

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

**07-0333**

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 06-057</b>
<b>P. Robert Broeren Attorney Reg. No. 0069166</b>	:	<b>Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio</b>
<b>Respondent</b>	:	
<b>Disciplinary Counsel</b>	:	
<b>Relator</b>	:	

This matter was heard January 26, 2007, in Columbus, Ohio before a panel consisting of Judge Harvey J. Bressler of Middletown, Jana E. Emerick of Lima, and Nancy D. Moore, Chair, of Columbus, Ohio. None of the panel members is a resident of the district from which the complaint originated or served on the probable cause panel that certified this matter to the Board.

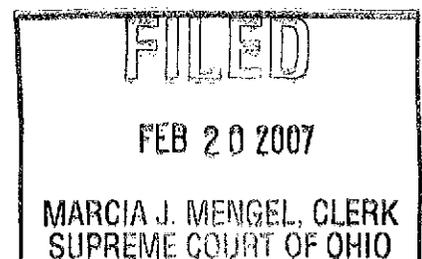
Stacy Solochek Beckman represented Relator, Disciplinary Counsel. Respondent, P. Robert Broeren, was present and represented by William Mann.

**FINDINGS OF FACT**

Respondent is currently 37 years of age and married with two children. He graduated from Kenyon College in 1991 and from Notre Dame Law School in 1994.

Respondent was admitted to the practice of law in the State of Ohio in 1998. He was also admitted in the State of Virginia in 1994 and admitted in the District of Columbia in 1999.

Respondent has practiced in Knox County, Ohio since 2002. Initially, he had a litigation practice



and at some point also began working as a part-time assistant county prosecutor. Respondent has been employed as a full-time assistant county prosecutor since January 1, 2005.

The parties submitted extensive stipulations to the panel at the commission of the hearing. Those stipulations were admitted and adopted by the panel.

In November 2003 Respondent was hired by William Lubin, president of PMR Products, Inc. (PMR) to defend PMR in a civil matter in Mt. Vernon Municipal Court. PMR had been sued by Selective Med Components (Selective Med), a Mt. Vernon company, for nearly \$2100. Lubin told Respondent to keep fees and costs to a minimum since only \$2100 was in dispute. Lubin had previously filed an answer and counter-claim pro se in the matter. Respondent entered his appearance as counsel for PMR on December 1, 2003.

Lubin, on behalf of PMR, proved to be a very difficult client whose dislike for Selective Med caused him to be somewhat uncooperative and unreasonable. Lubin claimed that the Selective Med's product was defective, but refused to return the product as requested by Selective Med. Respondent testified that he had negotiated two possible settlements of the case, but Lubin refused to consider either offer. Eventually Respondent was able to convince Lubin to return the merchandise to Selective Med, but the product's expiration date had passed by the time it was returned.

In mid-February, 2004, Selective Med filed a Motion to Compel claiming that PMR had failed to fully respond to Selective Med's discovery requests. Respondent did not respond to the Motion to Compel and the court granted Selective Med's Motion to Compel.

In mid-March Respondent replied to Selective Med's discovery requests. Respondent indicated that he had difficulty in providing complete discovery due to Lubin's lack of cooperation. Lubin testified that he provided all information that was requested by Respondent.

On March 31, 2004, Selective Med filed a Motion for Sanctions against PMR because the discovery was incomplete. Respondent submitted a response to Selective Med's Motion for Sanctions and filed a Motion for a Protective Order on April 15, 2004. The court granted both PMR's Motion for a Protective Order and Selective Med's Motion for Sanctions on April 21, 2004. The court awarded Selective Med \$500 in sanctions against PMR. Lubin testified that Respondent never informed him of the contempt hearing or sanctions.

On May 6, 2004, the Court set the matter for trial on June 11, 2004. Respondent and Lubin disagree about when Lubin was advised of the June 11 trial date. Lubin claims he wasn't told until June 10 of the June 11 trial date and was unable to come to Ohio on such short notice. Respondent claims he sent Lubin a letter dated May 7, 2004 informing Lubin of the trial date. While the panel found that Lubin was often less than credible, the panel finds that Respondent's "letter" (attached) also lacks credibility because it contradicts Lubin's instruction to keep fees and costs to a minimum.

On June 10, 2004, Respondent requested a continuance of the trial date after speaking to Lubin. On June 11, 2004 the Motion for a Continuance was denied and the case proceeded to trial. Respondent represented PMR at the trial and cross-examined Selective Med's witnesses. The court ruled in favor of Selective Med and ordered that PMR pay nearly \$2100 to Selective Med.

On July 15, 2004, a Judgment Debtor Examination was scheduled for August 20, 2004 and Lubin was required to appear. Lubin failed to appear. Lubin testified that Respondent failed to give him notice of that hearing. Respondent claims he sent a letter, dated June 18, 2004, to Respondent notifying him of the Judgment Debtor Examination. However, upon review of the

June 18 letter, especially when considered together with the letter dated June 16, 2004,<sup>1</sup> the panel concludes that both letters were written around September 2004 and backdated.<sup>2</sup> Respondent was given an opportunity during the hearing to admit that he had later fabricated the June 18 letter in an attempt to “prove” to Lubin that he had notified him of the Judgment Debtor Examination, but Respondent failed to make such admission, even though he conceded that it was problematic.

Lubin testified that he received notice from Mt. Vernon Municipal Court in September 2004 that a hearing was scheduled for September 17, 2004 for a Judgment Debtor Examination and for Lubin to show cause for failing to appear for the August hearing. Lubin said that was the first time he became aware that the case had proceeded to trial, that PMR had lost, and that there had been a previous Judgment Debtor Examination scheduled for August. Lubin wrote to the judge and asked for a continuance of the September 17, 2004 hearing. However, a continuance was not granted and Lubin was held in contempt for not appearing. PMR was ordered to pay Selective Med an additional \$500.

Lubin then sought the help of Richard Dolin (Dolin), a New York attorney, to assist him in the Selective Med matter. Dolin wrote to Respondent on five occasions between October 6,

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<sup>1</sup> Both letters are attached and were introduced into evidence as part of Joint Stipulated Exhibit 19.

<sup>2</sup> Respondent provided the letters to Lubin on September 17, 2004, in an effort to convince Lubin that Respondent had taken steps to advise Lubin of the June and August hearings. The June 18 letter indicates that the Examination of Judgment Debtor was scheduled for August 20. However, documentation was provided indicating that the Motion for Examination of Judgment Debtor was not filed until July 14, 2004 (attached and offered into evidence as part of Joint Stipulated Exhibit 19), and the court order for the examination (attached and offered into evidence as part of Joint Stipulated Exhibit 19) wasn't issued until July 15, 2004. Clearly it was impossible for Respondent to have received the notice and inform Lubin on June 18 of a hearing that wasn't even ordered or scheduled by the court until mid-July. Respondent tried to claim that the date on the June 18 letter must have been a typographical error. However, the content of the letter clearly indicates that the letter had to have been written before June 30.

2004 and January 19, 2005 requesting the PMR file be sent to him. Respondent failed to reply to any of Dolin's letters and refused to provide the file to Dolin. Respondent testified that he thought he was justified in keeping the file until his bill was paid in full.

Despite the fact that Respondent sent several bills to PMR for payment, Lubin and Dolin admitted that only one payment in the amount of \$135 was ever made by PMR. Three bills totaling \$2340, which had been prepared by Respondent and submitted to Lubin for payment, were presented to the panel.

Relator began investigating this matter in late 2004. Relator sent a letter to Respondent on December 29, 2004 which Respondent received, but to which he did not respond. Respondent stipulated that he did not provide reasonable cooperation to Relator with regard to the investigation of this matter. Respondent did eventually become very cooperative with Relator and participated in the disciplinary process, including filing a pro se answer, retaining counsel, submitting to a deposition, and entering into numerous stipulations.

### **CONCLUSIONS OF LAW**

The Panel accepted the stipulations of the parties and considered the evidence presented at the hearing. Respondent stipulated to violations of DR 9-102(B)(4) and Gov. Bar R. V(4)(G). Based upon the evidence, the Panel finds that Respondent's conduct, by clear and convincing evidence, did violate the following rules:

- |         |                     |   |
|---------|---------------------|---|
| Count 1 | DR 1-102(A)(4)      | Conduct involving dishonesty, fraud, deceit or misrepresentation.   |
| Count 1 | DR 6-101(A)(3)      | Neglect of a legal matter entrusted to him.   |
| Count 1 | DR 9-102(B)(4)      | Promptly deliver to a client as requested by the client properties in the possession of the lawyer which the client is entitled to receive. |
| Count 2 | Gov. Bar R. V(4)(G) | Failure to cooperate.   |

The panel finds that the following rules were not proven by clear and convincing evidence and are hereby dismissed:

- |         |                |  |
|---------|----------------|--|
| Count 1 | DR 1-102(A)(5) | Conduct prejudicial to the administration of justice.  |
| Count 1 | DR 6-101(A)(2) | Handling a legal matter without adequate preparation.  |
| Count 1 | DR 7-101(A)(2) | Intentionally fail to carry out a contract of employment.                                      |
| Count 1 | DR 7-101(A)(3) | Intentionally prejudice or damage a client during the course of the professional relationship. |

### MITIGATION AND AGGRAVATION

Respondent testified that he is the president of the Knox County Bar Association and is active in community affairs, including Kiwanis and the Red Cross. Respondent's wife testified that Respondent is a good husband and father. Two Knox County detectives testified that Respondent is a good prosecutor and is a valuable and accessible resource to law enforcement in Knox County. They further indicated that Respondent has an excellent reputation in the community for truth and honesty. The parties stipulated that Respondent has no prior disciplinary record.

Respondent was diagnosed with ADD, Attention Deficit Disorder, on April 7, 2006 by Gideon L. King, M.D. Respondent has been placed upon medication for that condition and has "responded well to it".<sup>3</sup>

Dr. King found that the ADD probably has had an effect on Respondent's ability to practice law, but did not report a finding that Respondent's ADD specifically contributed to his misconduct in this matter, or that Respondent has returned or will be able to return to competent,

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<sup>3</sup> See Stipulated Joint Exhibit 37.

ethical professional practice. The two Knox County detectives, called as character witnesses by Respondent, testified that they had noticed no difference in Respondent's work or behavior before and after April 2006. Therefore, the panel found that the mental disability did not qualify for consideration as mitigation in this matter.

Respondent has recently signed an OLAP contract and has been assessed by Stephanie Krznarich, associate director of OLAP. Respondent's first contact with OLAP was in August 2006, but his assessment wasn't done until December 19, 2006.<sup>4</sup> Ms. Krznarich made several recommendations regarding the ADD which were incorporated into Respondent's OLAP contract.

When considering aggravating and mitigating factors, the panel finds the following mitigating factors with respect to Respondent in this matter:

- no prior disciplinary record;
- good character;
- no pattern of misconduct;
- this was an isolated incident and out of character for Respondent;
- Respondent eventually was very cooperative with Relator;
- Respondent accepted responsibility for some of his misconduct;
- Respondent's client was not vulnerable and paid very little for Respondent's representation; and
- Respondent's client was very difficult and uncooperative at times.

The panel makes the following findings regarding aggravating factors:

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<sup>4</sup> Respondent had to cancel his September 2006 evaluation date due to a funeral. When Respondent failed to call to re-schedule the appointment, an OLAP representative had to initiate contact with him in November 2006 in order to re-schedule the assessment.

- Respondent initially was uncooperative with the disciplinary process;
- Respondent submitted exhibits (as part of Joint Exhibit 19) and testimony during the disciplinary hearing that the panel found to be false;
- Respondent failed to acknowledge the wrongfulness of some of his conduct;
- Respondent's client was harmed by the financial sanctions imposed; and
- Respondent had a selfish motive when he refused to return the client's file until receiving his fee.

### **RECOMMENDATION**

Relator recommended a six month suspension from the practice of law. Respondent recommended a public reprimand or a stayed suspension from the practice of law.

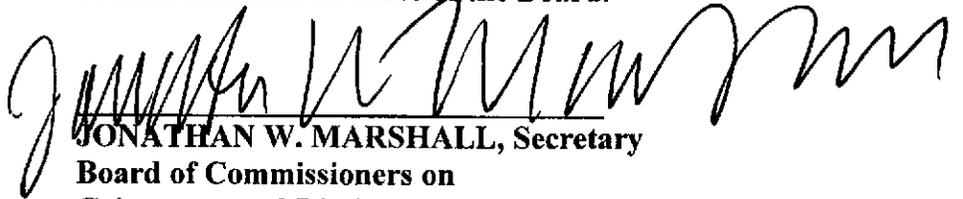
After considering Respondent's conduct, violations, and the mitigating and aggravating factors, the panel reluctantly recommends a six month suspension from the practice of law.

While the mitigation in this case is strong and persuasive, the panel's finding that Respondent gave false testimony and introduced false evidence during the hearing necessitates an actual suspension from the practice of law.

### **BOARD RECOMMENDED SANCTION**

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 February 9, 2007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Peter R. Broeren, Jr., be suspended for six months 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.**

A handwritten signature in black ink, appearing to read 'Jonathan W. Marshall', written in a cursive style. The signature is positioned above the printed name and title.

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



3. PMR is a retailer of medical devices and is located in Albany, New York.
4. In 2002 and 2003, PMR purchased electrodes for its medical devices from Selective Med Components ("Selective Med"), a company headquartered in Mt. Vernon, Ohio.
5. Due to a dispute about the quality of the electrodes, PMR refused to pay for the electrodes or return the electrodes to Selective Med.
6. On September 8, 2003, Selective Med initiated a lawsuit against PMR in the Mount Vernon Municipal Court, seeking money damages in the amount of \$2,097.78 plus costs and interest.
7. On October 2, 2003, Lubin filed an answer on behalf of PMR, and a counterclaim on behalf of PMR.
8. At the end of November 2003, respondent agreed to represent Lubin and PMR in the Selective Med litigation.
9. Respondent filed a notice of appearance on PMR's behalf on December 1, 2003.
10. On February 13, 2004, Selective Med filed a motion to compel answers to interrogatories and request for production of documents and a request for a hearing on sanctions after PMR failed to fully respond to Selective Med's discovery requests.
11. Respondent did not reply to Selective Med's motion to compel.
12. On February 23, 2004, the court granted Selective Med's motion to compel.
13. On or about March 17, 2004, respondent submitted responses to Selective Med's discovery requests.

14. On March 18, 2004 and March 19, 2004, the court considered Selective Med's motion for sanctions that had been previously filed and ordered that its attorney had until April 2, 2004 to review the discovery response and determine whether the response was complete.
15. On March 31, 2004, Selective Med filed a motion for sanctions against PMR because it alleged that the discovery responses submitted by respondent on March 17, 2004 were incomplete.
16. On April 15, 2004, respondent submitted a revised response to Selective Med's motion for sanctions along with a motion for a protective order.
17. On April 21, 2004, the court granted PMR's motion for a protective order as well as Selective Med's motion for sanctions and awarded sanctions against PMR in the amount of \$500.
18. On May 6, 2004, the court scheduled a trial in the Selective Med litigation for June 11, 2004.
19. Respondent contacted Lubin by telephone on June 10, 2004. Lubin advised respondent that he would be unable to attend the trial on June 11, 2004.
20. On June 10, 2004, respondent filed a motion to continue the trial, which the court denied on June 11, 2004.
21. On June 11, 2004, respondent appeared at the trial on PMR's behalf. Respondent cross-examined Selective Med's witnesses, and argued that judgment should be awarded to PMR by operation of Ohio's version of the Uniform Commercial Code.
22. The court ruled against PMR and ordered that PMR pay Selective Med \$2,097.78.

23. On July 15, 2004, the court scheduled a Judgment Debtor Examination for August 20, 2004 and required Lubin to appear at that time.
24. When Lubin failed to appear for the examination, the court issued a show cause order requiring PMR to appear on September 17, 2004 to participate in the Judgment Debtor Examination and to show cause as to why it should not be held in contempt.
25. On or about September 7, 2004, the court itself sent Lubin a copy of the show cause order.
26. On September 14, 2004, Lubin wrote to Mt. Vernon Municipal Court Judge Spurgeon requesting that the court set aside or vacate the judgment and continue the hearing scheduled for September 17, 2004.
27. On September 17, 2004, the court held a show cause hearing and found Lubin in contempt for failure to appear at the September 17, 2004 Judgment Debtor's Examination. The court ordered PMR to pay Selective Med an additional \$500.
28. On September 17, 2004, respondent forwarded Lubin a facsimile transmission that included materials respondent says he previously provided to Lubin.
29. On October 6, 2004, Attorney Richard E. Doling wrote to respondent regarding Lubin and PMR's case.
30. On October 25, 2004, Doling wrote to respondent regarding Lubin and PMR's case. Respondent did not reply to Doling's letter.
31. On November 15, 2004, Doling wrote to respondent regarding Lubin and PMR's case. Respondent did not reply to Doling's letter.

32. On November 29, 2004, Doling wrote to respondent regarding Lubin and PMR's case. Respondent did not reply to Doling's letter.

33. On January 19, 2005, Doling wrote to respondent regarding Lubin and PMR's case. Respondent did not reply to Doling's letter.

### COUNT II

34. On December 29, 2004, relator forwarded respondent a letter of inquiry relating to Lubin's grievance by certified mail to the business address provided to the Attorney Registration Office, 110 E. Gambier Street, Mt. Vernon, Ohio 43050. Although respondent received the letter, he did not reply to it as requested.

35. Respondent neglected to provide reasonably cooperation to relator with regard to its investigation.

### STIPULATED MITIGATING FACTORS

Pursuant to the mitigating factors identified in BCGD Proc. Reg. § 10 (B)(2), relator and respondent stipulate that respondent has no prior disciplinary record.

### STIPULATED EXHIBITS

The parties stipulate to the authenticity and admissibility of each of the following exhibits. Stipulated Exhibits 20 through 25 are admitted only to the extent that they are relevant to an issue in this case.

Exhibit 1 Complaint, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed September 8, 2003.

Exhibit 2 Answer, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed October 2, 2003.

Exhibit 3 Notice of Appearance, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed December 1, 2003.

- Exhibit 4 Motion to Compel Answers to Interrogatories and Request for Production of Documents and Request for Hearing on Sanctions, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed February 13, 2004.
- Exhibit 5 Journal Entry, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed February 23, 2004.
- Exhibit 6 Journal Entry, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed March 19, 2004.
- Exhibit 7 Motion for Sanctions Under Ohio Civil Rule 37(B), *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed March 31, 2004.
- Exhibit 8 Revised Responses of Defendant to Plaintiff's Motion for Sanctions, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed April 15, 2004.
- Exhibit 9 Motion for Protective Order Under Civil Rule 26(C), *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed April 15, 2004.
- Exhibit 10 Journal Entry, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed April 21, 2004.
- Exhibit 11 Journal Entry, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed May 6, 2004.
- Exhibit 12 Motion for Continuance, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed June 10, 2004.
- Exhibit 13 Transcript, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, dated June 11, 2004.
- Exhibit 14 Journal Entry, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed June 11, 2004.
- Exhibit 15 Order for Examination of Judgment Debtor, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed July 15, 2004.
- Exhibit 16 Entry, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed September 7, 2004.

- Exhibit 17 Letter from William Lubin to Judge Paul E. Spurgeon filed September 15, 2004.
- Exhibit 18 Entry, *Selective Med Components, Inc., v. PMR Products, Inc.*, Mt. Vernon Municipal Court, Case No. 03CVH785, filed September 17, 2004.
- Exhibit 19 Facsimile transmission from P. Robert Broeren, Jr., to Bill Lubin dated September 17, 2004.
- Exhibit 20 Letter from Richard E. Doling to P. Robert Broeren, Jr., dated October 6, 2004.
- Exhibit 21 Letter from Richard E. Doling to P. Robert Broeren, Jr., dated October 25, 2004.
- Exhibit 22 Letter from Richard E. Doling to P. Robert Broeren, Jr., dated October 26, 2004.
- Exhibit 23 Letter from Richard E. Doling to P. Robert Broeren, Jr., dated November 15, 2004.
- Exhibit 24 Letter from Richard E. Doling to P. Robert Broeren, Jr., dated November 29, 2004.
- Exhibit 25 Letter from Richard E. Doling to P. Robert Broeren, Jr., dated January 19, 2005.
- Exhibit 26 Letter from Stacy Solochek Beckman to P. Robert Broeren, Jr., dated December 29, 2004.
- Exhibit 27 Letter from Stacy Solochek Beckman to P. Robert Broeren, Jr., dated January 20, 2005.
- Exhibit 28 Subpoena Duces Tecum issued on February 17, 2005.
- Exhibit 29 Transcript of Attempted Deposition of P. Robert Broeren, Jr., dated March 10, 2005.
- Exhibit 30 Letter from Stacy Solochek Beckman to P. Robert Broeren, Jr., dated March 14, 2005.
- Exhibit 31 Letter from Stacy Solochek Beckman to P. Robert Broeren, Jr., dated March 29, 2005.
- Exhibit 32 Letter from Stacy Solochek Beckman to P. Robert Broeren, Jr., dated May 26, 2005.

Exhibit 33 Subpoena Duces Tecum issued on June 21, 2005.

Exhibit 34 Letter from Stacy Solochek Beckman to P. Robert Broeren, Jr., dated January 30, 2006.

Exhibit 35 Letter from Mary Jo Hawkins to William Mann dated January 18, 2007.

Exhibit 36 Letter from Stephanie Krznarich to William Mann dated January 23, 2007.

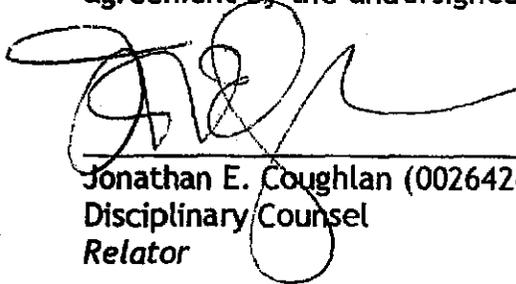
LEGAL STIPULATIONS

Relator, Disciplinary Counsel, and respondent, P. Robert Broeren, do hereby stipulate to the following legal conclusions:

1. Respondent's failure to properly respond to Attorney Richard Doling's letters constituted a violation of DR 9-102 (B)(4) [a lawyer shall promptly deliver to a client as requested by the client properties in the possession of the lawyer which the client is entitled to receive].
2. Respondent's failure to cooperate with relator's investigation violated Gov. Bar R. V (4)(G) [no lawyer shall neglect or refuse to assist or testify in an investigation].

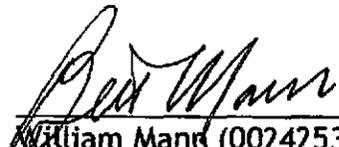
CONCLUSION

The above facts and legal conclusions are stipulated to and entered into by agreement by the undersigned parties on this \_\_\_ day of January 2007.



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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel  
Relator



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William Mann (0024253)  
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Counsel for Respondent



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Respondent