

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF:

Case No. 99-026

GEOFFREY L. OGLESBY

Disciplinary Counsel,
Relator

Case No. 00-1100

-vs-

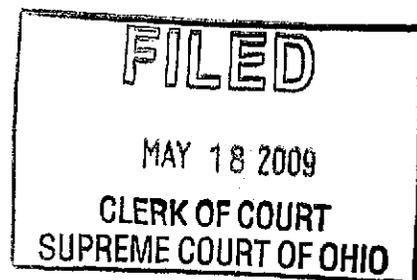
Geoffrey L. Oglesby,
Respondent

Disciplinary Counsel v. Oglesby
(2000) 90 Ohio St.3d 455]

MEMORANDUM IN SUPPORT RESPONDENT'S MOTION *FOR*
RECONSIDERATION PURSUANT TO S.Ct.Prac.R. XI, Section 2(B)

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RATIONALE FOR RECONSIDERATION

In 2000 the Panel and Board of Commissioners on Grievances and Discipline recommended that Respondent be suspended for one year. This Court issued an indefinite suspension. In 2004 the Panel and Board of Commissioners on Grievances and Discipline recommended that the Respondent not be readmitted to the practice of law. This Court in a 4-3 decision upheld the Board. In 2009 the Panel and the Board once again recommended that the Respondent not be readmitted. This Court upheld the decision by 6-1.

This Motion for reconsideration deals with the two passages from the Panel's report recommending that Respondent's¹ application for reinstatement be denied.

Passage No. I

"Relator presented Respondent's federal tax returns' for the years 2000 through 2007. Tax reporting deficiencies were a major obstacle to his reinstatement at the 2003 hearing. Based upon review of the tax returns and Respondent's testimony, the Panel finds that Respondent has failed to correct serious deficiencies in his personal tax accounting and reporting methods since his 2003 reinstatement hearing. This failure to make necessary improvements demonstrates the same pattern of lack of attention to detail that resulted in Respondent's previous misconduct and suspensions." (Page 4)

The problem with the first passage's conclusions is that there is no standard or rule which the passage is based upon that is objective as it relates to an alleged problem.

The motion will address just what a "tax deficiency" is and what "tax reporting" is based on an objective standard. A standard from the Internal Revenue Code or the United States Tax code was never utilized in these proceedings. Terms, that appear to be terms of art, such as "tax reporting deficiency" and "serious deficiencies in ...personal

¹ Technically, Geoffrey Oglesby is the "Petitioner"; however, throughout these proceedings he is referred to as the "Respondent". For clarity's sake the two terms will be used throughout this motion to refer to Geoffrey Oglesby.

tax accounting and reporting methods” should have some statutory meaning. Once a statutory meaning is applied to the facts, then there should be some breach of that statutory meaning.

Once an objective standard is used to demonstrate what a “tax deficiency” it will be clear that there is no “*tax deficiency*”. Tax reporting is reporting taxes, not one’s filing of his tax returns.

The tax returns were prepared by a licensed attorney. The IRS prefers that accountants or attorneys prepare taxes because they are professionals. As will be stated later in this memorandum, the IRS allows a “good faith” defense if one uses an accountant or attorney to prepare their returns. Respondent would submit that there were no “serious deficiencies” in the Respondent’s tax filings and that according to the “expert” that prepared they were done properly because the preparer signed them as being correct.

Passage No. II

Respondent has taken no CLE or other courses on law office management, has no business plan for the practice of law, has no defined system for tracking cases and meeting deadlines, and has no accounting system in place. However, Respondent claimed that the ethics portion of some CLE courses may have touched upon law office management. While Respondent insisted that he had addressed the deficiencies in his ability to manage a law office, he could not document any specific measures taken and the panel found him to be less than sincere in those claims. (Page 3)

While is important to take law office management courses, there is no objective standard as to what is included in a “law office management” continuing legal education seminar. The Ohio Supreme Court and the Commission on Continuing Legal Education do not have a “standard” as to what is to be included in a CLE on law office management.

There was a miscommunication, or a misunderstanding, about whether Respondent looked into obtaining Amicus software or whether he had the software. The Respondent can state categorically that he purchased and owned Amicus. The last version was purchased in 2000 before Respondent was suspended.

The Ohio State Bar Association introduced *OfficeKeeper: Professional Tools for Law Office Management and Client Relations*. If this court uses OfficeKeeper as an “objective standard” as to what is in a law office management course; this Court will discover that every salient aspect of an objective standard was covered in the testimony of the Respondent at the hearing.

One very important thing of note is the fact that OfficeKeeper continuously stresses “ethics” in just about every chapter.

STATEMENT OF FACTS

I. INTRODUCTION

Petitioner, Geoffrey L. Oglesby, pursuant to Gov. Bar R. V, § 10(B) and (C) petitioned the Court for reinstatement to the practice of law. Petitioner was suspended indefinitely on December 27th, 2000 in case number 00-1100, *Disciplinary Counsel v. Oglesby* (2000) 90 Ohio St.3d 455. A petition for reinstatement was filed on July 30, 2003 and denied on May 10, 2004²(The hearing n 2004 will be referred to as the “2004 Hearing”). Petitioner complied with the continuing legal education requirements of Gov. Bar. R. X, § 3(F).

Petitioner in his application indicated that he had an abundance of Continuing Legal Educational hours. Petitioner had two CLE *teaching credits* for lecturing at two

² Petitioner was suspended for six months with conditions from the practice of law on June 17, 1992 and reinstated in December of 1992. *Disciplinary Counsel v. Oglesby* (1992), 64 Ohio St.3d 39.

seminars. Petitioner indicated that he was a substitute for Attorneys that taught at the Ohio Business College and taught their law classes. Since Petitioner was suspended he has continuously worked for attorneys and written briefs, motions and pleadings concerning real estate law, franchise law, class actions and a host of other subjects that were outside of his general practice of criminal law. Petitioner prepped attorneys for jury trials and appellate arguments.

In 2004 the very first year that Petitioner started playing golf he volunteered to assist children playing golf. At that time in Sandusky there was no program, such as the First Tee Program, for low income and minority kids to learn the game. Petitioner wrote a grant. Petitioner's first attempt to write a grant generated \$20,000.00 from the United States Golf Association [USGA] for the children of Sandusky. Since 2004 Petitioner has helped raise thousands of dollars by writing more grants and fundraising for the children in Sandusky to have golf clubs, access to courses and other things associated with golf. The program continues in the Sandusky area.

II. THE PRIOR PETITION

In 2004 the Board recommended that the Respondent's petition for reinstatement be denied. The evidence at that hearing indicated that petitioner met all the moral, legal, educational, and CLE requirements to be reinstated. The 2004 Hearing panel based their recommendation on *errors* on his tax returns. The tax returns were done by Respondent. The 2004 panel also found that by not having verification of his CLE's that demonstrated lack of preparedness for the hearing. At the 2004 Hearing there was no dispute from Relator that Respondent had sufficient CLE hours based on attendance at CLEs. No one testified at the 2004 hearing stating that Respondent's CLE's were deficient.

At the 2004 hearing there was no objection to the fact that Respondent had not taken CLEs on Law Office Management.

In response to the “tax” concerns of 2004 Hearing panel, Respondent had a “Tax Preparer” who is a “Licensed Attorney” prepare his taxes. Relator in the discovery process never sought copies of Respondent’s tax returns. Respondent had upwards of *40 more hours of CLE* than is required by Ohio Supreme Court. As further evidence of compliance Respondent submitted his CLE transcripts indicating that since the 2004 Hearing he had *teaching credits* at two CLE seminars. After 2004 Hearing Respondent also attended a Judicial Candidate CLE along with a judicial candidate and received credit for that attendance.

Respondent’s CLE transcripts were submitted to Relator in response discovery. Respondent was not asked for his tax returns in discovery. Respondent submitted the front pages of his tax returns to demonstrate that he had income during the period of his suspension. After submitting his documents for discovery to the Relator, Relator did not ask for any other information or evidence. Relator by way of discovery indicated that they had no objection to Respondent’s reinstatement.

In the discovery response by the Relator indicated they were not going to introduce any evidence and had no witnesses. The Relator never supplemented their discovery.

Relator, prior to the hearing, had a copy of the Respondent’s CLE transcripts and income information. Relator never indicated that the lack of taking a CLE on Law Office Management or what Relator received for the taxes was a basis for objecting to his reinstatement.

SUPPORT OF RECONSIDERATION FOR PASSAGE I.

Since the 2004 Hearing Respondent's taxes were prepared by an Attorney who is a tax preparer. The taxes were done on the advice of counsel. Relator at no time requested Respondent's tax returns. Relator was under a "continuing duty of discovery" which included supplementing any responses. Respondent was not notified of the intent to introduce the taxes until the day of the hearing. The panel concluded that "Respondent has failed to correct serious deficiencies in his personal tax accounting and reporting methods since his reinstatement hearing".

The 2009 Panel did not give a definition of what a "serious deficiency" is. There was no evidence of what facts in the Respondent's personal tax accounting and reporting methods that amounted to "serious deficiencies". Relator had no tax experts testify. There may have been a disagreement on what should and shouldn't have been done, but there was no evidence that the IRS, the people in charge of taxes indicated that there were any "deficiencies" in the taxes prepared by Respondent's Tax Preparer.

At the 2004 Hearing Respondent *admitted* that Respondent made *mistakes* on the tax forms. This admission was based on his indication that his pre-2004 Hearing taxes were self prepared and as such he was responsible for the contents. The "mistake" was that Respondent put "attorney" as occupation. That was it. The 2004 Hearing panel had an admission to support their contention.

There was no such admission of mistakes by the Respondent at the 2009 Hearing, nor did Relator have any witness testify as to what a "serious deficiencies" is, or how in Respondent's tax returns there was a "serious deficiency". The panel gives no definition of what a serious deficiency is and there is no objective standard to determine what a

serious deficiency is. Furthermore, the serious deficiency should have some causal effect upon someone, or fall below some standard of care.

A statutory *notice of deficiency* has a specific, technical meaning. As courts have explained, the plain language of § 6212(a) requires that the notice, "at a minimum indicate that the *IRS has determined that a deficiency exists* for a particular year and specify the amount of the deficiency." See *Benzvi v. C.I.R.*, 787 F.2d 1541, 1542 (11th Cir. 1986); see also 26 U.S.C. § 6212(a). See: *SALERY v. COMMISSIONER OF IRS* 030609 FED11, 08-14225.

A taxpayer who receives a notice of deficiency may petition the Tax Court for a "redetermination of the deficiency." 26 U.S.C. § 6213(a). Thus, before a taxpayer may petition the Tax Court for a redetermination of deficiency, the IRS first must have notified the taxpayer that it has examined the taxpayer's return and made a deficiency determination. *Id.* § 6214; *Benzvi*, 787 F.2d at 1542. There was no testimony or evidence before this Court or the panel that the IRS, or anyone else, testified or concluded that there were "tax deficiencies", serious or otherwise.

The Internal Revenue Code defines deficiency as the difference between the taxpayer's liability and the liability shown on the taxpayer's return. I.R.C. Sec. 6211. The Secretary is authorized to send a notice of deficiency whenever he determines that "there is a deficiency in respect of any tax imposed," I.R.C. Sec. 6212(a). A taxpayer who receives a notice of deficiency may petition the Tax Court for a "redetermination of the deficiency." I.R.C. Sec. 6213(a). Thus before a taxpayer may petition the Tax Court for a redetermination of deficiency, *the IRS first must have notified the taxpayer that it has examined the taxpayer's return and made a deficiency determination.* See *Commissioner*

v. Gooch Milling & Elevator Co., 320 U.S. 418, 420, 64 S.Ct. 184, 185, 88 L.Ed. 139 (1943); *Corbett v. Frank*, 293 F.2d 501, 502 (9th Cir.1961) (deficiency notice is taxpayer's "ticket to the Tax Court."); cf., *Commissioner v. Shapiro*, 424 U.S. 614, 630 n. 12, 96 S.Ct. 1062, 1072 n. 12, 47 L.Ed.2d 278 (1976).

Once again, under the objective standard of a "deficiency" there is no evidence that there was a deficiency.

Although there is no prescribed form for a deficiency notice, the notice must at a minimum indicate that the IRS has determined that a deficiency exists for a particular year and specify the amount of the deficiency. As Judge Hand explained: "the notice is only to advise the person who is to pay the deficiency that the commissioner means to assess him; anything that does this unequivocally is good enough." *Olsen v. Helvering*, 88 F.2d 650, 651 (2d Cir.1937); see also *Foster v. Commissioner*, 80 T.C. 34 (1983) (deficiency notice need not tell taxpayer what Code section has been violated), *aff'd in part, vacated in part on other grounds*, 756 F.2d 1430 (9th Cir.1985), *cert. denied*, --- U.S. ---, 106 S.Ct. 793, 88 L.Ed.2d 770 (1986); cf. *Commissioner v. Stewart*, 186 F.2d 239, 241-42 (6th Cir.1951); *Scar v. Commissioner*, 81 T.C. 855, 860-61 (1983) (deficiency notice is adequate if it states amount of deficiency and tax year involved).

The Panel cannot conclude that there is a deficiency when there isn't one. As stated above a "deficiency" is a technical term, a term of art. The Panel had, and this Court has no defined term of conduct that is proscribed by any agency that handles the taxes.

It appears from the cases above that once the Tax Commissioner finds a deficiency, the tax payer is notified and has some due process rights. Herein, there is no evidence that the Tax Commissioner has found a deficiency.

THE TAXES WERE PREPARED BY AN "INCOME TAX RETURN PREPARER" AND A LICENSED ATTORNEY.

The United States code indicates what a tax return preparer is:

26 USC § 7701 (a) (36) Income tax return preparer

(A) In general

The term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by subtitle A or any claim for refund of tax imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

Good faith reliance on the advice of counsel or a qualified accountant can, under certain circumstances, be a defense to the 26 U.S.C. Sec. 6653(a) addition to tax. *ConLorez Corp. v. Commissioner*, 51 T.C. 467, 475 (1968). Good faith reliance on expert advice of a tax preparer (i.e., an attorney or accountant) may be a defense to a tax evasion charge. *United States v. Meyer*, 808 F.2d 1304, 1306 (8th Cir. 1987). If reliance on "expert advice" is a defense to violations of the tax code then certainly the Respondent had a right to rely on the attorney who prepared his returns.

The Panel and the Disciplinary Counsel asked question about why some deductions were taken and some weren't. The fact that the Respondent couldn't answer the questions on a form he hired an attorney to complete should not be held against him. Just because the Respondent is an attorney, certainly doesn't mean that he knows all the intricacies of the tax code.

SUPPORT OF RECONSIDERATION FOR PASSAGE II.

This section deals with reconsideration on the lack of a CLE class on Law Office Management.

The next area of concern for the panel was that “Respondent indicated that he would buy and use some kind of calendaring system when reinstated, but had not done any recent investigations to the effectiveness or cost of any particular system”. Under examination by Mr. Nowak, the Respondent stated: “The first type I would implement would be the *Amicus* program where you can calendar that, and I also have a personal calendar where I would put in the dates myself...” (Transcripts of the January 23, 2009 Hearing “Tr. 93”).

Amicus is world renowned software. Respondent could even recite the software company’s name, or rather he came close, that produced *Amicus*. Respondent indicated he went to Toronto where *Amicus*’ is headquartered. Mr. Oglesby could cite the name of the manufacturer and many of *Amicus*’ key components, yet, one of the reasons he was denied was based on the fact that he couldn’t recite the “cost or effectiveness” of *Amicus*. There was no advance warning that these questions were going to be asked, yet Mr. Oglesby answered the questions on *Amicus* without hesitation.

The Respondent continued: “ I would have it [*Amicus*] definitely under the computer, under a laptop system, and I am not sure what type of cyber backup I could get to make sure that is kept so that the computer doesn’t go down.” It should be noted that *Amicus* has a system where it can monitor your trust account and it also has ledgers in there. (Tr. 93). The panel stated: “However when pressed by counsel and the Panel,

Respondent was unable to document any steps that he has taken since his last reinstatement hearing to ensure that the same problems do not arise in the future.”

The following will demonstrate that Respondent was clearly prepared based on what was requested of him by the Relator.

Relator in closing argument stated: “Although we agree he [Respondent] *has met the scale of requirements and that he has the sheer numbers*, it does not appear that Petitioner has met any of the concerns that the prior Panel and the Supreme Court had concerning business management, calendaring, bookkeeping and other conditions.” [Tr. P. 143]. “He’s [Respondent] testified that he really has no set plan for engagement letters, fees or documentation, no set plans for a calendar. He talked about Amicus, but he has not really looked into it.” [Tr. P. 143] The facts in this case do not support Relator’s argument.

The panel, however, picked up on Relator’s argument and stated as follows in their finding: “Respondent indicated that he would buy and use some kind of calendaring system when reinstated, but had not done any recent investigation as to the effectiveness or cost of any particular system”.

Respondent had investigated the costs of his malpractice insurance and the cost of an accountant. Respondent testified that he had previously had Amicus. The clear implication by Respondent’s testimony is the cost of Amicus was not an issue and there was no need to investigate the cost, whereas Respondent did need to investigate the costs of an accountant and malpractice insurance.

Respondent indicated that he would “definitely have malpractice insurance” and indicated to the panel that he had called couple of insurance companies and received

quotes on malpractice insurance. [Tr. P. 92] In addition there a letter attached to the application for reinstatement that included one of the copies evidencing that Respondent investigated malpractice insurance.

Amicus has been in business from around 1993, they still sent e-mails to the Respondent, he had the program before it is virtually presumed that Amicus is sold at a competitive price and is effective. Once again if Respondent or any other attorney purchases any computer program there is a possibility the software can become obsolete. Providing a monitor would insure that whatever program Respondent obtains would be acceptable.

Under examination by Mr. Nowak, the Respondent stated: "The first type I would implement would be the *Amicus* program where you can calendar that, and I also have a personal calendar where I would put in the dates myself..." (Tr. 93). The Respondent continued:

"I would have it [*Amicus*] definitely under the computer, under a laptop system, and I am not sure what type of cyber backup I could get to make sure that is kept so that the computer doesn't go down." It should be noted that *Amicus* has a system where it can monitor your trust account and it also has ledgers in there. (Tr. 93).

Mr. Novak then asked: "Have you inquired on any representatives from *Amicus* as to what the cost would be assuming that we all said, well, were going to go ahead and let you be reinstated?" Respondent stated:

"I haven't checked into the cost. I know when I first looked at it. I'm pretty sure it was in Toronto when they first wheeled it out, or it was in a convention in Chicago where they had it. The cost at the time was not a lot. But now it's gone up, but I would buy the package, whatever it costs.

I enjoyed *Amicus* when I first saw it, but it's the ability to stop, and say today, Tuesday, I'm going to figure this out. I'm going to understand exactly how this

works, because it is a beautiful system that I've gotten other people to use because it is good.

I still get the e-mails, I think [it] is Gown & Gavel [Amicus] that they send it to me every year, I'm still on their [Amicus] mailing list, but I would almost insist on that because it keeps your hours, it keeps your time, it keeps your telephone calls; and things of that nature, and your hourly fees. It has three or four different packages where you can put in different hours for different types of clients. [Tr. P. 94-95]

Under examination by Mr. Mathews, Jr., Respondent was asked about employing a calendaring system. Respondent stated: "*I had Amicus when it first came out. I went to Toronto where they first introduced it, but I just never had the time to implement it. Now I have to be able to do that. I mean I would go to the technology fairs, and there was one in Toronto, there was one in Chicago where they would have these things.*" (Tr. P. 30)

The Panel and the Disciplinary Counsel took this to somehow mean that Respondent *never had* Amicus. Respondent would state that he categorically had purchased Amicus when it first came out.

The Panel indicated that "Respondent has taken no CLE or other courses on law office management, has no business plan for the practice of law, has no defined system for tracking cases and meeting deadlines, and has no accounting system in place. However, Respondent claimed that the ethics portions of some CLE course may have touched upon law office management" (2009 Findings of Facts and Conclusions of Law p. 3).

There is no litmus test, or standardize curriculum, as to what should be contained in a "law office management" CLE. Further, if one looks at the Court's website there are no Law Office Management courses in the near future [there is what looks like a Law Office Management courses in Akron, Ohio, however that is a one hour sales pitch.].

The closest thing that would be a standardized set of what should be in a law office management course is included in "*OfficeKeeper*".

"OfficeKeeper" is provided as a service of the Ohio State Bar Association, prepared in cooperation with the Ohio Bar Liability Insurance Company. It is designed to assist attorneys in setting up their practices and establishing procedures for office operations and good client relations. It is contained in the Ohio State Bar Association's "Casemaker". Respondent testified that he had "Casemaker"

The Ohio State Bar Association introduced OfficeKeeper: Professional Tools for Law Office Management and Client Relations. The OSBA's online law office management resource is available to its members at no additional cost. OfficeKeeper is a nuts and bolts resource guide to opening, maintaining and closing a law office, covering both the day-to-day operations of a law office as well as matters related to client relations. OfficeKeeper includes checklists, forms, references and links to Web sites and the new Model Rules of Professional Conduct. This online publication, prepared in cooperation with the Ohio Bar Liability Insurance Company and housed on the OSBA Web site at www.ohiobar.org, is an interactive PDF in that all cross-references, URLs and other links are live hyperlinks. The table of contents also contains a clickable road map to the entire document. OfficeKeeper's Contributors, Editorial Board and Staff Contributors is a virtual who's who in the legal community, ranging from Professors of Law at prestigious law schools to former Ohio Supreme Court Chief Disciplinary counsels.

If OfficeKeeper is used as a guide, it is clear that Respondent has covered virtually everything that would be included in a law office management course.

Furthermore, access to CaseMaker and OfficeKeeper would be an invaluable assistance if changes occur in the future.

OfficeKeeper's chapters included are highlighted by the bullet points:

- Opening and Maintaining a Law Practice, including choosing a business entity, developing a business plan, basic office equipment and office space considerations.

This area of OfficeKeeper related to the various types of business entities that an attorney or law firm could have ranging from a solo practitioner to a large firm. Respondent was asked about what his intention was with regard to engaging in a solo practice. Respondent replied:

“ I intend to practice by myself, and that – I mean with the³ day’s technology, with the internet, the ability --- you can sit in a restaurant and look up Case Maker and you can communicate with people [on a laptop]. It is beautiful. I mean, and you can have everything on there. And you can have a small printer and print a contract on the spot.” (Tr. P. 36, 37).

It is clear that the Respondent’s business plan was to be a solo practitioner. Included would be a computer, printer, access to the internet. In criminal law you really don’t have the type of business plans that are inherent in other areas of practice. You generally get the fee up front or have some one who is working co-sign the agreement.

Other areas covered in this section included determining office space, buying an office as opposed to leasing; American with Disabilities Act, change of address if you move; what type of computers, what types of letterheads you should have, laptop security and thins of that nature. This chapter also talked about legal resources such as how to set up a law library. As indicated throughout this document, Respondent plans to use, and

³ I think that Respondent said “today’s” technology as opposed to “the day’s” technology. There are other instances wherein statements in the transcripts are a little off. There were problems with the microphone and at times Respondent speaks softly.

uses now, Casemaker and the internet. They both include just about everything a “physical library” could include.

- Time Billing and Accounting, including trust accounts, fraud prevention and financial accounting;

When asked by the panel if Respondent would have two bank accounts, Respondent stated that he would have three: “Three, I think, I would have to have my personal account, a business account, and an IOLTA account”. (Tr. P. 97) The respondent further testified that he had contacted an accountant. “I did speak --- not to be presumptuous in no means, but I spoke with an accountant childhood friend of mine, and we discussed the things that I should do, but the bottom line is I have to be on top of my checkbook, my account and my schedule. (Tr. P. 32). Under cross examination by Relator, Respondent stated: “...I contacted a certified public accountant. His name is George Kurilic. He’s a CPA. (Tr. P. 64) Respondent continued: “...With the accountant that I plan to get should I be reinstated, he will do his job and I will do my job to make sure everything is there.” (Tr. P. 64, 65). The Relator continued:

“Q. You’ve mentioned that you contacted a CPA. When did you first contact him?

A. January 13th.

Q. Of this year?

A. Yes. Yeah, I wanted to know what it would *cost* and *what services* he could provide me. (Tr. 66).

This area also talked about theft by one’s employees, time and billing by associates and secretaries and their productivity.

- Case Management, including conflict checks, retainers, timekeeping and docketing, client communications, and case management software systems;

The Respondent testified that certain areas that would be covered in a Law Office Management seminar were covered in ethics seminars. Respondent stated as follows:

“...But as far as just keeping the calendar down pat, I mean, I’ve been to ethics seminars where they tell you that, and within the ethics seminars, there is that component of making sure you keep your practice up to date and do those things, but as far as the actual law office management-type things, a lot of those have to do with computer type equipment, and type of programs you can use to better your practice.

When I first did this [the Law Office Management Course taken in 1992 or 1993], I think I was the first [law firm] one to buy Anderson Law [on disc] in Erie County. I’ve also become very familiar by going to outside seminars about Amicus and things of that nature which would assist me greatly in that area.

But the ethics seminars, which I think I have four hours in that this year ... they say you have to take care of your business and all the law office management courses in the world are not going to help you if you don’t do it yourself. And I was remiss in that and I should have done better.” (Tr. P. 65)

The Relator followed up with the following question:

Q. *So you think the ethics seminars covered office management?*

A. *If you follow the ethics classes, everything else will fall into place, because it’s about writing letters, it’s about returning phone calls, it’s about making sure you reconcile your checkbooks, it’s about making sure that you are on top of your business game and that you are accountable for your office and that what’s gathered from those [Ethics Seminars] along with Professionalism, we need to return phone calls.*

I mean, there were problems such as that, and once we take care of those things, pretty much everything else will fall into place.” (Tr. 66)

It should not be held against the Respondent because he placed a higher degree of importance on ethics and professionalism than a Law Office Management course. Respondent is not averse to taking a Law Office Management course. Certainly a monitoring system could ameliorate the lack of any CLE hours in law office management

and insure that one would be taken in the near future. The evidence is overwhelming that Respondent takes CLEs.

Respondent has already indicated in this document that his management software would be *Amicus*. As a solo practitioner any “conflicts” should be readily discernable from speaking with the client and from past history.

- Office Staff, including hiring/firing, payroll, performance reviews and shared staff;

Respondent indicated that he was not going to hire anyone. There would be no need for hiring or firing, which this section covered. There were no plans for shared office staff. Respondent did indicate that he could share office space and that the lady that he does research for now would take some of the responsibility of paying the bills; any amount would be a “flat rate” or deviate slightly from month to month. Should Respondent be reinstated and people are hired then this area would essentially be followed.

- Marketing, including what is permitted, networking and specialization;

There are no marketing plans. A marketing plan is not needed. The panel indicated that Respondent was regarded as a “skilled professional in criminal law” [Findings of Facts p. 2] The panel also found that Respondent is respected in his community for his dedication to the community and involvement in various volunteer activities. [Findings of Facts p. 2]. Erie County Court of Common Pleas Judge Tone indicated that there is a need for Respondent as a criminal defense attorney. With these attributes, along with the fact that Respondent was previously certified to be lead counsel in court appointed Death Penalty cases and Death Penalty Appeals there should be no problem with in getting clients, or court appointments.

- Practice Challenges, including cash flow, substance abuse, burnout and how to avoid malpractice;

There is no anticipation that there will be cash flow problems. This area of the law management spoke about new attorneys when they had no way to gauge how much money they would make. Respondent doesn't plan to hire any staff. Court appointments alone would alleviate any "cash flow" problems.

This area was part of the area that Respondent was referring to when he indicated that Ethics covered some of the same sections in a Law Office Management course. This section talked about the ethical problems of: Burnout, Substance Abuse, Professionalism, Client Considerations, Multijurisdictional Practice, Retaining your license, (New Lawyer rules), Supervisory Responsibilities, Malpractice Insurance and Disciplinary problems.

There are no substance abuse problems. As indicated in the application for reinstatement Respondent has indicated that he does not drink alcoholic beverages. Respondent has indicated, and a copy of the letter is attached to his application for reinstatement, that he has contacted a carrier for malpractice insurance.

Respondent has numerous CLE hours in Ethics, Substance abuse and Professionalism.

- Quality of Life, including pro bono opportunities, career satisfaction and achieving a balanced life.

This area spoke about not overworking. Doing pro bono work. The panel's report acknowledged Respondent's volunteerism, there is no reason to believe that once readmitted he wouldn't continue his commitment to the community and do pro bono work.

On direct examination Respondent, when asked what steps he would take in managing his case load to devote time the administrative side of the practice, the Respondent stated: “ The --- I would --- have no choice but to limit. *I have to learn to say no. I realize that I can't be everything to everyone.*” (Tr. P. 31). Limiting cases is an extremely important factor.

In *OfficeKeeper* they state:

“Prioritize And Engage In Strict Self-Discipline: Stick to a plan whenever possible. Do not be controlled by the "tyranny of the urgent." Remember that what may be perceived as urgent by the client or another attorney is not always the most important aspect of your work day. *You cannot help everybody; you are not indispensable.* Be careful not to take a case based solely on feelings or guilt (this seldom turns out well and takes more time than other cases).” (Emphasis Supplied) (*OfficeKeeper* p.7.7)

It is clear that Respondent has a grasp of the problems that led to his suspension. *OfficeKeeper*, which could be considered objective, clearly indicates that an attorney should not try to help everyone. That was one of Respondent's problems leading to his violations.

OfficeKeeper was of the opinion that attorneys should delegate:

“Rely On Support Staff:

Train staff to handle calls, drop-ins and matters not requiring legal advice. (See Rule 5.3 Responsibilities Regarding Non-lawyer Assistants).

Delegate, delegate, delegate - Use the paralegals you hired and take advantage of the excellent on-the-job training you have given your staff. (*OfficeKeeper* Page 7.4)

Even though *OfficeKeeper* suggest that an attorney should “rely on support staff” the Respondent indicated that he would eschew that area because delegation and a lack of hands on approach was one of his problems. One of the hearing panelist asked:

Q. You testified earlier that in the past you *delegated* too much to other people, didn't have enough oversight. How could we be sure this time around, you would have enough oversight?

A. Because I would be the one handling the actual incoming money, monies going out, the scheduling and things of that nature. One of the biggest problems [Respondent had] was delegating it; and two, having a heavy workload...but under this set of circumstances [if Respondent is reinstated] everything would be contained under me, and I would be the one doing it.

As I testified earlier, it [previous disciplinary problems] was a situation where I'm allowing other people to do it [running the business end of the firm, scheduling and maintaining dates, etc.] because that is what they are being paid to do, but I have to be the one with the oversight..." (Tr. P. 97, 98)

Even though "relying on the staff" and "delegation" are, at least according to *OfficeKeeper*, an acceptable means of conducting one's practice, Respondent testified that delegation did not work for him. Clearly Respondent understands his problem and has offered steps to correct his problems.

- Closing/Selling a Law Practice, including law practice valuation, records retention and professional responsibility issues.

This area was not an issue at this time.

If this Court looks at a standard or an objective account of what a Law Office Management course would offer there is little doubt that the salient points are covered by the Respondent. At the 2004 Hearing there was no mention of taking of "Law Office Management Course", the complaint was that by not having some verification of the hours that impacted on Respondent's attention to detail. Now that the Respondent has ample hours the issue has been shifted to now be you didn't take the *right* CLEs.

Respondent would submit that if he can orchestrate grants, teach CLEs he should certainly be allowed to have the opportunity to practice again.

"[T]he disciplinary process exists not to punish the offender but to protect the public." *Disciplinary Counsel v. Catanzarite*, 119 Ohio St.3d 313, 2008-Ohio-4063, 893 N.E.2d 835. The Ohio Supreme Court has also recognized that rehabilitating disciplined lawyers is another goal of the disciplinary process. See *Ohio State Bar Assn. v. Johnson*, 96 Ohio St.3d 192, 2002-Ohio-3998, 772 N.E.2d 1184, ¶ 7.

Respondent submitted numerous character letters attesting to the fact that he has been rehabilitated. The Respondent has indicated that he is older, more mature and ready to reenter his profession. See *Disciplinary Counsel v. Jones* (2000), 90 Ohio St.3d 244, 2000-Ohio-29. In *Jones*, supra, this Court found that Jones "... is more mature, that he recognizes his problem, and that he is likely to avoid relapses in the future." While Jones was suspended for a drug conviction and thereafter used drugs, this Court, in overruling the panel recommendation that Jones' request that he be reinstated after an indefinite suspension be denied found that Jones had been rehabilitated. Drug usage is not the only criterion in which rehabilitation can occur.

Respondent is rehabilitated. He has been current with his CLEs. He has not taken the CLE course in a "lump", but has year in and year out taken them in a timely fashion. Respondent has been current on his attorney registration requirements.

This Court routinely places conditions upon attorneys. There is no reason to believe that Respondent, at his age and level of maturity, would not heed a monitor. As a matter of fact at the 2004 Hearing the Relator and Respondent stipulated to a monitor.

Notwithstanding Respondents large amount of Continuing Legal Education hours, which were well in excess of the required amount, the 2009 panel found fault that Respondent did not take any CLE on law office management. They further found that

Respondent "has no business plan for the practice of law, has no defined system for tracking cases and meeting deadlines and has no accounting system in place." [Panel Finding. Page 3]. It would have been presumptuous for Respondent to go out and set up an office prior to being reinstated. Respondent has been suspended for 8 years it is impractical to have a requirement on him that he should have an office set up prior to being reinstated.

If there is a concern for what the Respondent would do after being reinstated then that concern can be met with monitoring.

In *Disciplinary Counsel v. Cushion* (2001), 92 Ohio St.3d 144, 2001-Ohio-181, the same Board of Commissioners on Grievances and Discipline, when there was a concern about another indefinitely suspended attorney's lack of future plans recently stated:

"Relator raises the concern that Respondent [Cushion] has not practiced law or worked *in any law related field* since 1998, yet may have a desire to practice law if reinstated, in areas of law totally unfamiliar to him. Relator then *surmises* that such a situation is contrary to the best interest of the public, unless a monitor of his practice is ordered as a condition of reinstatement." [See *Disciplinary v. Cushion* Case No. 00-2267, Board of Commissioners No. 99-36]

Herein, Respondent has worked in a law related field since his suspension. He has even taught seminars in CLE classes. In *Cushion*, supra, the panel recommended that Mr. Cushion be reinstated and that no monitor be put in place. Clearly, Mr. Cushion had no previous discipline, yet being out of practice and the field for approximately 11 years is still a lengthy time period. Respondent Oglesby is not trying to take anything away from

Mr. Cushion⁴, however, Respondent Oglesby certainly would be able to resume with a monitor. The 2009 Oglesby panel even indicated that a monitor wouldn't help.

Respondent's first request for reinstatement was denied in part because the panel indicated that Respondent "came to the panel hearing without verifying that the records of the Supreme Court showed that he was current on his CLE requirements." [Mar. 4th 2004 Findings of Facts Case No. 99-26 p. 7]. During that case Respondent testified, under oath, that he did have the requisite hours. There was no testimony to the contrary that he did not have the requisite hours. The 2004 panel allowed Respondent one week to get "verification" that he was indeed current, notwithstanding his testimony under oath. Thereafter, Respondent provided "verification". After Respondent brought in verification the panel still held it against him citing lack of preparedness.

In *Disciplinary Counsel v. Cushion*, Mr. Cushion filed his reinstatement request on March 8th, 2008. On December 12, 2008 Cushion's The Ohio Board of Commissioners on Grievances and Discipline recommended reinstatement. According to a letter from the Ohio Supreme Court Mr. Cushion's hours were deficient at the time he applied for reinstatement and at the time of his reinstatement hearing. On February 11, 2009 the Clerk of the Ohio Supreme Court wrote to Mr. Cushion, in part as follows:

*"...When the board filed its report on December 12, 2008, you needed to have completed a total of 116 hours of CLE, including twenty hours related to professional conduct as required by Gov.Bar R. X(3)(A)(1). The attached letter and transcripts from the Office of Attorney Services, states that since your initial suspension on May 6, 1999, you have completed a total of 96 hours, with 24.25 of those hours related to professional conduct. Additionally, the attached letter from the Office of Attorney Services states that an attorney registration suspension was imposed upon you on December 1, 2005, and that you remain under that suspension. Please contact the Office of Attorney Services at 614/387-9320, regarding your registration status.
If you have any questions, do not hesitate to contact me at 614/387-9541.*

⁴ Respondent has known Mr. Cushion since when Cushion worked in Huron County, Ohio. Cushion's situation was very tragic and he had some serious problems and should be reinstated.

Sincerely,
Sandra H. Grosko
Case Management Counsel
Enclosure
cc: Dianaa Anelli
Jonathan Coughlan” [See Supreme Court’s Docket Case No. 00-2267]

Mr. Cushion’s panel recommended that Mr. Cushion be reinstated in spite of some type of testimony and documentation that Cushion had the CLE hours and didn’t. Mr. Cushion was indefinitely suspended based on a felony conviction. There was no objections filed indicating that his statement under oath that he had the CLEs was evidence that he hadn’t been rehabilitated from his former criminal act.

Instead, *after the hearing* he is allowed to take CLE classes to make up for the deficient hours. Mr. Cushion didn’t have the bare minimum number hours and yet the panel saw fit to reinstate him, without objection from the Relator. Yet, Respondent Oglesby takes 40 hours more than is required and is denied, in part, because the Panel didn’t like the CLE’s he took even though Oglesby was in full compliance

Mr. Oglesby is being denied, in part, because he didn’t take a law office management course. Law Office management courses are neither mandatory nor are they required. If the panel is convinced that a Law Office Management would be helpful then they can be taken after reinstatement with a monitor in place.

There is a philosophical difference as to how to solve a problem. Respondent is of the opinion that the problem lies in the fact that his problems were based on excessive work. He further indicates that problems occurred because he delegated tasks to others. Respondent’s solution to the problem was to reduce his case load and do his own scheduling, bookkeeping, etc. with the aid of an accountant. Respondent stated that the problem wasn’t that he couldn’t do the bookkeeping, scheduling, etc., but that he didn’t.

The Relator is of the opinion that Respondent's problem could have been cured by a CLE on "Law Office Management" or bookkeeping or accounting courses.

The primary issue in reinstatement proceedings is whether the disciplined attorney has been sufficiently rehabilitated as to justify readmission to the practice of law. *In re Nevius* (1963), 174 Ohio St. 560, 23 Ohio Op. 2d 239, 191 N.E.2d 166. Gov. R. V, Section 10(E) states in pertinent part that a petitioner shall not be reinstated unless he establishes by clear and convincing evidence all of the following factors:

- (1) That petitioner has made appropriate restitution to the person who was harmed by his misconduct;
- (2) That petitioner possesses all of the mental, educational, and moral qualifications that were required of an applicant to the practice of law in Ohio at the time of his or her original admission;
- (3) That petitioner has complied with the continuing legal education requirements of Gov. Bar X, Section 3(G);
- (4) That petitioner is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action.

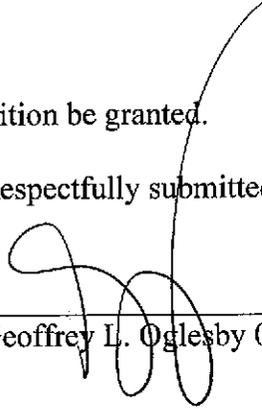
CONCLUSION

Respondent is a proper person to be readmitted to the practice of law. He has the desire, the ability, the intellect, the education, the moral and mental capacity to practice again. It is clear that he regrets his actions that led to the suspension. Not being able to practice has given him a much better insight on what to do and what not to do. He has checked with malpractice liability insurance companies, consulted with a Certified Public Accountant, has a Licensed Attorney preparing his taxes and not has he completed his CLE requirements he has taught CLEs. The public would be protected because he is obviously wiser than before

In conclusion to the Motion for Reconsideration the Respondent utilized a quote from Judge Tone. That quote is still applicable. Judge Tone, in his 2008 undated letter sent to Respondent in 2008 stated: "Hopefully you [Geoffrey] will get your ... back to work. More importantly the community [Erie County, Ohio] would be well served if you would help some folks seek justice"

WHEREFORE, Petitioner requests that his petition be granted.

Respectfully submitted,



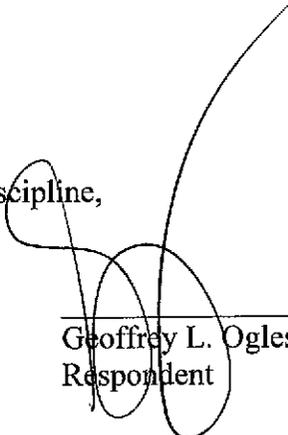
Geoffrey L. Oglesby 0023949

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Reconsideration, along with the attached Memorandum has been sent to the Relator on May 18, 2009 by sending the same ordinary U.S. Mail, postage prepaid (or hand delivered to):

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Geoffrey L. Oglesby 0023949
Respondent