

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

**In Re:** : **07-1570**

**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**  
**Butler County Bar Association and** : **Grievances and Discipline of**  
**Disciplinary Counsel** : **the Supreme Court of Ohio**

**Relators**

**FILED**  
SEP 04 2008  
CLERK OF COURT  
SUPREME COURT OF OHIO

This matter was heard on June 30, 2008, upon remand from the Supreme Court of Ohio, for consideration of the claims in mitigation as raised in supplemental materials filed with the Court on October 17, 2007 by Respondent, Clifford Scott Portman, Attorney Registration No. 0073390. Mr. Portman was admitted to the practice of law in Ohio on May 21, 2001.

The members of the hearing panel were Judge Beth Whitmore, Chair, Attorney McKenzie K. Davis, and Martha L. Butler. None of the panel members is from the appellate district from which the complaint arose or served as members of the probable cause panel that certified the matter to the Board of Commissioners on Grievances and Discipline (the "Board").

Carol A. Costa appeared as counsel on behalf of Relator, Disciplinary Counsel, and Richard A. Hyde appeared on behalf of Relator, Butler County Bar Association. Respondent was present and was represented by Alvin E. Mathews, Jr. Respondent and his Ohio Lawyers Assistance Program (OLAP) counselor, Stephanie S. Krznarich, both testified at the hearing.

## PROCEDURAL HISTORY

This action commenced on June 6, 2006 with the filing by the Disciplinary Counsel of a two count complaint against the Respondent. On December 26, 2006, Disciplinary Counsel and the Butler County Bar Association jointly filed an amended complaint alleging four additional counts of misconduct by the Respondent. Respondent did not answer the complaint.

On June 8, 2007, Relators filed a motion for default. A master commissioner appointed by the Board granted the motion, making findings of misconduct and a recommendation, which the Board adopted. On August 21, 2007, the Board filed its final report (Appendix A) in Case No. 06-058 with the Supreme Court. The report of the Board found Respondent committed rule violations on all six counts and recommended that the Respondent be permanently disbarred. On October 17, 2007, Respondent filed a motion to supplement the record, which was granted by the Court, wherein he raised objections to the recommended sanction in the Board's report.

On December 21, 2007, the Court remanded the matter to the Board to consider claims in mitigation raised by Respondent in his October 17, 2007 filing. *Butler Cty. Bar Assn. v. Portman*, 116 Ohio St.3d 1450, 2007-Ohio-6842. In addition, the Court ordered that Respondent be suspended from the practice of law for an interim period, effective with its December 21, 2007 entry, and continuing until the Court acts upon the further recommendation of the Board. *Id.*

We now consider Respondent's October 17, 2007 claims in mitigation.

## FINDINGS OF FACT

The findings of fact, as recited in the August 21, 2007 report of the Board are not disputed. The panel adopts those facts in their entirety here. Essentially, the Board found that Respondent had accepted retainers from several clients, failed to perform work for the clients,

and failed to refund the payments as requested by the clients. In addition, the Board found that Respondent accepted payment from Butler County for representing an indigent person after the man's mother had paid Respondent for the representation. Also, the Board found that after Respondent had allowed his malpractice insurance to lapse, he represented clients without informing them he was uninsured and he failed to secure the necessary waivers from them. Finally, the Board found that Respondent failed to respond to letters of inquiry from the Disciplinary Counsel and failed to honor a subpoena requiring him to appear at the office of the Disciplinary Counsel for a deposition.

#### CONCLUSIONS OF LAW

The conclusions of law as recited in the August 21, 2007 report of the Board are also undisputed. The panel adopts those conclusions of law for each count in their entirety. In summary, the Board found by clear and convincing evidence that Respondent violated DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(6) (conduct adversely reflecting on his fitness to practice law); DR 6-101(A)(3) (neglect of a legal matter); DR 9-102(B)(4) (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); DR 1-104 (a lawyer who does not maintain adequate professional liability insurance in appropriate limits shall inform his or her clients in writing); and Gov. Bar R. V(4)(G) (no lawyer shall neglect or refuse to assist in a disciplinary investigation or hearing).

#### AGGRAVATION AND MITIGATION

In its August 21, 2007 report, the Board identified the following aggravating factors:

“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.”

However, the panel notes that in his October 17, 2007 supplemental filing, Respondent presented evidence that he has made restitution to the individuals and entities named in the Relators’ complaint. Upon review of this evidence, the panel concludes that “failure to make restitution” should no longer be considered an aggravating factor in determining Respondent’s sanction. Also, the panel notes that during the remand proceeding, Respondent acknowledged the wrongful nature of his conduct and was open and cooperative. The panel is impressed by Respondent’s sincerity and notes the genuine remorse shown by Respondent during the panel’s remand hearing.

Also in its August 21, 2007 report, the Board indicated the following with respect to mitigating factors:

“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.”

In his October 17, 2007 supplemental filing, Respondent petitioned the Court to consider his planned contract with OLAP and his restitution to clients named in the Board report as additional mitigating factors in the determination of his sanction. Respondent requested that a sanction of indefinite suspension be imposed rather than permanent disbarment as recommended by the Board on August 21, 2007. In its remand order, the Court directed the Board to consider

Respondent's October 17, 2007 claims in mitigation as well as, if appropriate, a mental health evaluation of the Respondent. The Board has considered both.

Pursuant to BCGD Procedural Regulations,<sup>1</sup> this panel considers the following mitigating factors when determining the proper sanction:

“(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 disciplinary Board or cooperative attitude toward proceedings; (e) character or reputation; (f) imposition of other penalties or sanctions; (g) chemical dependency or mental disability \*\*\*; (h) other interim rehabilitation.”  
BCGD Proc. Reg. 10(B)(2)(a-h).

Based on the record now before us, the panel finds that the following additional mitigating factors should be considered in determining the Respondent's sanction:

The Respondent made a timely good faith effort to make restitution.

The Respondent suffered from a qualifying mental disability.

With respect to restitution, the Respondent attached an affidavit to his October 17, 2007 filing where he attested and presented documentation that he has paid restitution to the individuals and entities named in both the Relators' complaint and the report of the Board.

Respondent made full refunds of fees to three individual clients and provided a partial refund to the woman who had paid Respondent to represent her indigent son. Further, Respondent presented evidence that he has reimbursed Butler County in full for the fees he received that represented double-recovery for representation of the indigent client. The panel concludes that this new evidence merits that Respondent's actions in restitution be considered a factor in mitigation.

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<sup>1</sup> The rules and regulations governing procedure on complaints and hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court.

Respondent also presented additional evidence regarding his mental disability. To qualify as a factor in mitigation, a mental disability must be supported by all of the following:

“(i) A diagnosis of a \*\*\* mental disability by a qualified health care professional \*\*\* ;

“(ii) A determination that the \*\*\* mental disability contributed to cause the misconduct;

“(iii) \*\*\* [I]n the event of mental disability, a sustained period of successful treatment;

“(iv) A prognosis from a qualified health care professional \*\*\* that the attorney will be able to return to competent, ethical professional practice under specified conditions.” BCGD Proc. Reg. 10(B)(2)(g)(i), (ii), (iii), and (iv).

Respondent submitted the deposition testimony and mental health evaluation of clinical psychologist, Will Caradine, Ph.D., in support of a determination that he suffers from a mental disability that warrants consideration as a mitigating factor. Dr. Caradine began treating Respondent on December 7, 2007. Dr. Caradine diagnosed the Respondent as suffering from “generalized anxiety disorder with depressive features.” In his mental health evaluation of the Respondent, Dr. Caradine rendered his opinion that Respondent’s failure to provide legal services to clients from whom Respondent had received payment was not caused by any intent to defraud or deceive the clients. Rather, Dr. Caradine indicated that Respondent’s failure was due to his “severely distracted state of mind, characterized by strong anxiety, and elements of depression.” Dr. Caradine expressed his belief that Respondent’s impairment was triggered by a crisis in Respondent’s personal life that occurred shortly before the incidents that gave rise to this complaint. This crisis entailed the ending of a personal relationship with a woman whom Respondent contemplated marrying. Dr. Caradine further indicated that Respondent was vulnerable to such an episode due to experiences during his formative years. While Respondent

acknowledged coming from a good home, he developed a sense of inadequacy in measuring up to parental standards.

Dr. Caradine noted that Respondent was fully invested in the psychotherapy process. In his deposition, Dr. Caradine described Respondent's severe anxiety as overwhelming to the point where it interfered with his daily functioning and professional responsibilities. Dr. Caradine indicated that, to a reasonable degree of professional certainty, the diagnosis of "general anxiety disorder with depressive features" was the cause of the Respondent's conduct at issue in this case. However, he described the Respondent as an extremely conscientious person who would not ordinarily behave in the manner he had. Dr. Caradine indicated that his therapeutic approach involved delving into the Respondent's past to bring out and address issues repressed since childhood. In his mental health evaluation, Dr. Caradine expressed his opinion that as Respondent "continues to incorporate the insights he is gaining from therapy," he will be able to resume the practice of law and would be able to conduct himself in a competent and ethical manner. However, Dr. Caradine conditioned his recommendation upon Respondent's continuing his therapy for an indefinite period of time and continuing taking anti-depressant medications as prescribed by his personal physician.

At the remand hearing, OLAP Associate Director Krznarich testified to Respondent's participation in the OLAP program. Respondent entered into a four year recovery contract with OLAP. The contract requires Respondent to continue taking his medications as prescribed by his personal physician, to continue therapy as long as he and his therapist both agree that it is necessary, and to call the OLAP office twice per week to obtain counsel for his disciplinary matters. It was also recommended that Respondent seek occupational counseling. In response to this recommendation, Respondent has met with Dr. Kenneth Manges. In addition, Respondent

was directed to eat breakfast daily and exercise regularly. Krznarich indicated that Respondent has been fully cooperative and in total compliance with the requirements of his OLAP contract. She observed that Respondent is calmer and less anxious now. When asked whether she had any concerns about Respondent's fitness to return to the practice of law in two years or so, assuming he continued to comply with the provisions of the OLAP agreement, Krznarich testified that she had none.

Respondent also testified at the hearing and accepted full responsibility for his misconduct. He indicated that during the time period at issue, he was "in retreat from the world," felt overwhelmed, and was depressed. He observed that his therapy from Dr. Caradine had been quite helpful. He indicated his intention to remain in therapy indefinitely. Likewise, Respondent testified that he found his experience with OLAP to be very beneficial and said he intended to continue participating in the OLAP program. The Respondent indicated that he was confident a relapse would not occur because OLAP would be available to help him with stress management. Respondent committed to keep improving himself, to stay on his medication, and to continue with his therapy. The panel applauds this commitment.

After considering the testimony now before us together with reviewing Respondent's medical records, the panel concludes that Respondent suffered from a mental disability that qualifies as a mitigating factor pursuant to BCGD Proc. Reg. 10(B)(2)(g). First, Respondent received a diagnosis of "general anxiety disorder with depressive features" from Dr. Caradine, a qualified health care professional. Next, Dr. Caradine testified that, in his opinion, Respondent's mental disability caused the misconduct at issue. Further, Dr. Caradine noted the sustained improvement in Respondent as a result of therapy and medication. Dr. Caradine's assessment of Respondent's improvement was corroborated by the testimony of OLAP counselor Krznarich.

Finally, Dr. Caradine expressed his opinion that Respondent will be capable of returning to competent, ethical practice of law assuming he continues with therapy and medication.

#### RELATORS' RECOMMENDED SANCTION

Based upon Respondent's October 17, 2007 supplemental filing, Relators have revised their recommended sanction from permanent disbarment to indefinite suspension. Relators expressed no opinion as to whether Respondent should receive any credit for time served during his interim suspension.

#### RESPONDENT'S RECOMMENDED SANCTION

Respondent has also recommended that he receive an indefinite suspension, but requested that he be given credit for time served during his interim suspension.

#### PANEL'S RECOMMENDATION

The panel adopts the recommendation of Relators and Respondent that an indefinite suspension be imposed. The panel does not, however, adopt Respondent's recommendation that he receive credit for time served during his interim suspension. Had Respondent fully cooperated from the beginning of the disciplinary investigation, the delay in the process marked by his interim suspension would not have been necessary. The panel is not of the opinion that Respondent should be given credit for this period of time when the delay was caused by his own failure to cooperate.

In its August 21, 2007 report, the Board recommended that Respondent be permanently disbarred based on the nature of his rules violations, harm done to his clients, aggravating factors including failure to cooperate with the disciplinary process, and general lack of mitigating factors other than having no prior disciplinary record. However, the record now before us causes us to reconsider our sanction recommendation. We favorably note that Respondent has made

restitution to help ameliorate the injury done to his clients. We further acknowledge that Respondent suffers from a mental disability that qualifies as a mitigating factor pursuant to BCGD Proc. R. 10(B)(2)(g). While Respondent initially failed to cooperate in the disciplinary investigation, we commend his forthright, albeit belated, cooperation in the remand proceeding.

Given the additional evidence obtained on remand, Relators and Respondent pointed to several cases suggesting that indefinite suspension is appropriate in this case. In particular, Relators cited to cases where mental disability as a mitigating factor resulted in the imposition of indefinite suspension where permanent disbarment might otherwise have been imposed. For example, Relators cited *Erie-Huron Counties Joint Certified Grievance Commt. v. Meyerhofer*, 99 Ohio St.3d 62, 2003-Ohio-2467, where the Supreme Court held that an attorney be suspended indefinitely for transferring funds without authorization, for failing to timely distribute assets of a trust, and for failing to file a client's income tax returns. In this cited case, the attorney suffered from depression exacerbated by his divorce and was receiving psychiatric treatment for his depression. *Id.* The Court indicated that although the normal sanction in such a case was disbarment, the lesser sanction of indefinite suspension was appropriate because the attorney's mental illness was a contributing cause of his misconduct. *Id.* Similarly, in *Disciplinary Counsel v. Golden*, 97 Ohio St.3d 230, 2002-Ohio-5934, the Court held that an attorney be suspended indefinitely for engaging in a pattern of neglect and failing to cooperate in the disciplinary process due to clinical depression. The Court noted that while disbarment may be warranted in such cases, it tempered its decision where the attorney was seeking the appropriate treatment for her mental illness. *Id.* at 234. In *Cuyahoga Cty. Bar Assn. v. McClain*, 99 Ohio St.3d 248, 2003-Ohio-3394, the Court found that indefinite suspension of an attorney was

appropriate where the attorney had repeatedly neglected client matters due in part to his mental illness, but was seeking to overcome his problems through psychotherapy and medication. *Id.*

Similarly, Respondent cited to cases where attorneys who were already under suspension for misconduct, were found to have committed additional rule violations, yet received a sanction of indefinite suspension rather than permanent disbarment where mental disability was a mitigating factor. For example, in *Disciplinary Counsel v. Novak*, 112 Ohio St.3d 163, 2006-Ohio-6527, the Court imposed an indefinite suspension upon an attorney who was already under suspension for rules violations, but was additionally found to have neglected a client's divorce and bankruptcy cases, misrepresented his work, failed to disclose he lacked malpractice insurance, and failed to cooperate in the disciplinary process. The sole mitigating factor was that he was diagnosed with a mental disability. Likewise, in *Cuyahoga Cty. Bar Assn. v. Scott-Chestang*, 113 Ohio St.3d 310, 2007-Ohio-1956, the Court considered further rules violations by an attorney already under indefinite suspension for having neglected twelve client cases. The new charges involved neglecting a client's bankruptcy case, failure to return unearned retainer fees, and failure to disclose a lack of malpractice insurance. While noting the attorney's apparent failure in getting treatment for her alcohol dependency and mental disability, the Court nonetheless determined that indefinite suspension was the appropriate sanction to impose.

The cases presented by Relators and Respondent demonstrate the considerable weight placed by the Court upon mental disability as a mitigating factor in determining the appropriate sanction, especially when the attorney is pursuing the necessary treatment. Rules violations that would otherwise warrant permanent disbarment have instead been accorded a sanction of indefinite suspension. We are persuaded that the precedent established by these cases is applicable to the sanction recommendation in this case. While Respondent's conduct in

neglecting his clients and initially failing to make restitution is egregious, Respondent has now accepted responsibility for his actions, has made restitution, and is actively engaged in treatment for his mental disability. We are encouraged by his commitment to continuing his therapy, his OLAP involvement, and taking his medications as prescribed. Most importantly, we note Respondent's confidence that in the future, he would be able to recognize if he were suffering a relapse and would be willing to seek help before causing injury to his clients.

The panel has reviewed the ethical duties violated by Respondent, the injuries caused by the violations, the Respondent's mental state, and sanctions imposed in similar cases. Based on the evidence before us, which now includes the Respondent's testimony and medical records, the testimony of Respondent's OLAP counselor, and the deposition of Respondent's treating psychologist, the panel revises the August 21, 2007 recommendation and now recommends that Respondent receive an indefinite suspension from the practice of law, beginning on the date of the Supreme Court's order that acts upon the recommendations of the Board, subject to the following conditions:

- (1) As conditions for Respondent's return to the practice of law, he must (a) present an opinion to a degree of professional certainty from a qualified health care professional, that he has successfully completed a treatment program, is continuing treatment, and is capable of returning to the competent, ethical, and professional practice of law and (b) provide assessments from his treating psychologist and a qualified occupational counselor regarding any recommended restrictions that should be imposed upon the nature of Respondent's law practice.
- (2) Upon his return to practice, Respondent must serve probation for three years during which the following conditions must be met: (a) Respondent must continue

treatment with a qualified mental health professional, and follow all recommendations of his doctors, including, but not limited to, taking all medications as prescribed; (b) Respondent must make regular visits to his treating mental health professional at a frequency to be determined by the treating professional; (c) Respondent must continue participation in the OLAP program as recommended by his OLAP counselor, and (d) Respondent must refrain from any further misconduct.

### **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 August 15, 2008. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Clifford Scott Portman, be indefinitely suspended upon the conditions contained in the panel report 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 Recommendation as those of the Board.**



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

## The Supreme Court of Ohio

DEC 21 2007

CLERK OF COURT  
SUPREME COURT OF OHIO

Case No. 07-1570

Butler County Bar Association, and,  
Disciplinary Counsel,  
Relator,  
v.  
Clifford Scott Portman,  
Respondent.

ON CERTIFIED REPORT BY THE  
BOARD OF COMMISSIONERS ON  
GRIEVANCES AND DISCIPLINE OF  
THE SUPREME COURT

## ORDER

The Board of Commissioners on Grievances and Discipline filed its Final Report in this court on August 21, 2007, recommending that pursuant to Rule V(6)(B)(1) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, Clifford Scott Portman, be permanently disbarred. On October 17, 2007, respondent filed a motion to supplement the record and the Court granted that motion. Respondent filed objections to the Final Report and this cause was considered by the Court. On consideration thereof,

It is ordered that this matter is remanded to the Board of Commissioners on Grievances and Discipline for consideration of the claims in mitigation as raised in respondent's supplemental materials filed with the Court on October 17, 2007, including, if appropriate, a mental health evaluation of respondent.

It is further ordered and decreed that Clifford Scott Portman, Attorney Registration Number 0073390, last known business address in Hamilton, Ohio, is suspended from the practice of law for an interim period, effective as of the date of this entry and continuing until the Court acts upon the further recommendation of the Board. Proceedings in this Court are stayed until further order of this Court. Costs to abide final determination of the case.

It is further ordered that respondent immediately cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority.

It is further ordered that, effective immediately, respondent is forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform legal services for others.

It is further ordered that respondent is divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

ELECTRONICALLY  
JOURNALIZED

It is further ordered that, pursuant to Gov.Bar R. X(3)(G), respondent shall complete one credit hour of continuing legal education for each month, or portion of a month of the suspension. As part of the total credit hours of continuing legal education required by Gov.Bar R. X(3)(G), respondent shall complete one credit hour of instruction related to professional conduct required by Gov.Bar R. X(3)(A)(1), for each six months, or portion of six months, of the suspension.

It is further ordered, sua sponte, by the court, that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded by the Clients' Security Fund pursuant to Gov.Bar R. VIII(7)(F). It is further ordered, sua sponte, by the court that if, after the date of this order, the Clients' Security Fund awards any amount against the respondent pursuant to Gov.Bar R. VIII(7)(F), the respondent shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.

It is further ordered that on or before 30 days from the date of this order, respondent shall:

1. Notify all clients being represented in pending matters and any co-counsel of respondent's suspension and consequent disqualification to act as an attorney after the effective date of this order and, in the absence of co-counsel, also notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in respondent's place;
2. Regardless of any fees or expenses due respondent, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;
3. Refund any part of any fees or expenses paid in advance that are unearned or not paid, and account for any trust money or property in respondent's possession or control;
4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of respondent's disqualification to act as an attorney after the effective date of this order, and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;
5. Send all such notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;
6. File with the clerk of this court and the Disciplinary Counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service

of notices required herein, and setting forth the address where the affiant may receive communications; and

7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

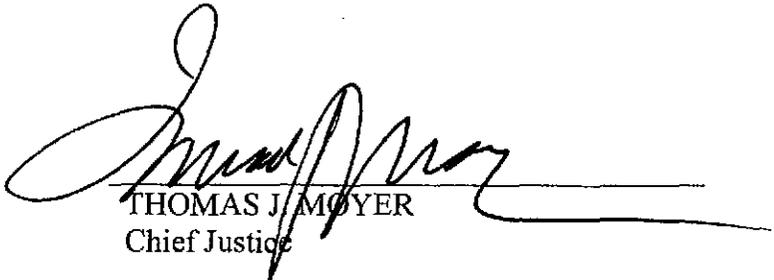
It is further ordered that respondent shall keep the Clerk, the Butler County Bar Association and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

It is further ordered that on or before 30 days from the date of this order, respondent surrender the attorney registration card for the 2007/2009 attorney registration biennium.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

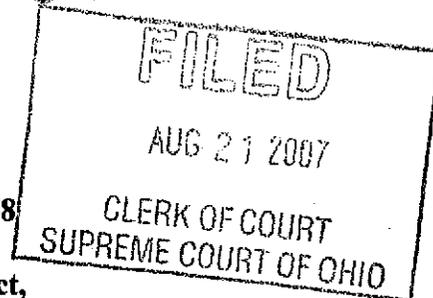
It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the Office of Attorney Services.

It is further ordered that the clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(8)(D)(1), that publication be made as provided for in Gov.Bar R. V(8)(D)(2), and that respondent bear the costs of publication.

  
THOMAS J. MOYER  
Chief Justice

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

07-1570



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

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.

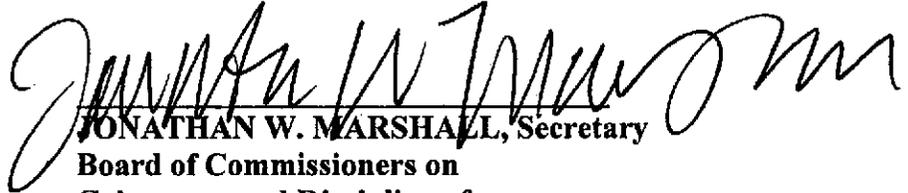
Accordingly, I agree with the Relators' recommendation and recommend permanent disbarment.

#### 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**