

IN THE SUPREME COURT OF OHIO

**Butler County Bar Association** :  
Co-Relator, : **CASE NO. 2007-1570**  
and :  
**Disciplinary Counsel** :  
Co-Relator, :  
: **RELATOR'S ANSWER TO**  
**Clifford Scott Portman** : **RESPONDENT'S OBJECTION TO**  
: **THE BOARD OF COMMISSIONERS'**  
Respondent. : **REPORT AND RECOMMENDATIONS**  
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**RELATORS' ANSWER TO RESPONDENT'S OBJECTION TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS**

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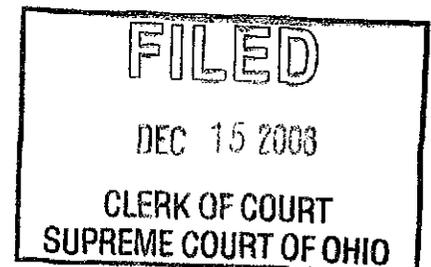
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Respondent.



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**Clifford Scott Portman** : **RELATORS' ANSWER TO**  
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Now come co-relators, Butler County Bar Association and Disciplinary Counsel, and hereby submit their answer to respondent's objection to the report and recommendations filed by the Board of Commissioners on Grievances and Discipline ("the board").

**STATEMENT OF FACTS**

Relators agree with the statement of facts set forth in respondent's brief.

**ANSWER TO RESPONDENT'S OBJECTION**

**Proposition of Law 1**

**The decision whether to retroactively apply a disciplinary  
sanction lies within the discretion of the Court.**

The board recommended that respondent be indefinitely suspended, with no credit

afforded for the time he has been suspended on an interim basis since December 21, 2007. In his sole objection to the board's report, respondent argues the sanction should be retroactive.

A hearing before the panel was held in this case after it was remanded to the board for consideration of respondent's mitigation evidence. At that time relators took no position as to the retroactive application of the indefinite suspension. Relators continue to remain neutral on that issue, but the board's decision refusing to afford credit for time served is nevertheless supported by the evidence.

Clearly, absent the mitigation evidence respondent presented after remand, the appropriate sanction in this case is disbarment. Respondent neglected multiple clients, failed to return client funds, accepted fees from clients while performing no work on their cases, and failed to cooperate in disciplinary investigations conducted by both relators. See e.g., *Cincinnati Bar Association v. Weaver*, 102 Ohio St.3d. 264, 2004-Ohio-2683, 809 N.E. 2d 1113 (disbarment ordered for multiple instances of neglect, taking money and performing no work, and failure to cooperate).

The board considered the mitigation evidence presented by respondent and recommended an indefinite suspension as opposed to disbarment. The board recognized respondent's mental health issues, his candor, acceptance of responsibility for his actions, and the fact that he made restitution to the various clients affected. The board did not adopt respondent's recommendation that he receive credit for time served during his interim suspension. The board's rationale was:

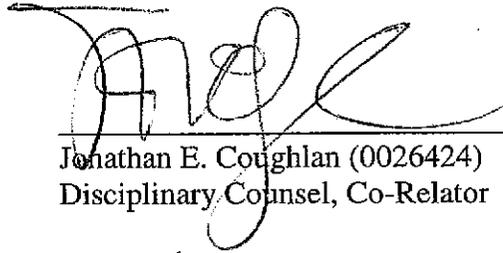
Had respondent fully cooperated from the beginning of the disciplinary investigation, the delay in the process marked by his interim suspension would not have been necessary. The panel is not of the opinion that respondent should be given credit for this period of time when the delay was caused by his own failure to cooperate.

Report at 9 (emphasis added)

**CONCLUSION**

The board's recommendation that respondent's indefinite suspension begin on the date of this Court's final order in this case is supported by the facts and evidence. However, relators leave the ultimate determination of this issue to the sound discretion of the Court.

Respectfully submitted,



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Jonathan E. Coughlan (0026424)  
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Per telephone authority on December 12, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Relator's Answer to Respondent's Objections to the Board of Commissioners' Report and Recommendations was served via U.S. Mail, postage prepaid, upon respondent's counsel, Alvin Mathews, Bricker & Eckler, 100 South Third Street, Columbus, Ohio, 43215, and upon Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5th Floor, Columbus, Ohio 43215, this 15<sup>th</sup> day of December, 2008.



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Carol A. Costa  
Counsel for Relator