

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

08-0037

In Re:	:	
Complaint against	:	Case No. 07-036
Thomas Joel Manning	:	Findings of Fact,
Attorney Reg. No. 0059759	:	Conclusions of Law and
Respondent	:	Recommendation of the
	:	Board of Commissioners on
Disciplinary Counsel	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
Relator	:	
	:	

This matter came on for hearing on November 30, 2007, in Dayton, Ohio, before a panel comprised of members Cynthia A. Fazio, Hamilton County, Myron A. Wolf, Butler County, and Judge Otho Eyster, Knox County, Chair. None of the panel members resides in the district from which the complaint originated or served as a member of the probable cause panel that certified this matter to the Board of Commissioners on Grievances and Discipline. Relator was present in the person of Attorney Joseph M. Caligiuri; Respondent was present and represented by Attorney William G. Knapp.

FILED
JAN 04 2008
CLERK OF COURT
SUPREME COURT OF OHIO

FINDING OF FACT

The complaint in this matter was filed May 30, 2007, and Respondent filed an answer on July 3, 2007. On November 30, 2007, the parties filed the Agreed Stipulations which are attached and incorporated by reference. This agreement contains 26 Stipulated Facts outlining Respondent's dishonesty in handling his client's personal injury claim and his misuse of his

client's funds constituting violations of DR 1-102(A)(4), DR 1-102(A)(6), DR 9-102(B)(3) and DR 9-102(B)(4).

In addition to the Stipulated Mitigation Evidence, the Respondent testified that he has been diagnosed with a depression and anxiety disorder. Since January of 2007, the Respondent has been treating with a psychologist and a psychiatrist and feels he has his disorder under control.

CONCLUSIONS OF LAW

The parties have stipulated the Respondent violated five Disciplinary Rules and the panel finds the Respondent's conduct did, in fact, constitute violations of the Rules cited above.

MITIGATION AND AGGRAVATION

The facts in this case support the Stipulated Mitigation Evidence and the Stipulated Aggravation Evidence. The Respondent has a prior disciplinary record. The Supreme Court of Ohio in the prior disciplinary case ordered a two year suspension in *Disciplinary Counsel v. Manning*, 110 Ohio St.3d 349, 2006-Ohio-5794.

PANEL RECOMMENDATION

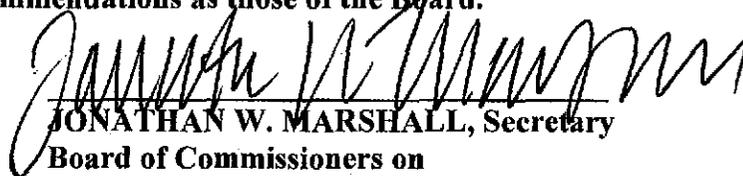
The panel recommends the Board accept the Stipulated Recommended Sanction and impose a six-month suspension from the practice of law. The panel further recommends this suspension run concurrent with Respondent's present suspension (from November 2006 to November 2008), followed by two years of probation.

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 December 7, 2007. The Board adopted the Findings of Fact and Conclusion of Law of the Panel. The Board, however,

recommends that the Respondent, Thomas Joel Manning, be suspended for a period of six months which suspension is to run consecutively to his current two year suspension. 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 cursive and somewhat stylized.

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**

FILED

NOV 30 2007

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

Thomas Joel Manning
Attorney Registration No. (0059759)
800 East Franklin Street
Centerville, OH 45459

**AGREED
STIPULATIONS
BOARD NO. 07-036**

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

AGREED STIPULATIONS

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

STIPULATED FACTS

1. Respondent, Thomas Joel Manning, was admitted to the practice of law in the state of Ohio on November 9, 1992. At the time of the alleged misconduct, respondent was subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. On November 22, 2006, the Ohio Supreme Court suspended respondent from the practice of law for two years.
3. On April 14, 2005, Irene Scarce retained respondent to represent her in a personal injury matter resulting from a car accident in which Scarce, a passenger in a third party's car, was rear ended by the tortfeasor.

EXHIBIT

Stips. 6

4. Respondent pursued settlements from the tortfeasor's insurance company (Allstate) and the vehicle owner's insurance company (Hartford).
5. On May 2, 2006, the tortfeasor's insurance company, Allstate, disbursed a check for \$12,500 made payable to respondent and Scarce. The \$12,500 represented Allstate's policy limits.
6. On May 9, 2006, Scarce endorsed the check and respondent deposited the \$12,500 into his IOLTA account at Fifth Third Bank, Account No. 0072487356.
7. After respondent deposited the \$12,500 check he had a balance of \$12,616.05 in his IOLTA account.
8. On May 10, 2006, respondent wrote check no. 1972 made payable to Thomas J. Manning for \$4,166.66, which represented one-third of the total award, leaving a balance of \$8,449.39 in respondent's IOLTA account.
9. After respondent's fee, Scarce should have been entitled to \$8,071.37, which represented two thirds of the total award (\$8,333.33) less expenses (\$261.97) advanced by respondent.
10. On May 12, 2006, respondent transferred \$1,500 from his IOLTA account to cover an unrelated overdraft in his operating account. This left a balance of \$6,949.39 in respondent's IOLTA account.
11. On May 22, 2006, respondent wrote check no. 1974 to Scarce for \$3,071.37, leaving a balance of \$3,878.02 in respondent's IOLTA account.
12. Although Scarce was entitled to \$8,071.37 (see paragraph 9), respondent falsely asserted that he was keeping \$5,000 of Scarce's money in his IOLTA account for payment of Scarce's subrogated medical expenses, despite the fact that respondent had already spent a portion of these funds on respondent's own personal expenses.

13. Respondent intended to hold the \$5,000 in his IOLTA account in the event Hartford enforced its lien against the Allstate settlement for medical payments that Hartford had made on behalf of Scearce.
14. On May 25, 2006, respondent wrote check no. 1975 made payable to Thomas J. Manning for \$1,000 for personal expenses, leaving a balance of \$2,878.02 in respondent's IOLTA account.
15. On May 25, 2006, respondent wrote check no. 1976 to Citifinancial, Account No. 67350770-0349100 for a business bridge loan for \$400, leaving a balance of \$2,478.02 in respondent's IOLTA account.
16. On May 25, 2006, respondent wrote check no 1978 made payable to the Clerk of Courts for \$150 for a different client, leaving a balance of \$2,328.02 in respondent's IOLTA account.
17. On May 31, 2006, respondent transferred \$450.64 via Speedpay from his IOLTA account to cover his malpractice insurance, leaving a balance of \$1,877.38 in respondent's IOLTA account.
18. On June 2, 2006, check no. 1973, which was written on May 15, 2006, for \$1,515 made payable to USAF Claims cleared respondent's account, leaving a balance of \$362.38 in respondent's IOLTA account. The memo line read, "Kimberly Gibson—Subrog. Reimbursement."
19. On June 2, 2006, check no. 1977, which was written on May 25, 2006, for \$436 made payable to the Montgomery County Probate Court was returned for insufficient funds.
20. On June 2, 2006, respondent wrote check no. 1980 from his IOLTA account made payable to respondent's receptionist for \$280, but the check was returned for insufficient funds.¹

¹ Respondent also paid his receptionist \$280 on April 21, 2006 via check no. 1970 drawn on his IOLTA account. The check cleared on May 2, 2006.

21. By June 6, 2006, respondent had depleted all of Scarce's funds and had a negative balance in his IOLTA account.
22. Despite having spent the \$5,000, respondent never informed Scarce of his misdeeds.
23. In October 2006, respondent settled Scarce's claim against Hartford Insurance for \$60,000.
24. Respondent presented Scarce with a document entitled, "Itemized Statement for Personal Injury Distribution," which stated:
- Settlement Received (Hartford UIM Claim) \$60,000
 - Waiver by Hartford of subrogation for medical payments benefits \$5,000
 - Less 33 1/3% for attorney fees per contract of 4/14/05 (\$20,000)
 - Total Disbursed to Client \$45,000
25. Although respondent repaid the \$5,000 from the \$20,000 contingency fee, his omission of the misuse of the \$5,000 led Scarce to believe that the money had remained in his IOLTA account.
26. Scarce received the entire \$45,000 disbursement.

STIPULATED DISCIPLINARY RULE VIOLATIONS

Respondent hereby stipulates and agrees that his conduct, as described above, violated the following

Disciplinary Rules:

- DR 1-102(A)(4) [Conduct involving fraud, dishonesty, deceit, or misrepresentation];
- DR 1-102(A)(6) [Conduct that adversely reflects on a lawyer's fitness to practice law];
- DR 9-102(A) [All funds of clients paid to a lawyer shall be deposited in an identifiable bank account maintained in the state in which the law office is situated and no funds belonging to the lawyer shall be deposited therein];

- DR 9-102(B)(3) [A lawyer shall maintain complete records of all funds, securities, and other properties of client coming into the lawyer's possession and render appropriate accounts to his client regarding them]; 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 and render appropriate accounts to his client regarding them].

STIUPLATED MITIGATION EVIDENCE

- Respondent has cooperated in the disciplinary process.
- Respondent's timely restitution prevented financial harm to the client.
- Respondent reserves the right to present character evidence to the Panel.

STIUPLATED AGGRAVATION EVIDENCE

- Respondent was previously disciplined; and,
- Respondent acted with a dishonest or selfish motive.

STIPULATED EXHIBITS

- | | |
|-----------|--|
| Exhibit 1 | Thomas J. Manning IOLTA Account Reconstruction |
| Exhibit 2 | May 2006 Monthly Bank Statement and Items, IOLTA Account No. 0072487356 |
| Exhibit 3 | June 2006 Monthly Bank Statement and Items, IOLTA Account No. 0072487356 |
| Exhibit 4 | Itemized Statement for Personal Injury Distribution |
| Exhibit 5 | Character Reference Letter from David F. Rudwall, Esq. |

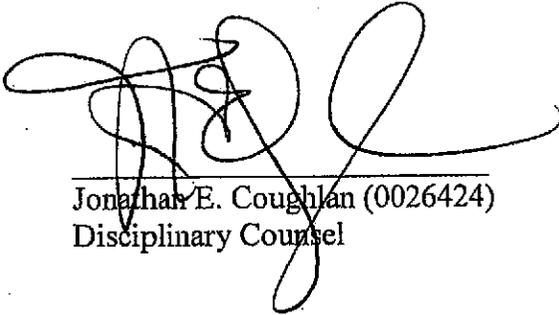
STIPULATED RECOMMENDED SANCTION

Respondent and relator hereby stipulate and agree that, based upon the stipulated facts, violations, and exhibits, an appropriate sanction for respondent's misconduct is a six-month suspension to run concurrently with respondent's present suspension, followed by two years of probation. Respondent and relator respectfully request that the panel adopt the recommended sanction.

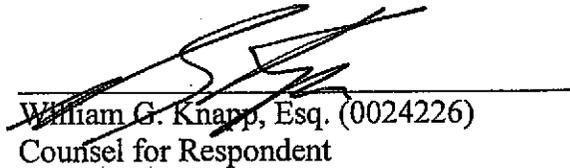
CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this

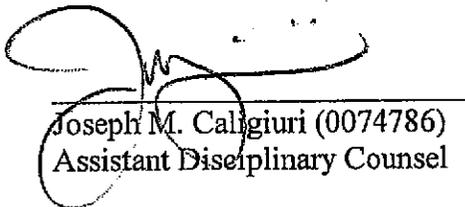
30th day of November, 2007.



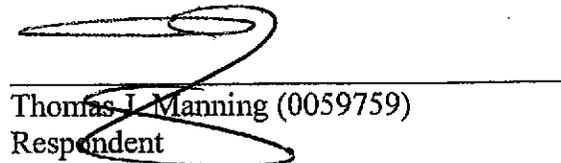
Jonathan E. Coughlan (0026424)
Disciplinary Counsel



William G. Knapp, Esq. (0024226)
Counsel for Respondent



Joseph M. Caligiuri (0074786)
Assistant Disciplinary Counsel



Thomas J. Manning (0059759)
Respondent