

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, : Case No. 08-37  
Relator, : (BCGD Case No. 07-036)  
v. :  
Thomas J. Manning, :  
Respondent. :

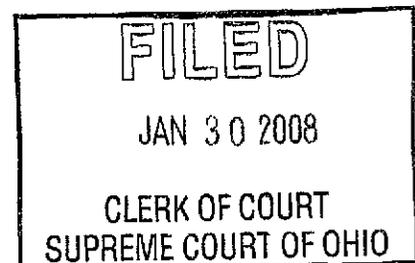
---

**OBJECTION 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**

---

William G. Knapp, III (0024226)  
800 East Franklin Street  
Centerville, OH 45459  
(937) 291-3400  
(937) 291-0757 (Fax)  
WGKLaw@aol.com  
Counsel for Respondent

Jonathan E. Coughlan (0026424)  
Disciplinary Counsel  
Joseph M. Caliguiri (0074786)  
Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, OH 43215  
(614) 461-0256



**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....	i
STATEMENT OF FACTS.....	1
RESPONDENT’S OBJECTION.....	2
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	10
APPENDIX	<b><u>Appx. Pgs.</u></b>
Board Order	1-9
Reference Letter from David F. Rudwall, Esq.	10

**TABLE OF AUTHORITIES**

*AUTHORITY*

CASES

<i>Cleveland Bar Assn. v. Glassman</i> (2004), 104 Ohio St.3d 484, 820 N.E.2d 350.....	4
<i>Cleveland Bar Assn. v. Herron</i> (2007), 112 Ohio St. 3d 564, 862 N.E.2d 107.....	5
<i>Cuyahoga Cty. Bar Assn. v. Garfield</i> (2006), 109 Ohio St.3d 103, 846 N.E.2d 45.....	5
<i>Cuyahoga Cty. Bar Assn. v. Maybaum</i> (2006), 112 Ohio St.3d 93, 858 N.E.2d 359.....	3, 4
<i>Dayton Bar Assn. v. Gerren</i> (2004), 103 Ohio St.3d 21, 812 N.E.2d 1280.....	3, 7
<i>Disciplinary Counsel v. Bubna</i> (2007), 116 Ohio St.3d 294, 878 N.E.2d 632.....	7
<i>Disciplinary Counsel v. Claflin</i> (2005), 107 Ohio St.3d 31, 836 N.E.2d 564.....	4, 5

<i>Disciplinary Counsel v. Croushore</i> (2006), 108 Ohio St.3d 156, 841 N.E.2d 781.....	5, 7
<i>Disciplinary Counsel v. Manning</i> (2006), 110 Ohio St.3d 349, 856 N.E.2d 259.....	7
<i>Disciplinary Counsel v. Mathewson</i> (2007), 113 Ohio St.3d 365, 865 N.E.2d 891.....	6
<i>Disciplinary Counsel v. Fumich</i> (2007), 116 Ohio St.3d 257, 878 N.E.2d 6.....	8
<i>Disciplinary Counsel v. Medley</i> (2004), 104 Ohio St.3d 251, 819 N.E.2d 273.....	8
<i>Disciplinary Counsel v. Morgan</i> (2007), 114 Ohio St.3d 179, 870 N.E.2d 1171.....	6, 7
<i>Disciplinary Counsel v. O'Neill</i> (2004), 103 Ohio St.3d 204, 815 N.E.2d 286.....	8
<i>Matter of Fischer</i> (N.Y.A.D. 1 <sup>st</sup> Dept., June 26, 2007), 839 N.Y.S.2d 462, 43 A.D.3d 173.....	6, 7
<i>Ohio State Bar Assn. v. Weaver</i> (1975), 41 Ohio St.2d 97, 322 N.E.2d 665.....	8
<i>Toledo Bar Assn. v. Abood</i> (2004), 104 Ohio St.3d 655, 821 N.E.2d 560.....	9
<i>Toledo Bar Assn. v. Kramer</i> (2000), 89 Ohio St.3d 321, 731 N.E.2d 643.....	3, 7
<b>SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR IN OHIO</b>	
BCGD Proc.Reg. 10(B)(2).....	2

Now comes Respondent, Thomas J. Manning, by and through counsel, and hereby submits the following objection 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 January 4, 2008. 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 January 10, 2008.

As will be discussed more fully below, Respondent objects only to the sanction recommended by the Board: to-wit, a six-month actual suspension to be served consecutively with his current two-year suspension. Respondent instead asks this Court to impose the sanction stipulated between Relator and Respondent, and approved by the hearing panel: a six-month suspension to run concurrent with his current two-year suspension, followed by two years of monitoring.

### **STATEMENT OF FACTS**

Respondent submits that he is in agreement with the Findings of Fact by the Board, as well as those contained in the Agreed Stipulations. Respondent does want to point out to this Court the testimony before the hearing panel concerning his diagnosis of depression and anxiety disorder, and his ongoing successful treatment for same. Respondent’s testimony was clear and moving as to the problems he was having and how his life has changed for the better since he sought help. Respondent has been seeing a psychologist for over a year now and is taking medication prescribed by a consulting psychiatrist. As confirmed by a report provided to Respondent’s counsel and Relator’s counsel, Respondent has been completely upfront with his treating providers, and been compliant in every way with the protocols set forth by the providers. Respondent’s psychologist, Dr. Tyrone Payne, also opined that the misconduct in both of

Respondent's conduct was in part caused by his conditions, and that his misconduct was the result of poor judgment and not dishonesty. Significantly, Dr. Payne also opined that Respondent could return now to the professional, ethical and competent practice of law.

The panel accepted Respondent's testimony as a mitigating factor pursuant to BCGD Proc.Reg. 10(B)(2), and Respondent asks this Court to consider it as well. The hearing panel took this testimony, and their personal observations of Respondent at the hearing, into account when approving the stipulated sanction, and Respondent submits that this Court should follow the recommendation of the hearing panel and impose the stipulated sanction.

### **OBJECTION OF RESPONDENT**

#### **I. THE STIPULATED SANCTION, AS ADOPTED BY THE HEARING PANEL, SHOULD BE IMPOSED BY THIS COURT:**

As stated above, Relator and Respondent stipulated that the sanction in this matter should be a six-month suspension to run concurrently with Respondent's current two-year suspension. Additionally, upon Respondent's reinstatement to the practice of law, he would be subject to a two-year monitoring period. The hearing panel approved the stipulated sanction and adopted it. However, the Board recommended that Respondent serve a six-month suspension consecutive to his current two-year suspension, with no monitoring period after reinstatement.

Respondent objects to the Board's recommendation, and instead asks this Court to impose the stipulated sanction adopted by the hearing panel. Respondent submits that the stipulated sanction is in accord with this Court's resolution of similar instances of misconduct, and would further the Court's stated primary goal of lawyer discipline- the protection of the public.

A. The stipulated sanction is in accord with this Court's prior decisions in similar cases:

At the panel hearing, the parties jointly submitted three (3) cases to the panel in support of the stipulated sanction. Those cases were: *Toledo Bar Assn. v. Kramer* (2000), 89 Ohio St.3d 321, 731 N.E.2d 743; *Dayton Bar Assn. v. Gerren* (2004), 103 Ohio St.3d 21, 812 N.E.2d 1280; and *Cuyahoga Cty. Bar Assn. v. Maybaum* (2006), 112 Ohio St.3d 93, 858 N.E.2d 359.

Respondent submits that those cases, as well as additional similar cases, further underscore that the stipulated sanction is reasonable and should be adopted by this Court.

In *Toledo Bar Assn. v. Kramer* (2000), 89 Ohio St.3d 321, 731 N.E.2d 743, the Respondent was supposed to hold funds in trust and use them to settle and pay medical bills arising from the client's auto accident. Respondent instead used over \$3,000.00 of this escrowed money for personal items. Respondent had no prior discipline, but was seeing a counselor for depression. He made restitution, cooperated, and was remorseful. The sanction imposed was a one-year suspension, all stayed, on condition that Respondent continue treatment.

In *Dayton Bar Assn. v. Gerren* (2004), 103 Ohio St.3d 21, 812 N.E.2d 1280, Respondent was supposed to hold over \$12,000.00 in trust to settle a hospital bill arising from his client's motorcycle accident. Instead, respondent used the funds for personal expenses. *Years* passed and a collection agency obtained a judgment against the client for the amount of the bill. Respondent had still not paid the judgment at the time of the Supreme Court proceedings. Respondent had no prior discipline, cooperated, showed remorse, and had a favorable reference. Additionally, the Board found Respondent had harmed his client. The sanction imposed by this Court was a six-month actual suspension.

In *Cuyahoga Cty. Bar Assn. v. Maybaum* (2006), 112 Ohio St.3d 93, 858 N.E.2d 359, Respondent was supposed to hold almost \$7,000.00 in trust and negotiate and pay the client's

medical bills from an auto accident. Instead, Respondent used the funds for personal and business expenses and lied to the client about the funds. Respondent did not return client's share of the funds for almost five years. Respondent had prior discipline for similar conduct, and attempted to use a psychological condition as a mitigator, but the court agreed that it was not contributory. Respondent also did not sincerely express remorse, and looked to shift the blame for his misconduct. The sanction imposed by this Court was an indefinite suspension, with a three-year probation to follow, on condition that Respondent continue treatment. As stated by Relator's counsel at the panel hearing, *Maybaum* was submitted to the panel as an extreme example of why, due to the numerous aggravating factors, the time involved, and the direct dishonesty to the client about the status of the funds in *Maybaum*, an indefinite suspension was **not** appropriate in this case.

Other cases also bolster the reasonableness of the stipulated sanction in this matter.

In *Cleveland Bar Assn. v. Glassman* (2004), 104 Ohio St.3d 484, 820 N.E.2d 350, Respondent had a felony conviction for theft of settlement funds and was under interim suspension. Respondent also had failed to file a bankruptcy for a client, and failed to communicate with the client. Respondent had prior federal discipline, halfheartedly apologized, but had good references and had been experiencing personal problems at the time of the theft. This Court approved the stipulated sanction of a one-year actual suspension pursuant to a consent-to-discipline agreement.

In *Disciplinary Counsel v. Clafin* (2005), 107 Ohio St.3d 31, 836 N.E.2d 564, the Respondent settled a personal injury case for a client, but did not return a release to the insurer. He further paid himself a fee even after told by the insurer not to disburse the funds until the release had been returned. Respondent used the balance of the funds for three years for personal

and business use. After the insurer filed a grievance, Respondent lied to the investigators and got the first grievance dismissed. The client did not get his funds until later, and testified he was harmed by not getting the funds. Respondent never did return the release as requested. Respondent had no prior discipline, and was ultimately cooperative, but the Board also had doubts about Respondent's remorse. This Court imposed a sanction of a two-year suspension, with one year stayed.

In *Disciplinary Counsel v. Croushore* (2006), 108 Ohio St.3d 156, 841 N.E.2d 781, the Respondent had commingled funds in his IOLTA account and used the IOLTA for personal purposes. Respondent had no prior discipline, cooperated, and there was no harm to clients. The sanction imposed by this Court was a one-year suspension, all stayed, followed by two years of probation.

In *Cuyahoga Cty. Bar Assn. v. Garfield* (2006), 109 Ohio St.3d 103, 846 N.E.2d 45, Respondent had a federal conviction for bank fraud, when he pledged a client's CD as collateral for a personal loan of \$250,000.00. The Client did not discover the misconduct for four years. Respondent had no prior record, cooperated, paid restitution, was remorseful, and had favorable references. This Court approved a stipulated sanction, pursuant to a consent-to-discipline agreement, of an eighteen-month suspension.

In *Cleveland Bar Assn. v. Herron* (2007), 112 Ohio St. 3d 564, 862 N.E.2d 107, the Respondent was under a prior indefinite suspension, and used trust funds to pay business and personal expenses. Respondent also initially failed to cooperate in the investigation. In addition, the Board found that Respondent had harmed a vulnerable client. Respondent was remorseful. This Court imposed the sanction of an indefinite suspension, to run concurrently with his current indefinite suspension.

In *Disciplinary Counsel v. Mathewson* (2007), 113 Ohio St.3d 365, 865 N.E.2d 891, the Respondent had two instances of prior discipline, and committed numerous violations, including multiple instances of neglect of client matters, dishonesty, failure to refund fees, and using his trust account as a personal checking account, overdrawing it at least ten times. Respondent also failed to cooperate in the investigation, but did ultimately sit for a deposition, though this Court found him to be “indifferent” to the disciplinary process. Based on the number of violations, as well as the severe aggravating factors, this Court imposed the sanction of an indefinite suspension.

In *Matter of Fischer* (N.Y.A.D. 1<sup>st</sup> Dept., June 26, 2007), 839 N.Y.S.2d 462, 43 A.D.3d 173, the Respondent commingled and misappropriated client funds, used his trust account as a personal checking account, failed to secure escrowed fiduciary funds, and overdrew the account. No clients were harmed by the misconduct. Respondent had no prior discipline, cooperated, was remorseful, and the panel found that Respondent’s actions were the result of poor judgment rather than dishonesty. The Court publicly reprimanded Respondent, holding:

“We have consistently held that public censure is appropriate for escrow violations such as improper record-keeping, non-venal conversion and commingling, especially where a respondent expresses remorse and cooperates fully with the committee. (citations omitted). Such a penalty is particularly appropriate where, as here, there were findings made by both the referee and hearing panel that the conduct giving rise to the charges reflected poor judgment rather than dishonesty.” (citation omitted).

In *Disciplinary Counsel v. Morgan* (2007), 114 Ohio St.3d 179, 870 N.E.2d 1171, Respondent commingled funds in his IOLTA account, overdrew the account, placed client funds at risk, failed to cooperate in the investigation, even ignoring a subpoena, and failed to answer the complaint. The Respondent had no prior disciplinary record. The sanction imposed by this Court was a two-year suspension with one year stayed.

This Court's recent decision in *Disciplinary Counsel v. Bubna* (Dec. 12, 2007), 116 Ohio St.3d 294, 878 N.E.2d 632, further supports the stipulated sanction in this matter. In *Bubna*, the respondent received a one-year suspension, with six months stayed on conditions. Respondent, over an eight-year period, used his IOLTA account for both personal and business purposes, commingled with client funds. Respondent never kept track of the sources and disbursements of the funds in the account, repeatedly overdrawed the account, and on numerous occasions used client funds for personal and business purposes.

Additionally, in 2002, respondent escrowed \$3,000.00 from a client's personal injury settlement towards payment of an insurer's subrogation claim. Respondent used the funds for business and personal purposes, never resolving the subrogation claim, to the extent that the client began receiving collection notices. Respondent avoided the client's calls, and it was not until early 2004 that he admitted he had not resolved the subrogation issue. Instead of taking care of the issue, respondent instead sent the client a check for \$1,835.00. Respondent later sent another check for \$1,135.00, representing the balance of the \$3,000.00 escrow, but the check bounced, and was not made good for several months, until after the client filed a grievance.

Though respondent had no prior discipline, his conduct harmed the client by adversely affecting his credit and subjecting him to collection efforts. Respondent also failed to fully grasp the gravity of the situation, and did not open separate accounts for over a year.

The above-cited cases make it clear that the stipulated sanction of a six-month concurrent suspension is in accord with the sanctions set forth above. Respondent's situation is most analogous to *Kramer, Gerren, Croushore, Fischer and Morgan*. Respondent does have prior discipline. *Disciplinary Counsel v. Manning* (2006), 110 Ohio St.3d 349, 856 N.E.2d 259. There was no harm to the client. In addition, the period of time involved (five (5) months) was

short compared with the cases cited above, all of which involved periods of several years of misconduct. Respondent fully cooperated in all aspects of this matter, and shown genuine remorse. Respondent also provided a favorable character reference, a copy of which is provided in the Appendix. Respondent's detailed testimony before the hearing panel was heartfelt and sincere concerning the problems he had been having, and the steps he has taken to resolve those issues.

Additionally, as Dr. Payne confirmed, his mental condition was the contributing factor to this and his past misconduct, and he is making a full recovery and can return to the professional, competent, and ethical practice of law. Respondent also testified before the hearing panel that he would welcome a monitor of his practice to insure to this Court, as well as the Ohio bar at large, that he has returned to the professional, competent, and ethical practice of law, and his troubles are behind him.

- B. A concurrent suspension, followed by two-years of monitoring, is an appropriate sanction and will serve the goal of protection of the public:

This Court has long recognized that "in determining the appropriate length of the suspension and any attendant conditions, we must recognize that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public." *Disciplinary Counsel v. Fumich* (2007), 116 Ohio St.3d 257, 878 N.E.2d 6 (citing *Disciplinary Counsel v. O'Neill* (2004), 103 Ohio St.3d 204, 815 N.E.2d 286; *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 322 N.E.2d 665). Further, this Court has imposed concurrent sanctions in appropriate cases. *E.g. Disciplinary Counsel v. Medley* (2004), 104 Ohio St.3d 251, 819 N.E.2d 273.

In this case, imposing a concurrent sanction, with two-years of follow-up monitoring, is perfectly tailored to protect the public, by insuring Respondent's actions match his words once

he is reinstated to practice. The stipulated sanction will permit Respondent to resume his career and re-establish his law practice while simultaneously insuring he is doing so properly and without incident. The Court will recall that Respondent's treating psychologist has opined that he believes that Respondent can return to the professional, competent, and ethical practice of law now. Respondent is eligible to petition this Court for reinstatement from his current suspension on November 22, 2008. Ordering the stipulated sanction would impose monitoring over Respondent's practice until the end of 2010 or beginning of 2011, and also insure that he continues to follow all treatment protocols by his providers. Certainly if Respondent failed to adhere to the ethical standards expected of Ohio lawyers upon his reinstatement, the monitoring would discover same. The interest in protecting the public is furthered by the stipulated sanction approved by the hearing panel, not the modified sanction recommended by the Board.

### CONCLUSION

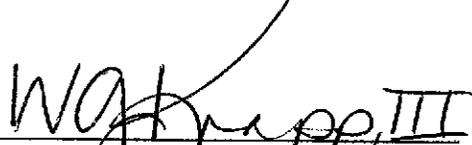
As this Court has held, each case of professional misconduct must be decided on the unique facts and circumstances presented. *Toledo Bar Assn. v. Abood* (2004), 104 Ohio St.3d 655, 821 N.E.2d 560. Respondent did commit wrongdoing, and should be sanctioned for same. However, taking into consideration the unique facts and circumstances presented, the appropriate sanction is the stipulated sanction approved by the hearing panel, and not the modified sanction recommended by the Board. Respondent has admitted fully to his misconduct, and cooperated with all aspects of the investigation and disciplinary process. Respondent further has shown sincere remorse. Respondent also provided a favorable character reference. There was no harm to the client from the brief period during which the misconduct occurred.

Most importantly, Respondent sought help for the problems which lead to the misconduct, and has been pursuing his treatment as recommended, to the point where his treating

provider opines he could resume law practice now. Based on all of the above, Respondent submits that the stipulated sanction approved by the hearing panel is appropriate given the circumstances.

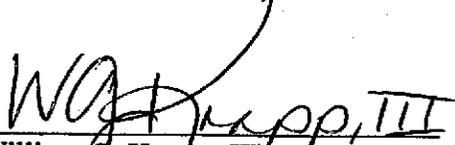
Accordingly, Respondent submits that the stipulated sanction of a six-month concurrent suspension, followed by a two-year period of monitoring, is reasonable and supported by the jurisprudence of this and other courts, and should be adopted and imposed by this Court.

Respectfully submitted,

  
William G. Knapp, III (0024226)  
800 East Franklin Street  
Centerville, OH 45459  
(937) 291-3400  
(937) 291-0757 (Fax)  
WGKLaw@aol.com  
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 30<sup>th</sup> day of January, 2008.

  
William G. Knapp, III  
Counsel for Respondent

## **APPENDIX**

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

**08-0037**

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 07-036</b>
<b>Thomas Joel Manning Attorney Reg. No. 0059759</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 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.**



**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 Searce. The \$12,500 represented Allstate's policy limits.
6. On May 9, 2006, Searce 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, Searce 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 Searce for \$3,071.37, leaving a balance of \$3,878.02 in respondent's IOLTA account.
12. Although Searce was entitled to \$8,071.37 (see paragraph 9), respondent falsely asserted that he was keeping \$5,000 of Searce's money in his IOLTA account for payment of Searce'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 Scarce.
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.<sup>1</sup>

---

<sup>1</sup> 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 Searce's funds and had a negative balance in his IOLTA account.
22. Despite having spent the \$5,000, respondent never informed Searce of his misdeeds.
23. In October 2006, respondent settled Searce's claim against Hartford Insurance for \$60,000.
24. Respondent presented Searce 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 Searce to believe that the money had remained in his IOLTA account.
26. Searce 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**

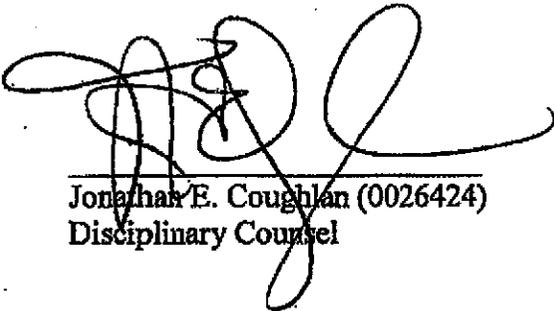
Exhibit 1	Thomas J. Manning IOLTA Account Reconstruction
Exhibit 2	May 2006 Monthly Bank Statement and Items, IOLTA Account No. 0072487356
Exhibit 3	June 2006 Monthly Bank Statement and Items, IOLTA Account No. 0072487356
Exhibit 4	Itemized Statement for Personal Injury Distribution
Exhibit 5	Character 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.

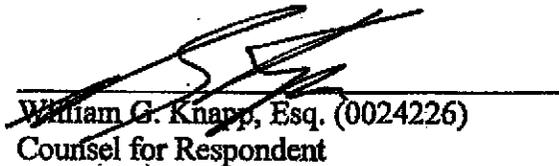
**CONCLUSION**

The above are stipulated to and entered into by agreement by the undersigned parties on this 30th day of November, 2007.



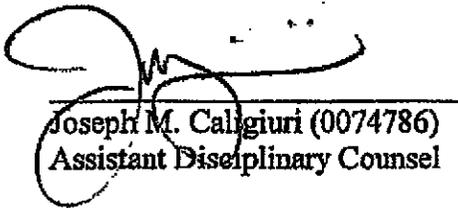
---

Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



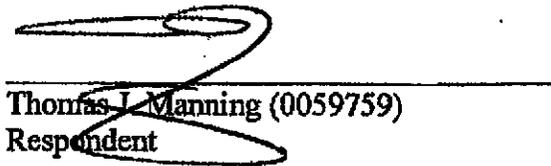
---

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



---

Joseph M. Caligiuri (0074786)  
Assistant Disciplinary Counsel



---

Thomas J. Manning (0059759)  
Respondent

DAVID FULLER RUDWALL  
ATTORNEY AT LAW  
500 EAST THIRD STREET  
SUITE 239  
DAYTON, OH 45402

TEL (937) 228-4600 FAX (937) 228-4601  
EMAIL: DRUDWALL@AOL.COM

November 29, 2007

Re: Thomas J. Manning Disciplinary Matter

To Whom It May Concern:

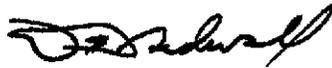
It is without reservation, and with full appreciation for our professional and ethical duties, that I commend Thomas J. Manning's worthiness to resume and continue in the practice of law.

My first opportunity to observe Mr. Manning's abilities was several years ago, as he represented a party in litigation. I was the chair of a three-person arbitration panel. He was thoroughly prepared, congenial and professional, working co-operatively with opposing counsel to achieve a resolution. These important qualities of character, concern for the client, diligence and professional demeanor are unfortunately becoming less common in the practice of law.

Since his disciplinary problems arose, Mr. Manning has consistently expressed regret, measured with a healthy and renewed resolve to serve clients with integrity. I have permitted him to work under my supervision, and am genuinely impressed with his deep knowledge, careful work ethic, and "people skills." I believe, without equivocation, that Mr. Manning will be an asset to the legal community, and to each client that he serves, for so long as he practices law.

Please contact me if I may further assist your deliberations.

Very truly yours,



David F. Rudwall