4) would be "actually suspended from the practice of law for an appropriate period of time." However, as will be discussed further below, the history of cases decided by the Court since *Fowerbaugh* is replete with examples that show that such is not always the case, and that

the two-year actual suspension sought by relator, and recommended by the Board, is unduly harsh and unsupported by the facts and law.

Indeed, in *Fowerbaugh*, the Respondent was given only a six-month suspension. The Respondent in *Fowerbaugh* had been retained by an out of state client to pursue a paternity and child support action, but then ignored the client's repeated phone calls and correspondence about the case over the next 14 months. Thereafter, to placate the client, the Respondent lied to the client and represented that a paternity action had been filed in juvenile court, when in fact nothing had been filed. To compound matters, the Respondent then sent the client a bogus complaint with a forged time-stamp, case number, and assigned judge, all purporting to show it had been "filed" with the court. The Respondent also forwarded the client a bogus request for production of documents which he had created. Further, the Respondent advised the client that there was a hearing date set, and the client purchased an airline ticket to travel to the hearing. The Respondent then falsely advised the client that the "hearing date" had been canceled. Thereafter, the Respondent terminated the attorney-client relationship by letter and never admitted his deception to the client. Though the Board recommended a public reprimand, this Court held that an actual six-month suspension was warranted, based not only on the dishonest conduct shown, but also because it found that the Respondent had fabricated actual court documents and made repeated attempts to justify his conduct by blaming the court instead of accepting responsibility for his actions.

In *Disciplinary Counsel v. Crowley* (1996), 76 Ohio St.3d 365, 667 N.E.2d 1183, a two-year suspension was imposed, with one year stayed on condition that the Respondent obtain treatment for depression. Relator had sought an indefinite suspension. However, the conduct in *Crowley* was much more serious than in the case at bar. The Respondent in *Crowley* had

deceived three separate clients as to the status of their cases, including the City of Rossford. One of the clients deceived was in relation to a medical malpractice case. However, unlike in the case at bar, the underlying case had merit, and the Respondent ultimately paid the clients \$15,000.00 to settle a malpractice claim. Further, the Respondent had practiced law while failing to register as an attorney. Also, Respondent initially failed to cooperate in the disciplinary process in the investigation stage.

In *Cincinnati Bar Assn. v. Fidler* (1998), 83 Ohio St.3d 396, 700 N.E.2d 323, the Respondent was given an eighteen-month suspension, with one year stayed. The Respondent had been convicted of shoplifting, and then testified falsely in the disciplinary investigation by withholding the fact that he had a prior shoplifting conviction. In addition, the Respondent had practiced law while failing to timely register in five successive bienniums.

Significantly, in *Disciplinary Counsel v. Eisenberg* (1998), 81 Ohio St.3d 295, 690 N.E.2d 1282, the Respondent received a public reprimand rather than an actual suspension for a DR 1-102(A)(4) violation. In this case, the Respondent's secretary traced the signatures of several estate beneficiaries on estate documents which were then filed with the probate court. The Board's recommendation, which was adopted by this Court, was based on the fact that the Respondent's actions were an "isolated incident in an otherwise unblemished legal career and not a course of conduct." There was also no underlying financial harm to the clients.

The holding and reasoning in *Eisenberg* was restated by this Court in *Dayton Bar Assn. v. Kinney* (2000), 89 Ohio St.3d 77, 728 N.E.2d 1052, as well as *Toledo Bar Assn. v. Kramer* (2000), 89 Ohio St.3d 321, 731 N.E.2d 643. In *Kinney*, the Respondent falsified the sale price for a bar on forms required by the Department of Liquor Control. The Respondent was given a stayed six-month suspension; in light of the facts of the case and that there was no change in the

result of the underlying case. In *Kramer*, the Respondent converted for personal use over \$3,000.00 in client funds which were being held in trust to pay medical expenses, but were later repaid by the Respondent. The panel recommended a public reprimand, and the Board recommended a one-year suspension, all stayed, on condition that Respondent continue treatment for depression.

In *Disciplinary Counsel v. Allison* (2000), 90 Ohio St.3d 296, 737 N.E.2d 955, the Respondent was suspended for two years, with one year stayed. The Respondent had lied to the probate court that he had received only \$1,000.00 in fees for estate work, when he had actually received another \$6,000.00. In the forms filed with the court, the Respondent misrepresented part of the \$6,000.00 as a payment to an estate heir. Further, even as of the time of this Court's decision, the Respondent had failed to reimburse the estate the \$6,000.00, despite having represented to the court over three years earlier that the funds would be repaid.

In *Cincinnati Bar Assn. v. Buckley* (2002), 94 Ohio St.3d 333, 763 N.E.2d 116, the Respondent was suspended for two years, with the second year stayed on conditions. The Respondent had concealed the prepayment of a promissory note to the detriment of his client's partners. Once the fraud was discovered and litigation commenced, the Respondent undertook settlement discussions with the adverse party without the knowledge of his client. This Court found that the settlement discussions were undertaken by the Respondent solely to avoid fraud and ethics allegations being made against him. The Respondent then proceeded to sign a joint pretrial statement filed with the court that contained false and inaccurate stipulations, and failed to prepare the case for trial. As a result, Respondent's client "incurred substantial financial damages."

In *Dayton Bar Assn. v. Suarez* (2002), 97 Ohio St.3d 235, 778 N.E.2d 569, the Respondent received an eighteen-month suspension with nine months of the suspension stayed. The Respondent had a prior disciplinary record. In this case, the Respondent had been retained by a client in a divorce which had been filed against him. The client specifically advised the Respondent that he wanted custody of his children because his wife could be abusive. The Respondent then failed to file responsive pleadings or otherwise defend her client in a divorce proceeding. The result was that an adverse divorce decree was entered against the client. The client also could not obtain custody of his two youngest children until they had suffered domestic assaults. In the investigation of the complaint, Respondent attempted to deceive the Dayton Bar Association by representing that records submitted were work performed on behalf of the client, when the date on the records was after the representation ceased. The Respondent also changed her testimony at various times during the investigation. Further, the Respondent showed a lack of candor, remorse, and failed to take responsibility for her misconduct.

The Respondent in *Disciplinary Counsel v. Markijohn* (2003), 99 Ohio St.3d 489, 794 N.E.2d 24, received a stayed six-month suspension. The Respondent had failed to make necessary retirement contributions to his firm's account, but reported to the firm that he had. He also filed false federal and state tax returns claiming the unmade contributions as deductions. The Respondent had settled all tax issues and made restitution. This Court, in imposing a stayed suspension, held "an abundance of mitigating evidence can justify a lesser sanction [than an actual suspension]." 99 Ohio St.3d at 490 (bracketed material added).

In *Portage Cty. Bar Assn. v. Mitchell* (2003), 101 Ohio St.3d 1, 800 N.E.2d 1106, the Respondent was given a six-month stayed suspension. The Respondent had aided a non-lawyer (who happened to be a convicted felon) in the unauthorized practice of law. The Respondent

then represented his firm to be “Mitchell and Associates” when he was the sole attorney. The client was unable to obtain the zoning modification for which he had retained the Respondent.

In *Cincinnati Bar Assn. v. Statzer* (2003), 101 Ohio St.3d 14, 800 N.E.2d 1117, the Respondent was given a stayed six-month suspension. The Respondent was initially charged with inducing a legal assistant to execute a false affidavit to avoid discipline, and failing to report unethical behavior of which she was aware. These two charges were later dismissed for a lack of clear and convincing evidence. During a deposition of the legal assistant in the disciplinary proceeding, the Respondent placed several cassette tapes in front of the witness. She then suggestively labeled and referred to them during questioning, implying that they contained material which could impeach the witness. In fact, the tapes were either blank or contained material unrelated to the witness. The Relator sought an indefinite suspension, while the Respondent sought a public reprimand.

In *Disciplinary Counsel v. Cuckler* (2004), 101 Ohio St.3d 318, 804 N.E.2d 966, the Respondent received a public reprimand pursuant to a consent to discipline agreement.¹ The allegations against Respondent pertained to conduct which occurred before Respondent was even admitted to the bar. Respondent had been hired by the Speaker of the Ohio House of Representatives as “Deputy Chief Legal Counsel,” and held himself out to the public as such, including in an application for a seat on the Delaware City Council, despite the fact that he had yet to pass the bar.

In *Disciplinary Counsel v. Hutchins* (2004), 102 Ohio St.3d 97, 807 N.E.2d 303, the Respondent received a six-month suspension. The Respondent was charged with two separate counts of misconduct arising out of his representation of a client in a divorce. First, the

¹ Respondent testified before the Board that he attempted on more than one occasion to discuss and negotiate a consent to discipline agreement. However, Relator refused these attempts.

Respondent fabricated a court order, including a magistrate's signature, opposing counsel's signature, and time-stamp, in order that his client would receive all proceeds of the sale of the marital residence. The fabricated order was faxed to an escrow agent for use at closing. Second, the Respondent made an agreement with his client to accept a fee as a sales agent for the sale of the marital residence, in addition to his fee for the divorce. The Respondent did not disclose to opposing counsel that he would be the recipient of the fee. Rather, it was disclosed on the closing documents as an attorney fee, but on the version that went to opposing counsel, it was disclosed as a "sales agent fee." This Court found that Respondent's conduct took advantage of opposing counsel's efforts to reach an amicable settlement in a contentious divorce.

The Respondent in *Disciplinary Counsel v. Jaffe* (2004), 102 Ohio St.3d 273, 809 N.E.2d 1122, was given a two-year suspension, with the second year stayed. The Respondent had neglected to work cases for four separate clients, all of whom lost their ability to pursue valid personal injury claims. The Respondent then lied to all of the clients about the status of their cases, and in one case falsely advised a client to accept a \$250.00 settlement offer which did not exist. The settlement had been paid by the Respondent out of his IOLTA account simply to placate the client. In addition, the Respondent used his IOLTA account to pay personal and business expenses over a four-year period.

In *Disciplinary Counsel v. King* (2004), 103 Ohio St.3d 438, 816 N.E.2d 1040, the Respondent was given a two-year suspension, with one year stayed. The Respondent had been previously suspended in 1990 for one year after a federal conviction for filing false tax returns. The Respondent had also been suspended for six months in 1996 for neglecting a legal matter and then repeatedly lying to his client about it. In the 2004 case, the Respondent did not advise his clients that their case had been dismissed on a summary judgment motion, and that he needed

to file a Civ. R. 60(B) motion. The Respondent ultimately paid his clients \$75,000.00 to privately settle a malpractice claim, since the underlying case had merit. Of importance to this Court was that the Respondent's conduct did not harm the client. 103 Ohio St.3d at 443. Further, based on the Respondent's multiple instances of prior disciplinary matters, this court also held that it would deal more harshly with cumulative misconduct than isolated misconduct. *Id.* at 442 (citing *Florida Bar v. Temmer* (Fla.1999), 753 So.2d 555).

In *Cleveland Bar Assn. v. Lehotsky* (2005), 105 Ohio St.3d 226, 824 N.E.2d 534, the Respondent only received a one-year actual suspension. The Respondent had accepted a retainer to prepare wills for a husband and wife. Respondent never did so, even after the clients made numerous attempts to contact him over a period of several months. Further, the Respondent never refunded the clients' retainer. In addition, Respondent failed to cooperate in the investigation or disciplinary process, leading to a default against him. Further, the Respondent had failed to keep current on his CLE requirements, and also had failed to pay a \$150.00 sanction levied against him for the CLE lapse.

In *Toledo Bar Assn. v. Lowden* (2005), 105 Ohio St.3d 377, 826 N.E.2d 836, the Respondent received a stayed two-year suspension. The Respondent had failed to follow through on two cases for which he had been retained. Additionally, in one of them, a divorce proceeding, the Respondent forged his client's signature on child support worksheets which were filed with the court and notarized the signatures as genuine. Respondent also failed to cooperate during the disciplinary investigation, and had previously been suspended for being in default on a child support order. Respondent's mental illness was found to play a part in his misconduct. Of note, *Lowden* is the only case that has ever cited *Disciplinary Counsel v. Insley*. In citing

Insley, this Court clearly stated that its holding was only applicable to situations involving the fabrication of actual court documents. 105 Ohio St.3d at 380, 826 N.E.2d at 839-840.

In *Disciplinary Counsel v. Carroll* (2005), 106 Ohio St.3d 84, 831 N.E.2d 1000, a stayed six-month suspension was imposed. In this case, the Respondent falsified time sheets submitted for compensation for his position as a member of the Ohio State Barber Board. Respondent ultimately was found guilty of a charge of dereliction of duty, a second-degree misdemeanor, in Franklin County Municipal Court, and made full restitution of over \$5,000.00. This Court found that these factors, among others, did not necessitate an actual suspension to protect the public.

In *Disciplinary Counsel v. Johnson* (2005), 106 Ohio St.3d 365, 835 N.E.2d 354, this Court imposed a one-year suspension, with six months stayed. The Respondent had “seriously” overcharged for her services as court-appointed counsel in juvenile court. This misconduct occurred in regard to multiple clients and involved padded and double-billing. The falsified billings came via application forms which Respondent completed and submitted to the juvenile court. Respondent also failed to acknowledge the wrongdoing of her conduct and pointed to her acquittal on criminal charges as a defense to her disciplinary complaint. Respondent had also failed to make restitution to the county for the over billing. *See also Disciplinary Counsel v. Holland* (2005), 106 Ohio St.3d 372, 835 N.E.2d 361 (companion case to *Johnson*- same allegations and same sanction imposed).

In *Columbus Bar Assn. v. Moesle* (2005), 106 Ohio St.3d 475, 835 N.E.2d 1259, the Respondent was indefinitely suspended. The Respondent represented a client in a divorce proceeding. He then lied to his client that a hearing in her case had been continued, when it hadn't, and later that the court had issued a warrant for her husband's arrest for failing to submit for DNA testing, when it hadn't. Respondent failed to respond to his client's telephone calls,

and voluntarily dismissed her case without her consent or notifying her. Respondent then failed to return the client's retainer, completely failed to acknowledge wrongdoing or cooperate in the disciplinary process, and harmed a vulnerable client. This Court found that Respondent's failure to cooperate or acknowledge wrongdoing gave rise to the severe sanction. 106 Ohio St.3d at 477, 835 N.E.2d at 1261 (citing *Columbus Bar Assn. v. Torian* (2005), 106 Ohio St.3d 14, 829 N.E.2d 1210).

In *Disciplinary Counsel v. Clafin* (2005), 107 Ohio St.3d 31, 836 N.E.2d 564, a two-year suspension was imposed, with one year stayed. The Respondent settled a client's personal injury case, and then failed to keep the client's share of the proceeds in an IOLTA account. Respondent also used the client's share of the proceeds to pay personal and business expenses. Further, the Respondent never provided a signed release to the insurance company, and did not provide the settlement funds to his client for 32 months. Respondent's conduct also caused serious harm to his client, as the client's son had to delay entry into college for two years due to lack of finances because the settlement funds had not been paid. The Board also did not feel that the Respondent was remorseful or that his explanations for his conduct were sincere.

In *Cuyahoga Cty. Bar Assn. v. Freedman* (2005), 107 Ohio St.3d 25, 836 N.E.2d 559, the Respondent received a twelve-month suspension. Respondent's misconduct involved two clients. First, Respondent failed to file an answer in a foreclosure case, resulting in the sheriff's sale of the client's property. Respondent's malpractice carrier paid a \$35,000.00 settlement. Second, Respondent failed to timely file a client's bankruptcy petition, arrived three hours late for her creditor's meeting, failed to file paperwork reaffirming the debt on the client's car, and then advised the client to hide the vehicle to prevent its repossession. Ultimately, the client's vehicle was repossessed. Additionally, the Respondent had failed to file personal income tax

returns since 1993, and business tax returns since 1998, and admitted he owed over \$200,000.00 in back taxes. Respondent had made no effort to file the past due returns by the time the matter was before this Court, nor had he made any effort to enter into payment plans.

In *Mahoning Cty. Bar Assn. v. Melnick* (2005), 107 Ohio St.3d 240, 837 N.E.2d 1203, the Respondent received a public reprimand. The Respondent falsely represented in summary judgment affidavits that he had witnessed signatures he notarized. *See also Columbus Bar Assn. v. Daugherty* (2005), 105 Ohio St.3d 307, 825 N.E.2d 1094.

Respondent submits that the decision in *Toledo Bar Assn. v. Hickman* (2005), 107 Ohio St.3d 295, 839 N.E.2d 24 should be a guide for this Court's consideration in the instant case. In *Hickman*, this Court imposed a one-year suspension with six months stayed. *Hickman* is instructive and of enhanced relevance in regard to the case at bar. The conduct of the Respondent in *Hickman*, though of a similar nature in general, was much more egregious than that herein. Respondent's conduct involved two separate matters handled for the same family. First, Respondent told his clients that he had filed a wrongful death action in regard to the death of their adult son. However, he never filed the action, and the statute of limitations passed. Respondent continually falsely represented to the clients that the action was proceeding; the probate estate was later closed for lack of an accounting. Even after the family retained new counsel, who discovered the misconduct, Respondent continued to falsely assure the family that all was well and the matter was pending.

Respondent also had been retained to represent the adult child prior to his death in regard to injuries he sustained in a bar fight.² Respondent thereafter voluntarily dismissed the son's claims, without the family's knowledge or consent, and never refiled same. Notwithstanding the

² This Court also noted that Respondent failed to reduce the contingent fee agreements he had with the clients to writing, as required by O.R.C. §4705.15.

fact that he settled the claims of other victims of the same fight, Respondent continued to mislead the family that the case was pending, and that a settlement offer of \$1,000.00 had been made, but that collecting same was a problem.

The sanction imposed was jointly recommended by Relator and Respondent. A significant aggravating factor in the sanction imposed was that both underlying cases were valid and were lost due to Respondent's conduct, though some compensation had been received by the family from a malpractice settlement.

In *Muskingum County Certified Grievance Committee v. Greenberger* (2006), 108 Ohio St.3d 258, 842 N.E.2d 1042, this Court imposed a two-year suspension, with the last six months stayed. The complaint in this case involved misconduct upon six separate clients, most of who were damaged by the misconduct. In addition, Respondent was not fully cooperative and forthcoming in the disciplinary process. Further, Respondent failed to show for oral argument before this Court, and had failed to make restitution to his clients.

In *Erie-Huron Counties Joint Certified Grievance Committee v. Huber* (2006), 108 Ohio St.3d 338, 843 N.E.2d 781, a one-year suspension was imposed. Unlike the instant case, Huber's misconduct involved three separate clients. With regard to one client, Respondent falsely stated that a foreclosure complaint had been filed and a deposition taken, when neither had been done. Further, Respondent collected fees from the client for both unperformed services, and had not made any attempt at restitution. With regard to another client, Respondent failed to file child custody paperwork in spite of repeated promises to do so, fully knowing that the clients desperately wanted to seek custody. Respondent also failed to fully cooperate in the disciplinary process.

Thus, this Court's jurisprudence in the decade following *Fowerbaugh* shows that an actual suspension is not always the result, and that the two-year actual suspension advocated by Relator and adopted by the Board should be considered too harsh. As this Court can see, there have been many occasions where lesser suspensions, or stayed suspensions, have been imposed in situations involving much more serious and egregious conduct, and where the clients were actually harmed by the misconduct, right up until *Huber* which was decided in late March. Again, no evidence was submitted to the Board that the clients in this matter were harmed, and the Board dismissed the allegation that Respondent had violated DR 7-101(A)(3).

The other two cases cited by Relator in support of their advocacy for a two-year suspension lend additional support to Respondent's contention to this Court that such a suspension is unduly harsh and not warranted.

In *In Re Vivas* (1999), 692 N.Y.S.2d 742, the Respondent was retained to pursue a medical malpractice case. Respondent later advised her client that the defendant physicians had filed a summary judgment motion dismissing her claims. In fact, no such motion was pending. To placate her client, who had requested a copy of the motion, Respondent fabricated a summary judgment motion using the firm name of the Defendants' attorneys, as well as an alleged affidavit from a physician. The documents were then provided to the client under the pretense that they were authentic. A two-year actual suspension was imposed, based mainly on the fact that she had fabricated actual court pleadings, including the affidavit of a physician, to deceive her client. *Vivas* is dissimilar to the instant case based on the involvement of the actual fabrication of court documents.

More significantly, a review of New York case law coming before and after *Vivas* shows that *Vivas* is an excessive aberration in New York disciplinary jurisprudence. For example, in

Matter of Norman LeBlanc (1998), 674 N.Y.S.2d 524, a six-month suspension was imposed.

The Respondent in *LeBlanc* not only misrepresented the status of a case to his clients, he altered dates on which his client's signatures were notarized on a summons and complaint filed with the court, and presented to his clients a fictitious order purporting to be the order of a trial court judge. The Respondent had an unblemished record and expressed remorse for his conduct.

Further, in *Matter of Levantino* (2000), 712 N.Y.S.2d 575, a one-year suspension was imposed. The Respondent in *Levantino* has been retained in 1985 to pursue a medical malpractice case. Notwithstanding the fact that his law firm ordered him to withdraw, he failed to do so. The Respondent left his firm in 1988 and abandoned the client's file to lay dormant, resulting in the passing of the statute of limitations. In 1992, the client and his mother contacted Respondent to inquire as to the status of the case. Respondent then falsely advised them the case was viable and active. Four years later, in 1996, Respondent was again contacted by the client and his mother inquiring as to the status of the case. Respondent continued to lie, and ultimately advised the client he had obtained a \$40,000.00 judgment in the client's favor. Eventually, the Respondent issued a check to the client out of his personal checking account fully knowing the check would not be honored, simply to placate the client. Respondent had done nothing to make restitution to the client, who had a viable underlying case. In spite of the fact that the Respondent's misconduct had persisted over a decade involving numerous deceptions, and that Respondent deliberately wrote a bad check out of a personal account to deceive the client, only a one-year suspension was imposed.

In *Matter of Haberman* (2006), 807 N.Y.S.2d 621, the Respondent was publicly reprimanded. The Respondent had been retained in 1992 to pursue an annulment. He failed to do anything on the case until 1999, when he was admonished by the grievance committee for

neglecting the case. The Respondent then failed to comply with a court order and timely submit paperwork finalizing the matter. In 2002, the client again complained to the grievance committee because Respondent had failed to finalize the matter. The matter was not resolved until 2004. Additionally, the Respondent lied to his client that he had re-filed the necessary paperwork with the court when he had not. The Respondent also had a prior disciplinary record.

In *Insley*, a 4-3 decision by this Court, an indefinite suspension was imposed. However, there are significant differences which render the conduct in *Insley* much worse than the case at bar. In *Insley*, the Respondent, who had only been in practice for a little over a year when the misconduct occurred, had been retained to obtain temporary custody of the client's cousin for school purposes. The Respondent wrote to the school and advised the school that she was in the process of obtaining the custody order, and enclosed copies of pleadings she intended to file with the juvenile court the same day. In fact, almost three months later, no such papers had been filed. When the client inquired as to the status of the proceeding, Respondent fabricated a custody order using photocopied and transposed signatures of a judge and magistrate, and which purported to have been filed with the court. Respondent then faxed the fabricated documents to the school in order that the juvenile could remain enrolled, and she falsely advised the school that all papers had been filed to change custody. The misconduct was discovered by her firm several months later. Respondent then failed to cooperate or participate in the disciplinary process, leading to a default finding. The determinative factors in the severe sanction imposed by this Court were the Respondent's lack of cooperation in the disciplinary process, and her fabrication of the signatures of two judicial officers along with time-stamps. In the present case, there was no fabrication of any court documents, there were no forgeries of a judge or magistrate and no fictitious time-stamps. Further the Respondent immediately admitted all wrong-doing

when contacted by another attorney and has been totally cooperative during the disciplinary process even offering a consent to discipline agreement.

The magnitude of the egregious conduct in *Insley* places that case in an arena far removed from the present situation.

Additionally, as was discussed above, this Court has cited *Insley* in only one other decision: *Toledo Bar Assn. v. Lowden* (2005), 105 Ohio St.3d 377, 826 N.E.2d 836, and made it clear in said decision that *Insley*'s holding was only applicable to cases where actual court documents had been fabricated. No such misconduct occurred in this case.

As such, Respondent submits to this Court that the two-year actual suspension recommended by the Board is excessive when considered in light of the cases which have been decided by this Court in the years since *Fowerbaugh*. Further, neither *Vivas* nor *Insley* withstand in-depth scrutiny as being persuasive or even relevant to this case. Indeed, both buttress Respondent's position that a stayed suspension would be appropriate and would adequately address the misconduct at issue.

A STAYED SUSPENSION IS THE APPROPRIATE SANCTION

As discussed above, this Court has consistently held that where misconduct is an isolated incident in an otherwise unblemished career, and little or no harm results to the clients, a stayed suspension is merited. *Disciplinary Counsel v. Eisenberg* (1998), 81 Ohio St.3d 295, 690 N.E.2d 1282; *Dayton Bar Assn. v. Kinney* (2000), 89 Ohio St.3d 77, 728 N.E.2d 1052; *Toledo Bar Assn. v. Kramer* (2000), 89 Ohio St.3d 321, 731 N.E.2d 643. Respondent has been admitted to practice since 1992, and has no disciplinary history in nearly fourteen years of practice. Further, as affirmed by the Board's decision, the clients were not harmed by Respondent's misconduct. Full restitution has been made. Respondent admitted his misconduct, and has cooperated fully

with the investigation by Relator and with the disciplinary process. Respondent made numerous overtures regarding consent to discipline, which were rebuffed by Relator. Respondent has demonstrated remorse throughout the proceedings, and sought a personal meeting with the clients and their counsel in order to personally apologize to them. Their counsel denied Respondent's request. Respondent also has submitted evidence of his good character and reputation, including statements from a sitting judge as well as the Dayton Bar Association, which looks forward to begin referring cases to Respondent again.

In addition, as mentioned above, Respondent is a member of the Greater Dayton Volunteer Lawyers Project, where he handles numerous *pro bono* civil and domestic relations cases per year. He accepts domestic relations cases through the Montgomery County appointed counsel program. He has been a member of the Dayton Bar Association Bar Exam & Qualifications Committee and Fee Dispute Resolution Committee. Respondent has been a positive contributor to the Dayton legal community, and looks forward to continuing to do so throughout the balance of his career.

An additional mitigating factor for this Court to consider is that Respondent represented the same clients during this time period regarding a personal injury matter arising out of a traffic accident, and negotiated a favorable settlement for them. Relator, as part of the investigation into the misconduct at issue, reviewed the file regarding this matter, and found that Respondent had properly and competently handled the case. This matter not only involves misconduct involving only one client; it concerns only one matter pertaining to the one client.

Respondent has also taken affirmative steps to insure that the misconduct in this matter does not happen again. As stated by the Board in its decision, Respondent consults with David F. Rudwall, an attorney with many years of experience, about any medical malpractice calls he

may get. As of this writing, Respondent has not taken on another malpractice case, and would only do so as co-counsel with Mr. Rudwall. Further, Respondent has hired an office assistant, and has implemented a file calendar system that requires him to review every file in his office at least once a week.

CONCLUSION

As this Court has held, each case of professional misconduct must be decided on the unique facts and circumstances presented. *Toledo Bar Assn. v. Abood* (2004), 104 Ohio St.3d 655, 821 N.E.2d 560. Respondent did commit wrongdoing, and should be sanctioned for same. However, taking into consideration the unique facts and circumstances presented, the appropriate sanction is a stayed suspension, not an actual one. Respondent has admitted fully to his conduct, and cooperated with all aspects of the investigation and disciplinary process from its initial discovery, first with the clients' counsel, to the investigation by Relator, and ultimately to the proceedings before the Board. Based on all of the above, Respondent submits that a stayed suspension is appropriate given the circumstances. Clearly, the two-year actual suspension suggested by Relator is grossly excessive and unduly harsh. This is supported by the case law following *Fowerbaugh* which is fully discussed above, as well as this Court's decisions, most notably *Hickman* that imposed a one-year suspension with six months stayed, for conduct worse than that in this case, and where the clients were actually irreparably harmed by the misconduct due to their inability to pursue viable cases. The case law cited by Relator is neither persuasive nor commensurate with the misconduct herein. Respondent wants to make it clear that the "pattern" of misconduct to which he stipulated refers to conduct occurring within the representation of Alfred & Nollie Combs, and not multiple instances of misconduct involving

multiple clients. As shown, the misconduct was related to one case involving the Combs, another case was handled completely and settled in favor of the clients. This unfortunate situation is a clear aberration on an otherwise unblemished career. Respondent simply wants an opportunity to show the bench and bar of Ohio that he is worthy of a chance to continue to practice law and demonstrate that this misconduct was an aberration and not the norm. As such, Respondent asks this Court not to follow the recommendations of the Board and instead to impose a stayed suspension, with monitoring if deemed appropriate.

Respectfully submitted,



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Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent to Jonathan E. Coughlan, Esq./Joseph M. Caliguiri, Esq., Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215, this 9 day of May, 2006.



William G. Knapp, III
Attorney for Respondent

APPENDIX

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re:	:	
Complaint against	:	Case No. 05-044
Thomas Manning	:	Findings of Fact,
Attorney Reg. No. 0059759	:	Conclusions of Law and
Respondent	:	Recommendation of the
Disciplinary Counsel	:	Board of Commissioners on
Relator	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
	:	
	:	

INTRODUCTION

This matter was heard on Thursday, December 15, 2005, at the Ohio Judicial Center, Columbus, Ohio before a Panel consisting of David C. Comstock and Judge Joseph Vukovich, both of Youngstown, Ohio and Panel Chair, Paula Hicks-Hudson of Toledo, Ohio. This hearing on the merits was conducted pursuant to Gov. Bar R. V. Sec. 6. None of the panel members was from the appellate district from which the Complaint originated or served as members of the Probable Cause Panel that certified this matter to the Board.

The Respondent was present and represented by William Knapp. The Relator was represented by Joseph Caligiuri of the Office of Disciplinary Counsel.

PROCEDURAL BACKGROUND

The Complaint in this matter was filed on April 18, 2005 and served upon the Respondent. The Complaint set forth One Count against the Respondent alleging that he was guilty of misconduct having violated the following Disciplinary Rules:

DR 1-102(A)(4), Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

DR 1-102 (A)(5), Engage in conduct that is prejudicial to the administration of justice;

DR 1-102 (A)(6), Engage in conduct that adversely reflects on the lawyer's fitness to practice law;

DR 2-106(A), Enter into an agreement for, charge, or collect an illegal or clearly excessive fee;

DR 2-110(A)(3), A lawyer who withdraws from employment shall refund promptly part of a fee paid in advance that has not been earned;

DR 6-101(A)(3), Neglect a legal matter entrusted to him;

DR 6-102, A lawyer shall not attempt to exonerate himself from or limit liability to a client for personal malpractice;

DR 7-101(A)(2), Intentionally fail to carry out a contract of employment entered into with a client;

DR 7-101(A)(3), Intentionally prejudice or damage his client during the course of the professional relationship; and,

DR 9-102(A), All funds paid to a lawyer or law firm, other than for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein.

Respondent filed his Answer, pro se, on June 29, 2005 admitting to facts relating to making false statements to the Combs and denying the remaining allegations of the

Complaint. He later was represented by William Knapp who filed his entry of appearance ten days prior to the hearing.

At the time of the Hearing, the Relator elicited testimony from the Respondent to corroborate his signature and his acknowledgment of the facts contained in the Agreed Stipulations and Stipulated Exhibits, which supported the allegations in the Complaint. After the hearing, the record remained open until January 6, 2006, for the parties to file their trial briefs.

FINDINGS OF FACT

The Panel finds that the following facts have been established by clear and convincing evidence:

1. Respondent Thomas Manning was licensed to practice on November 9, 1992, having graduated from the University of Dayton College of Law and is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. On or about March 12, 2000, Respondent was hired by Alfred and Nollie Combs (hereinafter referred to as the Combs) for a medical malpractice action.
3. In July 2000, the Respondent contacted Attorney Jon Lafferty from the Toledo, Ohio Law Firm of Williams, Jilek, Lafferty, Gallagher & Scott for assistance in evaluating and litigating the case.
4. On July 21, 2000, Lafferty requested a fee of \$ 1,000 for an expert to evaluate the case.

5. On November 21, 2000, at Respondent's request the Combs paid the \$ 1,000.00, which the Respondent deposited into his personal bank account on November 28, 2000.
6. The Combs contacted the Respondent over a period of time and ultimately contacted Lafferty on or around February 21, 2001. Lafferty informed the Combs that neither he nor the firm had any involvement in the case and had not received any money from the Respondent.
7. When confronted by the Combs, the Respondent admitted that he decided to handle the case himself and did not retain Lafferty.
8. Over a period of time, the Respondent falsely stated to the Combs on numerous occasions that he had filed the malpractice action in the Montgomery County Court of Common Pleas.
9. The Combs requested the case number of the action, but the Respondent never gave them any information.
10. On December 11, 2003, the Respondent met the Combs at their home, falsely stated to them that he had settled the case for \$ 47,500 and provided them with documents purporting to be a Release of Confidentiality Agreement and an Itemized Statement for Personal Injury Distribution.
11. The Respondent created a structured settlement that provided for three installment payments as follows:

First Installment:	\$ 10,000 on or before December 8, 2003.
Second Installment:	\$ 10,000 on or before February 10, 2004.
Third Installment:	\$ 27,500 on or before February 10, 2005.

12. The Respondent told the Combs that their signatures were needed immediately and gave them a check of \$ 5,221.14 drawn on the Respondent's IOLTA account stating that this amount was the first payment.
13. Respondent's "itemized statement" listed the following accounting for the first installment payment:

\$ 10,000.00	First Installment Payment
- 4,000.00	Attorney Fees (40% of the \$ 10,000)
<u>777.86</u>	Costs advanced by Respondent (including \$150 filing fee, medical records costs, and postage)
5,221.14	Disbursed to the Combs

14. The statement did not mention the initial \$ 1,000.00 deposited with the Respondent.
15. In February, 2004, the Combs contacted the Respondent for the second installment payment, which was to include the \$ 1,000.00 initial deposit.
16. The Respondent falsely stated that he did not know when the money would be wired to his IOLTA account.
17. The Combs contacted Attorney Jennifer Steel to investigate the matter.
18. When Steel discovered that the Respondent never filed a medical malpractice action for the Combs, she contacted the Respondent.
19. The Respondent admitted to Steel that he had fabricated the settlement agreement to avoid a malpractice claim against himself and that he intended to pay the \$ 47,500 from his own personal funds.
20. The Respondent testified at the hearing that he refunded the initial \$ 1,000 to the Combs approximately six weeks prior to the disciplinary hearing.

21. The Respondent also testified that Alfred Combs's medical malpractice case was compromised by his underlying health, to wit, he had advance heart disease.¹

CONCLUSIONS OF LAW

The Panel found that the evidence presented at the hearing did not sustain a finding that the Respondent violated DR 7-101(A)(3), Intentionally prejudice or damage his client during the course of the professional relationship. It was unclear whether Combs could have sustained his case due to his heart condition and thereby receive an award for damages.

Based upon the stipulations and Respondent's testimony, the Panel unanimously finds that the following violations of the Code of Professional Responsibility have been demonstrated by clear and convincing evidence:

DR 1-102(A)(4), Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

DR 1-102 (A)(5), Engage in conduct that is prejudicial to the administration of justice;

DR 1-102 (A)(6), Engage in conduct that adversely reflects on the lawyer's fitness to practice law;

DR 2-106(A), Enter into an agreement for, charge, or collect an illegal or clearly excessive fee;

DR 2-110(A)(3), A lawyer who withdraws from employment shall refund promptly part of a fee paid in advance that has not been earned;

¹ Sometime in the 1980's, Mr. Combs was diagnosed with a heart condition that required implanting a pacemaker and defibrillator. He was given Cordarone to regulate his heart rhythm. Combs contended that he was over prescribed Cordarone, which caused him to have certain symptoms that affected his quality of life. Mr. Combs died in October, 2004 from heart failure.

DR 6-101(A)(3), Neglect a legal matter entrusted to him;

DR 6-102, A lawyer shall not attempt to exonerate himself from or limit liability to a client for personal malpractice;

DR 7-101(A)(2), Intentionally fail to carry out a contract of employment entered into with a client;

DR 9-102(A), All funds paid to a lawyer or law firm, other than for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein.

AGGRAVATION, MITIGATION AND RECOMMENDED SANCTION

22. By way of Aggravation, the Relator and Respondent stipulated that the Respondent exhibited a dishonest or selfish motive and the Respondent engaged in a pattern of misconduct.
23. By way of Mitigation, the parties stipulated that the Respondent does not have a prior disciplinary record, and provided full and free disclosure to the disciplinary Board and exhibited a cooperative attitude towards the proceedings.
24. The Respondent graduated from the University of Dayton and was a solo practitioner primarily handling criminal and family law cases.
25. The Respondent testified at the hearing, that he is married and has two children. During the fall of 2000, he purchased a house and found out that his wife was pregnant with their first child.
26. He further stated that when he realized that the statute of limitations was blown and “. . . out of panic and out of cowardness. ,” he lied to the Combs and began a pattern of lying and ultimately fabricating documents.

27. He further testified that presently he does not accept medical malpractice cases and now seeks assistance from a more experienced attorney to help him evaluate personal injury cases.
28. There was evidence that the underlying medical malpractice case may not have had merit due to Mr. Combs's underlying health conditions.
29. Finally, Respondent accepted responsibility for his actions and expressed remorse for his actions.
30. The Relator argued for a two year suspension based upon Disciplinary Counsel v. Insley 104 Ohio St.3d 424, 2004-Ohio-6564, Disciplinary Counsel v. Fowerbaugh (1995), 74 Ohio St.3d 187 and a New York case entitled In the Matter of Dorothy S. Vivas (1999), 692 N.Y.S. 2d 742.
31. The Relator distinguished Respondent's actions from those in *Insley* and *Fowerbaugh*, although noting that Respondent had engaged in creating false documents and engaging in a pattern of misconduct.
32. The Relator asked the panel to consider the *Vivas* case because the facts were similar to the present case. The New York Court suspended Vivas from the practice of law for two years.
33. The Respondent, through his attorney, asked that any sanction not include actual suspension from the practice, but instead a stay of the suspension and include a monitor for a period of time.
34. The Panel, after reviewing the record and cited cases, recommends that the Respondent be suspended from the practice of law for two years.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 7, 2006. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Thomas Manning, be suspended for two years from the practice of law in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio**

**BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF THE SUPREME COURT OF OHIO**

THOMAS MANNING
Atty. Reg. No.: 0059759
800 East Franklin Street
Centerville, OH 45459

FILED
NOV 30 2005

**AGREED
STIPULATIONS
BOARD NO. 05-044**

DISCIPLINARY COUNSEL
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, Thomas Manning, do hereby stipulate to the admission of the following facts, exhibits, and disciplinary rule violations.

STIPULATED FACTS

1. Respondent, Thomas Joel Manning, was admitted to the practice of law in the state of Ohio on November 9, 1992. Respondent is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. On or around March 12, 2000, Alfred and Nollie Combs (hereinafter referred to as the Combs) retained respondent to represent Alfred Combs in a potential medical malpractice action.

3. In July 2000, respondent contacted Attorney Jon Lafferty, from the Williams, Jilek, Lafferty, Gallagher & Scott law firm (hereinafter referred to as "the WJLGS firm") and requested Lafferty's assistance in litigating the potential medical malpractice action.
4. On July 12, 2000, Lafferty sent a facsimile to respondent indicating that he would review the file. Lafferty requested a \$1,000 retainer.
5. On or around July 21, 2000, respondent sent a letter to the Combs stating that respondent would be working with Lafferty and that Lafferty was requesting \$1,000 to cover the cost of an expert.
6. In August 2000, Alfred Combs suffered an injury after being thrown from his riding lawn mower.¹
7. On November 21, 2000, at respondent's request, the Combs paid respondent \$1,000, which the Combs understood was to be used to pay Lafferty's expert.
8. On November 28, 2000, respondent deposited the \$1,000 check into his firm's operating account at Fifth Third Bank.
9. Over the next few months, the Combs contacted respondent to check on the status of their case, but respondent was unable to provide the Combs with any relevant information.
10. In February 2001, the Combs contacted Attorney Michael Jilek from the WJLGS firm, whom informed the Combs that the WJLGS firm had no involvement in the case and had never been paid any money from respondent.
11. Shortly thereafter, the Combs spoke to respondent and informed him about their conversation with the WJLGS firm.

¹ Respondent represented Alfred Combs with respect to the injury sustained from the lawn mower accident. Respondent resolved this case in Mr. Combs' favor and without incident.

12. Respondent admitted to the Combs that he unilaterally decided to handle the case himself and that he would not be using Lafferty.
13. In the following months, and on numerous occasions, respondent falsely stated to the Combs that he had filed the malpractice action in the Montgomery County Court of Common Pleas.
14. Sometime before December 11, 2003, respondent falsely stated to the Combs that there were some settlement offers on the malpractice case.
15. Respondent advised Alfred Combs to accept a \$47,500 settlement, despite the fact that no such offer existed.
16. On or near December 11, 2003, while at the Combs' residence, respondent provided the Combs with documents purporting to be a Release and Confidentiality Agreement, and an Itemized Statement for the Personal Injury Distribution.
17. The purported Release and Confidentiality Agreement ostensibly released the treating physicians and hospitals in exchange for a \$47,500 structured settlement.
18. The alleged structured settlement provided for three installments:

First Installment:	\$10,000 on or before December 8, 2003
Second Installment:	\$10,000 on or before February 10, 2004
Third Installment:	\$27,500 on or before February 10, 2005
19. On that same day, respondent provided the Combs with a \$5,221.14 check drawn on respondent's IOLTA account at Fifth Third Bank, account no. 72487356.
20. Respondent falsely informed the Combs that the \$5,221.14 check was the first installment from the medical providers under the terms of the alleged structured settlement agreement.

21. The \$5,221.14 figure ostensibly represented the \$10,000 initial disbursement less respondent's \$4,000 fee ($\$10,000 \times .40 = \$4,000$), less \$777.86 in costs allegedly advanced by respondent.
22. The \$777.86 figure, allegedly representing costs advanced by respondent, ostensibly included a \$150.00 filing fee, despite the fact that respondent had never filed the action.
23. Respondent used the remaining \$627.86 to procure and copy medical records, and to pay for postage.
24. Respondent's purported Itemized Statement made no mention of the Combs' initial \$1,000 payment.
25. After having an opportunity to review the alleged Itemized Statement, the Combs contacted respondent to inquire about the initial \$1,000 payment.
26. Respondent stated that he would credit the \$1,000 check against the purported February 10, 2004 disbursement.
27. Beginning in February 2004, and continuing thereafter, the Combs repeatedly attempted to contact respondent to inquire as to the status of the second \$10,000 disbursement, which was ostensibly due on or before February 10, 2004.
28. Respondent falsely stated that the physicians' insurance company was supposed to wire the \$10,000 into his IOLTA account, but that respondent had no way of identifying when the funds would arrive.
29. In June 2004, the Combs contacted Attorney Jennifer Marsha Steel to look into the matter.
30. Steel searched the Montgomery County docket and learned that respondent had never filed a medical malpractice action on behalf of the Combs.

31. Steel immediately contacted respondent, whom admitted that he had failed to file the malpractice action, that he had fabricated the alleged settlement agreement to avoid a malpractice claim against himself, and that he intended to pay the \$47,500 from his own personal funds.
32. Respondent has failed to pay any of the remaining settlement funds to the Combs.
33. Respondent has refunded the \$1,000 to the Combs.

STIPULATED DISCIPLINARY RULE VIOLATIONS

Respondent and relator hereby agree and stipulate that respondent's conduct, as described in **Count One**, violated the following disciplinary rules:

- DR 1-102(A)(4) [Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]
- DR 1-102(A)(5) [Engage in conduct that is prejudicial to the administration of justice]
- DR 1-102(A)(6) [Engage in conduct that adversely reflects on the lawyer's fitness to practice law]
- DR 2-106(A) [Enter into an agreement for, charge, or collect an illegal or clearly excessive fee]
- DR 2-110(A)(3) [A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned]
- DR 6-101(A)(3) [Neglect a legal matter entrusted to him]
- DR 6-102 [A lawyer shall not attempt to exonerate himself from or limit liability to a client for personal malpractice]
- DR 7-101(A)(2) [Intentionally fail to carry out a contract of employment entered into with a client]

- DR 7-101(A)(3) [Intentionally prejudice or damage his client during the course of the professional relationship]
- DR 9-102(A) [All funds of a client paid to a lawyer or law firm, other than for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein]

MITIGATION EVIDENCE

Respondent and relator hereby agree and stipulate to the presence of the following mitigating factors under Gov. Bar R.V, Section 10(B):

- Absence of a prior disciplinary record
- Full and free disclosure to the disciplinary Board and a cooperative attitude towards the proceedings
- Respondent reserves the right to present evidence of his reputation in the legal community

AGGRAVATION EVIDENCE

Respondent and relator hereby agree and stipulate to the presence of the following aggravating factors under Gov. Bar R.V, Section 10(B):

- Dishonest or selfish motive
- A pattern of misconduct

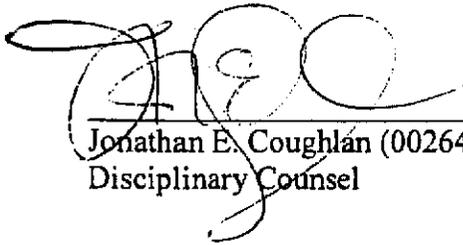
STIPULATED EXHIBITS

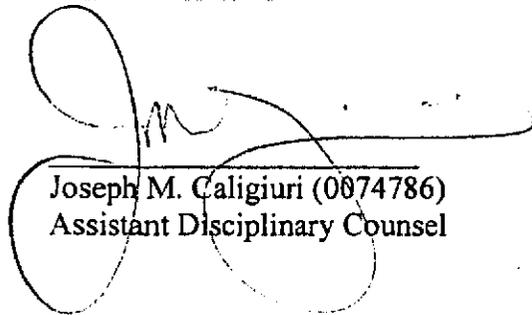
Exhibit 1: Grievance filed by Alfred and Nollie Combs

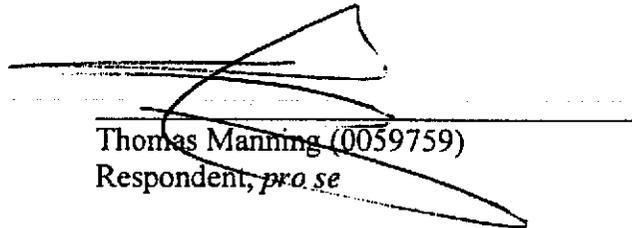
- Exhibit 2: Facsimile cover page, notes from Jon Lafferty, facsimile from Lafferty to respondent, and Michael Jilek's notes
- Exhibit 3: Letter from respondent to the Combs
- Exhibit 4: \$1,000 check from the Combs to respondent, dated 11/21/00
- Exhibit 5: Release and Confidentiality Agreement
- Exhibit 6: Itemized Statement for Personal Injury Distribution
- Exhibit 7: Check No. 1471, drawn on Respondent's IOLTA Account at Fifth Third Bank, Account No. 72487356, for \$5,221.14
- Exhibit 8: Letter from Attorney Jennifer Marsha Steel

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 21st day of November 2005.


Jonathan E. Coughlan (0026424)
Disciplinary Counsel


Joseph M. Caligiuri (0074786)
Assistant Disciplinary Counsel


Thomas Manning (0059759)
Respondent, *pro se*



Jeffrey A. Swillinger
President
Hon. Alice O. McCollum
First Vice President
Michael W. Krumholtz
Second Vice President
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Susan Blasik-Miller
Past President

John M. Ruffolo
Bar Counsel

William B. Wheeler
Executive Director

December 13, 2005

The Supreme Court of Ohio
Board of Commissioners on Grievances and Discipline
65 S. Front St., 5th Floor
Columbus, OH 43215-3431

To whom it may concern:

Thomas Manning has been an active member of the Dayton Bar Association's Lawyer Referral Service since 1998, with the exception of the last several months when an ethical complaint was filed against him.

Over the years, I have had an opportunity to get to know Mr. Manning on a professional basis and have always found him to be helpful when dealing with LRS issues. This opinion comes not only from my personal experience but from the people who have been referred to him. I have received many calls from clients thanking us for referring them to Mr. Manning. These clients found him to be extremely knowledgeable and helpful with their legal situation.

Because of the complaint filed against Mr. Manning with your office, I have been unable to refer him for the last several months, as the Dayton Bar Association will not refer any attorney who is not in present good standing with the court. I am eagerly awaiting the time when Mr. Manning will be able to be an active member of the LRS panel. His attitude and method of professionalism in the legal community is something to which all attorneys should aspire.

If you have any questions please do not hesitate to contact me.

Sincerely,

Christin Albrektson,
Assistant Executive Director



COURT OF COMMON PLEAS

MONTGOMERY COUNTY COURTS BUILDING

GENERAL DIVISION

41 NORTH PERRY STREET

P.O. Box 972

DAYTON, OHIO 45422-2150

A.J. WAGNER
JUDGE

(937) 225-4409
FAX (937) 824-7992
E-MAIL: wagnera@montcourt.org

December 14, 2005

Office of Disciplinary Counsel
250 Civic Center Drive
Suite 325
Columbus, Ohio 43215

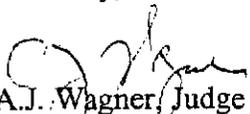
Re: Thomas Joel Manning, Respondent. Case No: 05-044

Please be advised that I have known Mr. Manning for more than ten years. I came to know Mr. Manning when I obtained an office in the same building as he was in and we shared a reception area as well as reception staff. I later came to know Mr. Manning as a practicing attorney in the Montgomery County Court of Common Pleas where I now sit as a Judge.

All of my personal experiences with Mr. Manning have been positive. He has shown courtesy to me as a fellow attorney and as a judge. When I have seen him interacting with a client he has always showed proper and professional decorum.

If I can be of any further assistance, please do not hesitate to call upon me.

Sincerely,


A.J. Wagner, Judge
Montgomery County Common Pleas Court
General Division

December 14, 2005

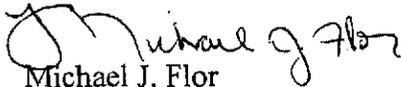
To Whom It May Concern:

This letter is written in support of Thomas J. Manning. Mr. Manning represented me in my divorce in 2002. I have spoken with him about several other matters since then and met with him recently about a child custody matter. I also know several persons who Mr. Manning has either represented or spoken with in this period. Every one of these people has had nothing but positives to say about Mr. Manning.

Mr. Manning handled my case professionally and honestly and helped me through a difficult time in my life. He always had time to take my call and address my concerns. He was able to relieve my stress about my case and helped get things resolved favorably, especially issues regarding my son. He has always taken the time to talk to me, no matter how minor the questions, since my case was resolved.

I am glad that I had Mr. Manning help me in my divorce, and that he has been available for all other matters that have come since. Mr. Manning fulfilled what I was looking for in a lawyer and I will use him again in a minute. I have also recommended several friends and co-workers to Mr. Manning because of my positive experience with him.

Sincerely,



Michael J. Flor
867 Willowbrook Drive
Monroe, Ohio 45050