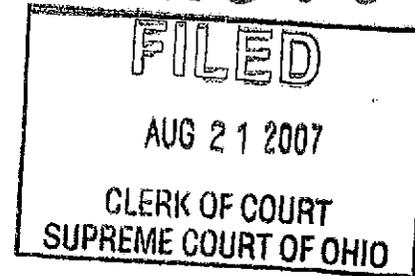


**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

07-1570



In Re:	:	
Complaint against	:	Case No. 06-058
Clifford Scott Portman	:	Findings of Fact,
Attorney Reg. No. 0073390	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Butler County Bar Association and	:	the Supreme Court of Ohio
Disciplinary Counsel	:	
	:	
Relators	:	

This matter was referred to Bernard K. Bauer, a Master Commissioner of the Board of Commissioners on Grievances and Discipline, by the Secretary for disposition pursuant to Rule V, Section 6(F)(2) of the Rules for the Government of the Bar of Ohio. Master Commissioner Bauer then proceeded to prepare a report pursuant to Gov. Bar R. V(6)(J).

PROCEDURAL BACKGROUND

This action was commenced with the filing of a two count complaint against the Respondent by Disciplinary Counsel on June 6, 2006.

On December 26, 2006, Disciplinary Counsel and the Butler County Bar Association (hereinafter "Bar Association") jointly filed an amended complaint against the Respondent alleging four additional counts of misconduct.

On January 3, 2007, certified mail delivery of the amended complaint was completed by delivery to "Clifford Scott Portman, 308 North Second Street, Hamilton, Ohio 45011." The certified mail delivery was endorsed, but the name of the person endorsing it is unclear. The

address used for service is the business address of the Respondent listed in attorney registration records.

On February 8, 2007, the Secretary directed the Relators to file a motion for default against the Respondent.

On June 8, 2007, the Relators filed their motion for default.

The materials offered in support of the motion are sufficient. *See Dayton Bar Association v. Sebree* (2004), 104 Ohio St.3d 448, 2004-Ohio-6560; *Northwestern Bar Association v. Lauber* (2004), 104 Ohio St.3d 121, 2004-Ohio-6237.

FINDINGS OF FACT

Based upon the materials offered in support of the motion for default, I make the following findings upon clear and convincing evidence:

1. Clifford Scott Portman, the Respondent, is an attorney-at-law licensed to practice law in the State of Ohio since May 21, 2001, and is subject to the Code of Professional Responsibility and the Supreme Court Rules for the Government of the Bar of Ohio.

COUNT I [The Blech Matter]

2. On October 14, 2005, Disciplinary Counsel received a grievance filed against the Respondent by Keith Blech.

3. During the Respondent's representation of Blech in a domestic violence matter, Blech advised respondent that his wife, Nancy Sizemore, (from whom Blech was separated), had been involved in an automobile accident with an uninsured/underinsured driver in January of 2004.

4. The Respondent told Blech that due to his marriage and because he paid the insurance on the vehicle his wife was driving, he was legally entitled to a portion of any damages recovered in his wife's suit which was pending in the Butler County Common Pleas Court.

5. The Respondent advised Blech that he would represent him in the lawsuit, and that he needed a \$500 money order in order to proceed.

6. The Respondent called Blech on at least four occasions to ask for the funds.

7. On July 1, 2005, Blech obtained a \$500 money order and forwarded it to the Respondent as a retainer.

8. Blech attempted to contact the Respondent on at least 15 different occasions after paying the retainer, but the Respondent never returned Blech's calls.

9. The Respondent performed no work on Blech's behalf.

10. Despite Blech's requests, the Respondent has not refunded the \$500 retainer.

COUNT II
[Failure to Cooperate]

11. On November 7, 2005, Disciplinary Counsel forwarded a letter of inquiry by certified mail to the Respondent's business address listed in attorney registration records. The letter requested a response by November 21, 2005.

12. The letter of inquiry was returned as "Not deliverable as addressed, unable to forward."

13. On November 17, 2005, a second letter of inquiry was forwarded by certified mail to the Respondent's home address listed in attorney registration records. This letter requested a response by November 30, 2005.

14. The second letter of inquiry was returned as "unclaimed."

15. On December 9, 2005 a third letter of inquiry was forwarded to the Respondent at a new business address listed in attorney registration records. A response was requested by December 23, 2005.

16. The certified mail return receipt was signed by "Katherine N. Fischer."

17. No response to the letter of inquiry was received by Disciplinary Counsel.

18. On January 4, 2006, a fourth letter of inquiry was sent by certified mail to the Respondent's new home address listed in attorney registration records. This letter requested a response by January 18, 2006.

19. The certified mail return receipt was signed by "Dwight J. Portman."

20. No response to the letter of inquiry was received by Disciplinary Counsel.

21. On February 17, 2006, a fifth letter of inquiry was sent by certified and regular mail to both the Respondent's business and home addresses listed in attorney registration records. These letters requested a response no later than March 2, 2006.

22. The certified mail return receipt for the letter sent to the Respondent's business address was signed, but the name of the person endorsing it is unclear.

23. The certified mail return receipt for the letter sent to the Respondent's home address was signed by "Sally Drukebert."

24. Disciplinary Counsel received no response to either of the letters forwarded on February 17, 2006.

25. On March 15, 2006, Disciplinary Counsel's investigator, Michael Kozanecki, served a subpoena upon the Respondent by leaving it at the Respondent's residence address listed in attorney registration records.

26. The subpoena required the Respondent to appear at office of Disciplinary Counsel for a deposition on April 12, 2006 at 10:00 a.m. The subpoena also required the Respondent to bring with him Blech's entire file, as well as the Respondent's IOLTA records from "January 1, 2005 to the present."

27. The Respondent failed to appear for the deposition.

COUNT III
[The Cook Matter]

28. In February, 2005, Edith and Charles Cook, the parents of Brian Cook, retained the Respondent to file a motion for judicial release for their son.

29. Mr. and Mrs. Cook paid the Respondent the sum of \$500.

30. At the time the Respondent was retained, Brian Cook was serving a six year and nine month prison term with the Ohio Department of Corrections, pursuant to a sentence received in the Butler County Common Pleas Court, and was not eligible to file for judicial release until he had served five years of the sentence.

31. The Respondent promised Mr. and Mrs. Cook that if he did not get their son out of jail on judicial release he would refund their money.

32. The Respondent did not file a motion for judicial release as promised and did no work for Mr. and Mrs. Cook.

33. Thereafter, Mr. and Mrs. Cook made numerous requests for the return of the \$500 they had paid to the Respondent.

34. These requests for return of their money were made to the Respondent in writing and sent to him by certified U.S. mail. The first written request for the return of their money was sent on June 15, 2005, and the second was on February 1, 2006.

35. Mr. and Mrs. Cook made numerous unsuccessful attempts to speak with the Respondent in person by make approximately 10 personal trips to his office and by placing numerous phone calls to both his office and to his cell phone.

36. Despite all of Mr. and Mrs. Cook's attempts to contact the Respondent, he did not respond to their letters, nor did he return the messages left at his office or phones.

37. The Respondent failed to return Mr. and Mrs. Cook's \$500.

38. As a result of respondent's conduct, Edith Cook filed a grievance against the Respondent with the Bar Association.

39. The Respondent appeared at a hearing requested by the Bar Association at its office on March 16, 2006.

40. At the conclusion of the proceedings on March 16, 2006, the Respondent was requested to bring his file in the Cook matter, a copy of his malpractice insurance policy or his IOLTA bank statements for the preceding 15 months to the Bar Association's office by 5:00 p.m. on March 31, 2006.

41. The Respondent did not comply with this request in any fashion and has failed to produce any records whatsoever in this matter.

42. Mr. and Mrs. Cook deny the Respondent refunded their money. Though he claimed under oath before members of the Bar Association that he had done so, the Respondent produced no proof that he refunded the \$500 payment to Mr. and Mrs. Cook.

COUNT IV
[The Mullins Matter]

43. On October 4, 2005, Beverly House, the mother of Ronald Mullins, retained the Respondent to file a motion for judicial release for her son.

44. House paid the Respondent the sum of \$250.

45. The Respondent did not file a motion for judicial release as promised and he did no work for House, or her son.

46. From October 4, 2005, to December 10, 2005, House attempted to contact the Respondent approximately 160 times without success.

47. The Respondent did not return any phone calls made by House.

48. During this time period, House called the Butler County Prosecuting Attorney's office and one of the employees of that office conducted a three-way conference call with House and the Respondent.

49. During the three-way phone conversation, the Respondent falsely stated that he had already filed the motion for judicial release.

50. The Respondent failed to return House's \$250 payment.

51. As a result of the Respondent's conduct House filed a grievance against him with the Bar Association.

52. At the time the Respondent was requested to appear before the Bar Association on March 16, 2006, he admitted under oath that he had not filed the motion for judicial release.

53. Further, the Respondent admitted under oath that he failed to follow up on the Mullins matter and that he failed to communicate with House.

54. The Respondent also admitted under oath that he had not refunded House's \$250 payment.

COUNT V
[The Johnson Matter]

55. The Respondent was appointed to represent Douglas Johnson, an indigent criminal defendant, in the Butler County Common Pleas Court.

56. During his representation of Johnson the Respondent accepted the sum of \$1,000 from Johnson and his mother, Marvine Calhoun, for representation on the criminal charges.

57. In the fee application filed with the Court, the Respondent falsely certified he had received no compensation in connection with providing representation in the Johnson's criminal case.

58. On March 18, 2005, the Butler County Auditor issued payment to the Respondent in the amount of \$1,065 as payment of Johnson's indigent attorney fee.

59. The Respondent cashed the indigent attorney fee check in the amount of \$1,065 on March 28, 2005.

60. During his representation of Johnson, the Respondent falsely told Calhoun that he had filed a motion for judicial release on behalf of her son.

61. The Respondent never filed a motion for judicial release on behalf of Johnson.

62. During his representation of Johnson, the Respondent failed to keep in touch with his client, and failed to return numerous phone calls by Calhoun.

COUNT VI
[Legal Malpractice Insurance]

63. At the time the Respondent was requested to appear before the Bar Association on March 16, 2006, he admitted that he had previously allowed his legal malpractice insurance policy to lapse.

64. The Respondent further admitted that he continued to represent clients after the malpractice insurance policy had lapsed and that he did not have his clients sign the appropriate waivers indicating their knowledge that he had no malpractice insurance coverage.

CONCLUSIONS OF LAW

As to Count I, the Blech matter, the Relators have alleged that the Respondent has violated DR 1-102(A)(6), DR 6-101(A)(3), and DR 9-102(B)(4).

As to Count I, based upon clear and convincing evidence, I conclude that the Respondent has violated DR 1-102(A)(6), (a lawyer shall not engage in conduct adversely reflecting on his fitness to practice law); DR 6-101(A)(3), (a lawyer shall not neglect a legal matter entrusted to him); and DR 9-102(B)(4), (a lawyer shall promptly pay or deliver to the client as requested by a client the funds securities, or other properties in the possession of the lawyer which the client is entitled to receive).

As to Count II, the Relators have alleged that the Respondent has violated Gov. Bar R. V(4)(G) regarding the investigation of the Blech matter.

As to Count II, based upon clear and convincing evidence, I conclude that the Respondent has violated Gov. Bar R. V(4)(G) (no lawyer shall neglect or refuse to testify in a disciplinary investigation or hearing).

As to Count III, the Cook matter, the Relators have alleged that the Respondent has violated DR 1-102(A)(4), DR 1-102(A)(6), DR 6-101(A)(3), DR 9-102(B)(4) and Gov. Bar R. V(4)(G).

As to Count III, based upon clear and convincing evidence, I conclude that the Respondent has violated DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(6) (a lawyer shall not engage in conduct adversely reflecting on his fitness to practice law); DR 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him); DR 9-102(B)(4) (a lawyer shall promptly pay or deliver to the client as requested by a client the funds, securities or other properties in the possession of the lawyer

which the client is entitled to receive); and Gov. Bar R. V(4)(G) (no lawyer shall neglect or refuse to testify in a disciplinary investigation or hearing).

As to Count IV, the Mullins matter, the Relators have alleged that the Respondent has violated DR 1-102(A)(4), DR 1-102(A)(6), DR 6-101(A)(2) and DR 9-102(B)(4).

As to Count IV, based upon clear and convincing evidence, I conclude that the Respondent has violated DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(6) (a lawyer shall not engage in conduct adversely reflecting on his fitness to practice law); DR 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him); and DR 9-102(B)(4) (a lawyer shall promptly pay or deliver to the client as requested by a client the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive).

As to Count V, the Johnson matter, the Relators have alleged that the Respondent has violated DR 1-102(A)(4), DR 1-102(A)(6) and DR 6-101(A)(3).

As to Count V, based upon clear and convincing evidence, I conclude that the Respondent has violated DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(6) (a lawyer shall not engage in conduct adversely reflecting on his fitness to practice law); and DR 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him).

As to Count VI involving malpractice insurance, the Relators have alleged that the Respondent has violated DR 1-102(A)(6) and DR 1-104.

As to Count VI, based upon clear and convincing evidence, I conclude that the Respondent has violated DR 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law) and DR 1-104 (an attorney who does not maintain

adequate professional liability insurance in appropriate limits must advise his or her clients in writing).

AGGRAVATION AND MITIGATION

Section 10. Guidelines for Imposing Lawyer Sanctions

(A) Each disciplinary case involves unique facts and circumstances. In striving for fair disciplinary standards, consideration will be given to specific professional misconduct and to the existence of aggravating or mitigating factors.

[Adopted by the Supreme Court of Ohio, effective June 1, 2000, amended effective February 1, 2003.]

Matters to be considered in aggravation of discipline are (a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) lack of cooperation in the disciplinary process; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of and resulting harm to victims of the misconduct; and (i) failure to make restitution.

A dishonest motive is present.

There is a pattern of misconduct and there are multiple offenses.

There is a lack of cooperation in the disciplinary process.

The Respondent has engaged in making false statements and deceptive practices during the disciplinary process.

The Respondent has not acknowledged the wrongful nature of his misconduct.

There is a failure to make restitution.

Though not exhaustive, matters which may be considered in mitigation include (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) timely

good faith effort to make restitution or to rectify consequences of misconduct; (d) full and free disclosure to the Board or cooperative attitude toward the proceedings; (e) character or reputation; (f) imposition of other penalties or sanctions; (g) chemical dependency or mental disability; and (h) other interim rehabilitation.

The Respondent is 33 years of age and was admitted to the practice of law on May 21, 2001.

There is an absence of a prior disciplinary record.

There are no other mitigating factors present.

RECOMMENDED SANCTION

The Relators have recommended disbarment as the appropriate sanction for the Respondent.

The Respondent accepted funds for work he never performed and failed to refund those funds to the individuals who advanced them.

By accepting funds from Johnson and Calhoun and then certifying to the court that he had not received any other funds in his representation of Johnson, he stole funds from Butler County while he was acting as an officer of the court.

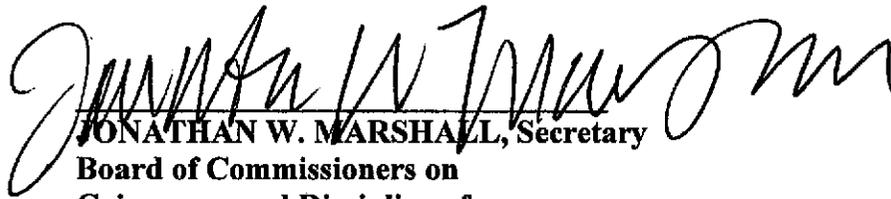
Accordingly, I agree with the Relators' recommendation and recommend permanent disbarment.

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 August 10, 2007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Master Commissioner and recommends that the Respondent, Clifford Scott Portman, be permanently

disbarred 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', is written over a horizontal line. The signature is fluid and cursive.

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