

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

FILED  
JUL 15 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 09-076</b>
<b>Joseph Anthony Pfundstein</b>	:	<b>Findings of Fact,</b>
<b>Attorney Reg. No. 0056167</b>	:	<b>Conclusions of Law and</b>
	:	<b>Recommendation of the</b>
<b>Respondent</b>	:	<b>Board of Commissioners on</b>
	:	<b>Grievances and Discipline of</b>
<b>Disciplinary Counsel</b>	:	<b>the Supreme Court of Ohio</b>
	:	
<b>Relator</b>	:	
	:	

**Background and Summary of Panel Recommendation**

1. This matter was heard on March 18, 2010, in Columbus, Ohio. The members of the hearing panel were McKenzie K. Davis, Lawrence R. Elleman and John H. Siegenthaler, Chair. None of the panel members resides in the district from which the complaint arose and none was a member of the probable cause panel that certified the matter to the Board.
2. Relator was represented by Robert R. Berger. Respondent was represented by Richard S. Koblentz.
3. Relator's complaint was filed September 24, 2009 and certified October 12, 2009. Relator alleged numerous violations of the Rules of Professional Conduct occurring in 2007 and 2008 and arising out of Respondent's representation of a single client, Phillip Einhorn, as shown in two separate counts.

4. In both counts, Respondent is charged with specified violations resulting from his lack of diligence, failure to inform, conduct prejudicial to the administration of justice, failure to comply with requests for information from the client and conduct reflecting on his fitness to practice law.
5. More significantly, Respondent is also charged in both counts with conduct involving dishonesty, fraud, deceit or misrepresentation. This complaint charges that he repeatedly lied to Einhorn from mid 2007 until mid 2008 regarding the status of what the client thought were matters being pursued by Respondent.
6. Respondent's answer filed October 23, 2009, and the subsequent agreed stipulations of the parties leave little of substance at issue except the sanction and the mitigating effect, if any, of Respondent's mental disability.
7. For the reasons set forth below, the panel recommends that Respondent receive a twelve month suspension from the practice of law with the entire suspension conditionally stayed.

#### **Findings of Fact**

8. The following facts as stipulated by the parties are accepted by the panel as to Counts I and II.
9. Respondent, Joseph Anthony Pfundstein, was admitted to practice in Ohio on November 18, 1991.

#### **Count I: Einhorn v. Cicirella**

10. In or about the summer of 1998, Phillip Einhorn hired Respondent to represent him in a legal malpractice claim against Attorney Leonette Cicirella. Respondent and Einhorn entered into a one-third contingency fee agreement.

11. On September 17, 1998, Respondent filed a complaint against Cicirella on behalf of Einhorn in the Cuyahoga County Common Pleas Court. *Einhorn v. Cicirella*, Case No. CV-98-365184.
12. On September 16, 1999, the court dismissed Einhorn's lawsuit without prejudice pursuant to a notice of voluntary dismissal filed by Respondent.
13. On May 25, 2000, Respondent filed the complaint against Cicirella on behalf of Einhorn in the Cuyahoga County Common Pleas Court. *Einhorn v. Cicirella*, Case No CV-00-408582.
14. On April 23, 2001, the court granted a judgment in favor of Einhorn against Cicirella for \$3,906.52.
15. After this judgment was granted by the court, Respondent agreed to pursue collection of this judgment on behalf of Einhorn.
16. In 2007 and 2008, Einhorn made numerous telephone and e-mail requests to Respondent for the status of Respondent's collection efforts. Respondent failed to provide timely responses to these requests.
17. On July 29, 2007, Respondent sent Einhorn an e-mail that advised Einhorn that Respondent "was waiting to get Leonette [Cicirella] into court" and that Respondent "was waiting on a court date." At the time of this statement, there was no legal action pending against Cicirella. (Stip. 9)
18. On August 14, 2007, Respondent sent Einhorn an e-mail that advised Einhorn that Respondent was "waiting from Garfield [Heights Municipal] Court on a date for a show cause motion that should be coming in about [sic] a month." At the time of this

statement, there was no legal action pending against Cicirella in Garfield Heights Municipal Court. (Stip. 10)

19. On January 2, 2008, Respondent sent Einhorn an e-mail that advised Einhorn that Respondent “was waiting for a show cause date” on Cicirella “for her failure to appear at a recent hearing” in “Garfield [Heights Municipal] Court sometime in late January early February.” At the time of this statement, there was no legal action pending against Cicirella in Garfield Heights Municipal Court. (Stip. 11)
20. On April 11, 2008, Respondent sent Einhorn an e-mail that advised that Respondent “found out where [Cicirella] works” and that he is “trying to garnish her wages.” At the time of this statement, Respondent had not located an employer for Cicirella. (Stip. 12)
21. Respondent was terminated by Einhorn in August 2008. (Stip. 13)

**Count II: Einhorn v. See Bee Brush Co., Inc.**

22. In late 1999 and/or early 2000, Einhorn hired Respondent to represent him in an employment discrimination claim against the See Bee Brush Co., Inc. Respondent and Einhorn entered into a one-fourth (25%) contingency fee agreement.
23. On May 25, 2000, Respondent filed a complaint against the See Bee Brush Co. on behalf of Einhorn in the Cuyahoga County Common Pleas Court. *Einhorn v. See Bee Brush Co., Inc.*, Case No. CV-00-408583.
24. On February 5, 2001, the court dismissed Einhorn’s lawsuit without prejudice pursuant to a notice of voluntary dismissal filed by Respondent due to Einhorn’s failure to respond to discovery.
25. After the lawsuit was dismissed, Respondent did not complete any more legal work for Einhorn on this matter. Nonetheless, in 2007 and 2008, Respondent made repeated false

and/or misleading statements to Einhorn that suggest Respondent was still pursuing Einhorn's claim.

26. In 2007 and 2008, Einhorn made numerous telephone and e-mail requests to Respondent for the status of the See Bee Brush Co. matter. Respondent failed to provide timely and truthful responses to these requests, including:
- a. In 2007 during a conversation with Einhorn, Respondent falsely advised Einhorn that he may be deposed in the See Bee Brush Co. lawsuit.
  - b. On August 14, 2007, Respondent sent Einhorn an e-mail that falsely advised Einhorn that "See-Bee kind of in a holding pattern nothing reall[y] [sic] going on but should be picking up in a couple weeks. By any chance are you coming in to Cleveland in the event of depositions or anything like this."
  - c. On August 28, 2007, Respondent sent Einhorn an e-mail that falsely advised Einhorn that Respondent "was trying to figure out what kind of depo[sition]" of Einhorn was being sought by the defendant in the See Bee litigation.
  - d. On September 19, 2007, Respondent received an e-mail from Einhorn "to confirm our deposition meeting" on September 24, 2007. On September 20, 2007, Respondent sent Einhorn a reply e-mail that falsely advised Einhorn that Respondent was unable to confirm the date because Respondent "and the other [See Bee Brush Co.] attorney have other commitments" on that date.
  - e. On January 2, 2008, Respondent sent Einhorn an e-mail that falsely advised Einhorn that Respondent "was trying to figure out a way to get your depo[sition] without you having to come to town." (Stip. 18)

- f. On May 25, 2008, Respondent sent Einhorn an e-mail that falsely advised him that Respondent had previously mailed the Einhorns an update on the See Bee Brush matter.
27. At the time of the communications detailed in paragraph 26, there was no legal action pending against See Bee Brush Co. and no actual deposition was planned or scheduled.
28. Respondent was terminated by Einhorn in August 2008.

### Conclusions of Law

29. The parties stipulated the following violations from Respondent's conduct in Counts I and II which the panel finds to be supported by clear and convincing evidence.
30. Respondent's conduct in Count I violates Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client]; 8.4(c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; and 8.4(h) [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law].
31. Respondent's conduct in Count II violates Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client]; 8.4(c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; and 8.4(h) [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law].
32. The panel also finds by clear and convincing evidence that Respondent's conduct from February 2007 until August 2008 in (a) failing to pursue collection of the malpractice judgment in Count I, and in (b) abandoning the employment discrimination claim in Count II without the consent of his client violates Prof. Cond. R. 1.3 [a lawyer shall act

with reasonable diligence and promptness in representing a client] and 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter].

33. The panel cannot find violations in either Count I or Count II of Prof. Cond. R. 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice] and therefore recommends dismissal of these alleged violations.

**Mitigation and Aggravation**

34. The parties stipulated and the panel finds the following mitigating circumstances under BCGD Proc. Reg. 10(B)(2):
- a. Respondent has no prior disciplinary record;
  - b. Respondent has displayed a cooperative attitude during the disciplinary proceedings;
  - c. Respondent suffers from a mental disability within the meaning of BCGD Proc. Reg. 10(B)(2)(g)(i) of Board Rules and Regulations (BCGD Proc. Reg.) as diagnosed by a qualified health care professional; for which Respondent has undergone a sustained period of successful treatment, including but not limited to, participation in the Ohio Lawyers Assistance Program ("OLAP") under BCGD Proc. Reg. 10(B)(2)(g)(iii); and for which Respondent's qualified health care professional testified at the hearing that Respondent is presently able to practice law competently, ethically, safely and that Respondent's disabling symptoms are fully currently managed in satisfaction of BCGD Proc. Reg. 10(B)(2)(g)(iv).
35. The main issue is the parties disagreement over whether the diagnosed condition of Respondent (dysthymia, a form of depression) contributed to cause the misconduct and thus meets the second prong required for mitigation by BCGD Proc. Reg. 10(B)(2)(g)(ii).
36. The panel finds from the uncontroverted testimony of Respondent's examining psychologist, Roger Neil Hess, Ph.D., the probability that Respondent's dysthymia contributed to his misconduct. (Tr. 100, 101)
37. Relator's counsel did succeed in having Dr. Hess admit that the Diagnostic and Statistical Manual of Mental Disorder (DSM) does not indicate that depression causes dishonesty

(Tr. 109); however, there was no evidence that DSM is the complete authority on the issue nor did Relator's counsel offer any evidence that dysthymia would not have contributed to Respondent's misconduct.

38. Respondent testified that his untruthful conduct was the result of Einhorn being a particularly belligerent, abusive and demanding individual who often called Respondent at his home demanding certain action and who screamed and yelled when he heard something he didn't like. (Tr. 54, 55, 160) Coupled with this was Respondent's fear, based on Einhorn having filed a grievance against a previous lawyer and obtaining a judgment against another, that he would be dealing with a disciplinary issue if Einhorn knew the actual status of his matters. (Tr. 42, 162, 172).
39. In further mitigation, Respondent was forthright, apologetic and very remorseful in his testimony and throughout the proceedings. Respondent offered 23 letters attesting to his good character and reputation, community service and legal service over his 18 years of practice.
40. Paul Caimi of OLAP testified as to Respondent's compliance with his three year program which he entered in March 2009. He spoke of the Respondent's diagnosis of dysthymia and that it contributed to his misconduct. (Tr. 67) Further, Caimi stated that dysthymia as a form of low-level depression, can cause one to lack assertiveness especially in dealing with difficult people and for one to say just about anything to make them go away. (Tr. 68) Caimi said that Respondent has taken well to OLAP and his therapy and would be no threat to the public if he were to continue practicing law. (Tr. 76)
41. Judge Brian Melling of the Bedford Municipal Court which employs Respondent as a magistrate testified that Respondent has a very good temperament, is smart, hard

working, diligent and fair. (Tr. 128-129) He said Respondent is “even,” a wonderful citizen and a conscientious father. (Tr. 129, 130) Judge Melling said that Respondent volunteered to him that he had lied to a client and had a resulting grievance pending. The judge advised Respondent to get a lawyer but said that it never crossed the judge’s mind that Respondent should not be sitting as a magistrate in his court. (Tr. 131, 132)

42. As to Aggravation, the parties stipulated that Respondent engaged in a pattern of misconduct and multiple offenses, but that they involved the same client on two separate matters.

#### **Recommended Sanction**

43. Relator requests that Respondent receive a 12 month suspension with six months stayed conditioned on continued participation in OLAP, continued treatment with Dr. Roger Hess and a monitor for one year after his actual suspension.
44. Respondent also requests a 12 month suspension with continued OLAP participation and treatment by Dr. Hess; however, Respondent says that the actual suspension should be stayed in full and does not mention a monitor.
45. The parties submitted briefs with case law supporting their positions as to the mitigating effect of a mental disability on the requested suspension and whether or not a stay would be appropriate.
46. The panel finds that the case of *Dayton Bar Assn. v. Ellison*, 118 Ohio St.3d 128, 2008-Ohio-1808 and *Disciplinary Counsel v. Fumich*, 116 Ohio St.3d 257, 2007-Ohio-6040 are persuasive in support of a fully stayed suspension. In both cases, a lawyer found to have lied to his or her client was given a fully stayed suspension, because the aggravating factors involved were greatly outweighed by those in mitigation. Although

not cited by Respondent, the panel finds *Ellison* to be factually similar to the case before it.

In *Ellison*, the respondent lied to her client about the status of an employment discrimination claim which had been dismissed on summary judgment even though the client periodically checked with respondent on the claim. Respondent did not tell the truth until actually confronted by the client at which time the claim was already lost. Also, in *Ellison* there was a separate count in which the respondent had mishandled a domestic relations matter for another client. In addition, the lawyer had a public reprimand for neglect some 20 years prior. In mitigation there was ample evidence of respondent's 27 years of community service together with the cooperation and remorse. Respondent explained that she was having personal problems, including the end of her marriage, and did not know how to deal with having lost the discrimination case. The Supreme Court recognized that conduct involving deceit or misrepresentation would ordinarily result in an actual suspension; however, it recited that a stayed suspension could be given despite dishonesty where sufficient mitigating circumstances were present. The Court ordered a one year suspension all stayed with probation and a monitor to ensure responsible management of respondent's office.

47. A similar result was reached in *Fumich*, as cited by Respondent. The respondent in that case did not tell his clients that their medical malpractice case had been dismissed on summary judgment and later fabricated a \$16,000.00 settlement with his own funds which the clients accepted. The Supreme Court ordered a 12 month suspension, all stayed. There were no prior violations and several mitigating factors, with no motive to exploit the clients nor to act for personal financial gain. The Court noted respondent's

dishonesty and did not condone it recognizing that an actual suspension is usually warranted. However, respondent's mitigating evidence weighed against an actual suspension. The Court also recognized that the primary purpose of the sanction is not to punish the offender, but to protect the public.

48. The panel believes it significant that although the Supreme Court ordered fully stayed suspensions in both *Ellison* and *Fumich* because of several mitigating circumstances, that neither matter had the additional mitigating factor of mental disability as in this case.
49. Relator has cited cases where the Supreme Court ordered actual suspensions even though the untruthful attorneys offered mitigating evidence of clinical depression or mental disability. In those cases, however, the misconduct was coupled with other substantial violations: i.e., *Disciplinary Counsel v. Keller*, 110 Ohio St.3d 240, 2006-Ohio-4354 (two year suspension, 18 months conditionally stayed for lying to an 82 year old client about status of her case, missing statute of limitations, resulting in unpaid malpractice judgment against Respondent for \$102,800.00, attempt to exonerate himself from malpractice and failure to inform as to the lack of liability insurance); *Disciplinary Counsel v. Grdina*, 101 Ohio St.3d 150, 2004-Ohio-299 (two year suspension, one year stayed conditionally for lying to clients about filing estate tax returns or probate papers in two estates resulting in penalties, failure to respond to Relator's inquiries, use of IOLTA account and client funds for personal expenses and failure to register and failure to comply with CLE requirements); and *Disciplinary Counsel v. Jaffe*, 102 Ohio St.3d 273, 2004-Ohio-2685 (two year suspension, with one year conditionally stayed for lies and misrepresentation involving four clients; failure to timely file suit; failure to make discovery response and to provide summary judgment response; failure to inform clients of dismissals and lost

evidence; filing suit in jurisdiction where not licensed; misuse of IOLTA account and failure to return files to client.)

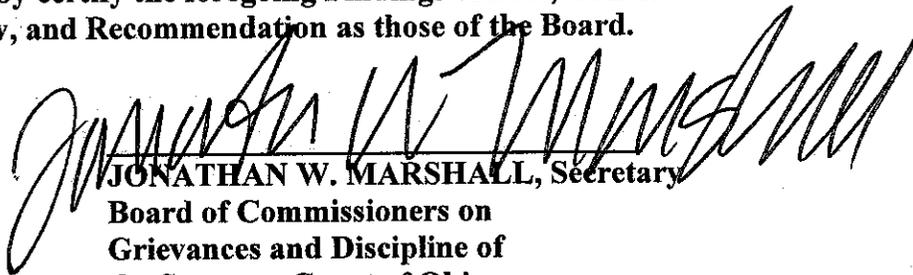
50. In the instant case, the client Einhorn did not testify. There was no proof that the client had been harmed. There was no evidence as to the validity or value of his employment discrimination claim nor evidence as to whether his malpractice judgment against his previous attorney was collectible. Respondent did not charge a fee in either matter. (Tr. 157, 158) Respondent did testify that the limitation period on the discrimination claim had run by the time of his misrepresentation to Einhorn in 2007. (Tr. 179) Respondent said he dismissed the discrimination case after Einhorn failed to comply with discovery requests including failure to provide copies of his tax returns in violation of the judge's order which contained a "drop dead" deadline for either production or dismissal with prejudice. (Tr. 164-165)
51. Respondent testified that the attorney against whom Einhorn had recovered the malpractice judgment had been on disability since 2000 or 2001. (Tr. 33) Respondent did not feel that there was anything he could have done to collect the judgment. (Tr. 179)
52. The panel feels that Respondent's untruthfulness with a single client, although occurring several times over nearly a one year period, was an anomaly and is unlikely to be repeated. Respondent poses no threat to the public. Respondent's mental disability of dysthymia contributed to cause his misconduct through his inability to cope with his client. This resulted in his fabricated responses to the client's inquiries. The mental disability substantially mitigates Respondent's misconduct, while his continuing therapy and participation in OLAP should permit him to continue in the practice of law without interruption.

53. The panel therefore recommends that Respondent be suspended from the practice of law for 12 months, with the suspension stayed on conditions that: (a) he shall remain in compliance with OLAP and therapy as directed by Dr. Roger Hess during the period of the stayed suspension; (b) he shall serve a term of probation to run concurrently with his OLAP program until completion in March 2012, with a monitor appointed by Relator to periodically report on Respondent's compliance with the program; and (c) he shall pay all costs related to these proceedings.

**BOARD RECOMMENDATION**

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 10, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Joseph Anthony Pfundstein, be suspended for a period of twelve months with the entire twelve month suspension stayed upon the conditions contained in the panel's report. The Board further recommends that the cost of these proceedings be taxed to 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**

**RECEIVED**

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

MAR 04 2010

**DISCIPLINARY COUNSEL  
SUPREME COURT OF OHIO**

**Joseph Anthony Pfundstein, Esq.**  
29325 Chagrin Boulevard  
Suite 305  
Pepper Pike, OH 44122

**FILED**

MAR 10 2010

**BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE**

**Attorney Registration No. (0056167)**

**AGREED  
STIPULATIONS  
BOARD NO. 09-076**

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

**AGREED STIPULATIONS**

Relator, Disciplinary Counsel, and respondent, Joseph Anthony Pfundstein, do hereby stipulate to the admission of the following facts, violations, aggravation, mitigation and exhibits.

**STIPULATED FACTS**

1. Respondent, Joseph Anthony Pfundstein, was admitted to the practice of law in the State of Ohio on November 18, 1991. Respondent is subject to the Rules of Professional Conduct, the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.

COUNT I

Einhorn v. Cicirella

2. In or about the summer of 1998, Phillip Einhorn hired respondent to represent him in a legal malpractice claim against Attorney Leonette Cicirella. Respondent and Einhorn entered into a one-third contingency fee agreement.
3. On September 17, 1998, respondent filed a complaint against Cicirella on behalf of Einhorn in the Cuyahoga County Common Pleas Court. *Einhorn v. Cicirella*, Case No. CV-98-365184.
4. On September 16, 1999, the court dismissed Einhorn's lawsuit without prejudice pursuant to a notice of voluntary dismissal filed by respondent due to a statute of limitations problem with the theory of legal malpractice.
5. On May 25, 2000, respondent refiled the complaint against Cicirella on behalf of Einhorn in the Cuyahoga County Common Pleas Court styled as *Einhorn v. Cicirella*, Case No. CV-00-408582, and utilizing a different theory, breach of contract.
6. On April 23, 2001, the court granted a judgment in favor of Einhorn against Cicirella for \$3,906.52.
7. After this judgment was granted by the court, respondent agreed to pursue collection of this judgment on behalf of Einhorn.

8. In 2007 and 2008, Einhorn made numerous telephone and e-mail requests to respondent for the status of respondent's collection efforts. Respondent failed to provide timely responses to these requests.
  
9. On July 29, 2007, respondent sent Einhorn an e-mail that advised Einhorn that respondent "was waiting to get Leonette [Cicirella] into court" and that respondent "was waiting on a court date." At the time of this statement, there was no legal action pending against Cicirella.
  
10. On August 14, 2007, respondent sent Einhorn an e-mail that advised Einhorn that respondent was "waiting from Garfield [Heights Municipal] Court on a date for a show cause motion that should be coming in a bout [sic] a month." At the time of this statement, there was no legal action pending against Cicirella in Garfield Heights Municipal Court.
  
11. On January 2, 2008, respondent sent Einhorn an e-mail that advised Einhorn that respondent "was waiting for a show cause date" on Cicirella "for her failure to appear at a recent hearing" in "Garfield [Heights Municipal] Court sometime in late January early February." At the time of this statement, there was no legal action pending against Cicirella in Garfield Heights Municipal Court.

12. On April 11, 2008, respondent sent Einhorn an e-mail that advised Einhorn that respondent “found out where [Cicirella] works” and that he is “trying to garnish her wages.” At the time of this statement, respondent had not located an employer for Cicirella.
13. Respondent was terminated by Einhorn in August 2008.

## COUNT II

### Einhorn v. See Bee Brush Co., Inc.

14. In late 1999 and/or early 2000, Einhorn hired respondent to represent him in an employment discrimination claim against the See Bee Brush Co., Inc. Respondent and Einhorn entered into a 25 per cent contingency fee agreement.
15. On May 25, 2000, respondent filed a complaint against the See Bee Brush Co. on behalf of Einhorn in the Cuyahoga County Common Pleas Court. *Einhorn v. See Bee Brush Co., Inc.*, Case No. CV-00-408583.
16. On February 5, 2001, the court dismissed Einhorn’s lawsuit without prejudice pursuant to a notice of voluntary dismissal filed by respondent due to Einhorn’s failure to respond to discovery.
17. After the lawsuit was dismissed, respondent did not complete any more legal work for Einhorn on this matter. Nonetheless, in 2007 and 2008, respondent made repeated false

and/or misleading statements to Einhorn that suggested respondent was still pursuing Einhorn's claim.

18. In 2007 and 2008, Einhorn made numerous telephone and e-mail requests to respondent for the status of the See Bee Brush Co. matter. Respondent failed to provide timely and truthful responses to these requests, including:
  - a. In 2007 during a conversation with Einhorn, respondent falsely advised Einhorn that he may be deposed in the See Bee Brush Co. lawsuit
  - b. On August 14, 2007, respondent sent Einhorn an e-mail that falsely advised Einhorn that "See-Bee kind of in a holding pattern nothing reall[y] [sic] going on but should be picking up in a couple weeks. By any chance are you coming in to Cleveland in the event of depositions or anything like this."
  - c. On August 28, 2007, respondent sent Einhorn an e-mail that falsely advised Einhorn that respondent "was trying to figure out what kind of depo[sition]" of Einhorn was being sought by the defendant in the See Bee litigation.
  - d. On September 19, 2007, respondent received an e-mail from Einhorn "to confirm our deposition meeting" on September 24, 2007. On September 20, 2007, respondent sent Einhorn a reply e-mail that falsely advised Einhorn

that respondent was unable to confirm the date because respondent “and the other [See Bee Brush Co.] attorney have other commitments” on that date.

e. On January 2, 2008, respondent sent Einhorn an e-mail that falsely advised Einhorn that respondent “was trying to figure out a way to get your depo[sition] without you having to come to town.”

f. On May 25, 2008, respondent sent Einhorn an e-mail that falsely advised Einhorn that respondent had previously mailed the Einhorn’s an update on the See Bee Brush matter.

19. At the time of all of the communications detailed in paragraphs 18(a) through (f) through 24, there was no legal action pending against See Bee Brush Co. and no actual deposition was planned or scheduled.

20. Respondent was terminated by Einhorn in August 2008.

#### **STIPULATED VIOLATIONS**

21. Respondent’s conduct in Count I violates the Ohio Rules of Professional Conduct: 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client]; 8.4(c) [a lawyer shall not engage in conduct involving fraud, deceit, dishonesty,

or misrepresentation]; and 8.4(h) [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law].

22. Respondent's conduct in Count II violates the Ohio Rules of Professional Conduct::  
1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client]; 8.4(c) [a lawyer shall not engage in conduct involving fraud, deceit, dishonesty, or misrepresentation];; and 8.4(h) [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law].

### **CONTESTED VIOLATIONS**

23. Whether Respondent's conduct in Count I violates the Ohio Rules of Professional Conduct:  
1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client];  
1.4(a) (3) [a lawyer shall keep the client reasonably informed about the status of the matter];  
or 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].
24. Whether Respondent's conduct in Count II violates the Ohio Rules of Professional Conduct:  
1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client];  
1.4(a) (3) [a lawyer shall keep the client reasonably informed about the status of the matter];  
or 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

### **STIPULATED MITIGATION**

25. Respondent has no prior disciplinary record.
26. Respondent has displayed a cooperative attitude during the disciplinary proceedings.
27. Respondent suffers from a mental disability:

- (i) as diagnosed by a qualified health care professional;
- (ii) For which the Respondent has undergone a sustained period of successful treatment, including but not limited to, participation in the Ohio Lawyer's Assistance Program; and
- (iii) For which Respondent's qualified health care professional will testify at the hearing to be held in the instant matter that the Respondent is presently able to practice law competently, ethically, safely and that Respondent's disabling symptoms are fully managed currently.

28. **CONTESTED MITIGATION** Whether the diagnosed condition of Respondent contributed to the cause of the stipulated violations of the Ohio Rules of Professional Conduct.

**STIPULATED AGGRAVATION**

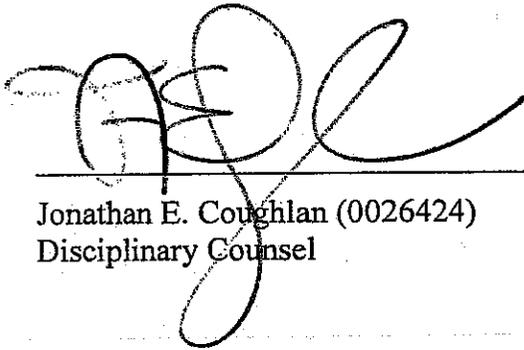
29. Respondent engaged in a pattern of misconduct and multiple offenses; however, all involved the same client and only two (2) matters.

**STIPULATED EXHIBITS**

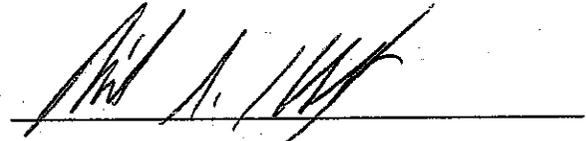
- Exhibit 1 Court case docket for *Einhorn v. Cicirella*, Case No. CV-98-365184
- Exhibit 2 Court case docket for *Einhorn v. Cicirella*, Case No. CV-00-408582
- Exhibit 3 Respondent's July 29, 2007 e-mail to Einhorn
- Exhibit 4 Respondent's August 14, 2007 e-mail to Einhorn
- Exhibit 5 Respondent's January 2, 2008 e-mail to Einhorn
- Exhibit 6 Respondent's April 11, 2008 e-mail to Einhorn
- Exhibit 7 Court case docket for *Einhorn v. See Bee Brush Co., Inc.*, Case No. CV-00-408583
- Exhibit 8 Respondent's August 28, 2007 e-mail to Einhorn
- Exhibit 9 September 19 and 20, 2007 e-mails between respondent and Einhorn
- Exhibit 10 Respondent's May 25, 2008 e-mail to Einhorn

**CONCLUSION**

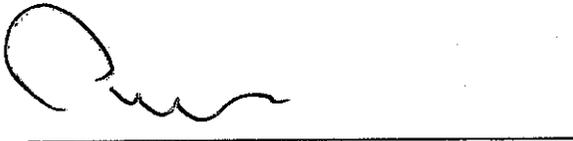
The above are stipulated to and entered into by agreement by the undersigned parties on this 10 day of MARCH, 2010.



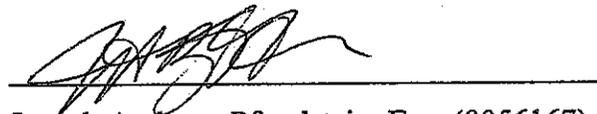
Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



Richard S. Koblentz (0002677)  
Counsel for Respondent



Robert R. Berger (0064922)  
Senior Assistant Disciplinary Counsel



Joseph Anthony Pfundstein, Esq. (0056167)  
Respondent