

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE:

Complaint Against:

PAUL J. KELLOGG (#0062303),

RESPONDENT

CINCINNATI BAR ASSOCIATION,

RELATOR

Case No. 09-2302

RELATOR'S RESPONSE
TO RESPONDENT'S
MOTION FOR
RECONSIDERATION

**RELATOR'S RESPONSE TO RESPONDENT'S MOTION FOR
RECONSIDERATION**

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Through his motion for reconsideration, respondent Paul J. Kellogg requests that this Court reconsider its July 20, 2010 decision in which the Court indefinitely suspended Respondent without any interim suspension credit, and specifically asks this Court to make Respondent's suspension effective as of January 15, 2009, consistent with the recommendation of the Board of Commissioners on Grievances and Discipline, or in the alternative, as of December 14, 2009.¹ For the reasons set forth here, Respondent Cincinnati Bar Association respectfully requests that this Court deny Respondent's motion in its entirety.

First, each of the cases cited by Respondent is easily distinguishable from the facts and circumstances in the instant matter. Most notably, in each and every case relied upon by Respondent, the respondents pled guilty to the criminal charges against them. Respondent, on the other hand, did not plead guilty, but rather, challenged the charges against him and was ultimately found guilty of six felony counts by a jury. (Opinion at ¶¶ 10, 27.)

Second, each of the cases relied upon by Respondent in which the Court granted interim suspension credit involved either lesser damages and/or lesser criminal sanctions. For example, in *Disciplinary Counsel v. Blaszak*, 104 Ohio St.3d 330, 819 N.E.2d 689, 2004-Ohio-6593, Blaszak pled guilty to selling witness testimony in a pending case and received three years supervised probation, which term was ended one year early. In *Cuyahoga County Bar Assn.*

¹ Respondent notes that he promptly ceased practicing law following his sentencing on August 29, 2008, and was not responsible for the 16-month delay between his sentencing and the Court's imposition of an interim felony suspension on December 14, 2009. (Motion at 2, fn 1.) Notably, however, pursuant to Gov. Bar R. V(5)(A)(1)(a), Ohio attorneys are subject to an automatic interim suspension from the practice of law upon conviction of a felony.

V. Garfield, 109 Ohio St.3d 103, 846 N.E.2d 45, 2006-Ohio-1935, Garfield pled guilty to one count of bank fraud and received a sentence of 30 days at a half-way house followed by three years probation. The respondent in *Disciplinary Counsel v. Petroff*, 85 Ohio St.3d 396, 709 N.E.2d 111, 1999-Ohio-400 pled guilty to attempting to evade federal income taxes. The court specifically noted that Petroff's criminal conduct had no impact on his clients and did not arise from his representation of his clients. In *Dayton Bar Assn. v. Seall*, 81 Ohio St.3d 280, 690 N.E.2d 1271, 1998-Ohio-630, Seall pled guilty to conspiracy to commit tax fraud and received a four-month prison sentence followed by a two-year term of supervised release. The respondent in *Disciplinary Counsel v. Lash*, 68 Ohio St.3d 12, 1993-Ohio-157, 623 N.E.2d 28, pled guilty to bank fraud in a case that involved no loss to anyone. Lash was required to complete 100 hours of community service and two years supervised release. Moreover, the relator suggested that the respondent be allowed interim suspension credit. In *Disciplinary Counsel v. Gittinger*, 125 Ohio St. 3d 467, 929 N.E.2d 410, 2010-Ohio-1830, Gittinger pled guilty in a case involving somewhere between \$400,000 and \$1,000,000 in damages. Gittinger received a sentence of a year and a day followed by five years supervised release. In addition, the parties proposed a one-year suspension with credit for time served on interim suspension. Finally, the respondent in *Disciplinary Counsel v. Bennett*, 124 Ohio St.3d 314, 921 N.E.2d 1064, 2010-Ohio-313, pled guilty to unlawfully structuring \$32,000 in transactions with various financial institutions with the express purpose of evading the requirements for transfers in excess of \$10,000 (but in

stipulations, admitted to structuring additional transactions). The parties proposed a one-year suspension with credit for time served during his interim suspension.

In the instant case, a jury found Respondent guilty of six felony counts, including “conspir[ing] to commit and commit[ing] money laundering by assisting in the creation of two trusts designed to protect \$14 million of Warshak’s assets – the ill-begotten gains of the company’s ‘continuity program’ – from the FTC and future lawsuits by its customers.” (Opinion at ¶¶ 6, 23.) These charges and damages far exceed those in the cases relied upon by Respondent. In addition, and also unlike the cases relied upon by Respondent, Relator never agreed to, stipulated to, or proposed allowing interim suspension credit, but rather, sought a sanction of permanent disbarment.

Notably, this Court had the opportunity to grant interim suspension credit when deciding this case but chose not to. Rather, the Court expressly rejected the Board’s recommended sanction, noting not only the seriousness and severity of respondent’s crimes, but more importantly, the fact that if the Court “were to impose the Board’s recommended sanction, respondent could resume the practice of law more than two years before the expiration of that supervised release.” (Opinion at ¶ 23.)

Respondent’s three-year term of supervised release began to run in November 2009, following the expiration of his prison term. (Opinion at ¶ 11.) Accordingly, Respondent’s supervised release will not conclude until November 2012. Granting Respondent interim suspension credit from either January 15,

2009 (whereby two years would run January 15, 2011), or Respondent's alternatively suggested date of December 14, 2009 (whereby two years would run December 14, 2011), would allow Respondent to apply for readmission to the practice of law well prior to the expiration of his supervised release. Indeed, even calculating the two-year period from July 20, 2010, the date of this Court's Order, the date when Respondent would be permitted to reapply for reinstatement falls on July 20, 2012, four months prior to the conclusion of Respondent's supervised release -- that is, of course, unless Respondent has knowledge that would lead him to believe that he will receive an early release from his three-year term of supervised release. In the event Respondent has any such knowledge, Relator respectfully submits that such information is highly relevant to Respondent's pending motion and should be disclosed to both Relator and this Court.

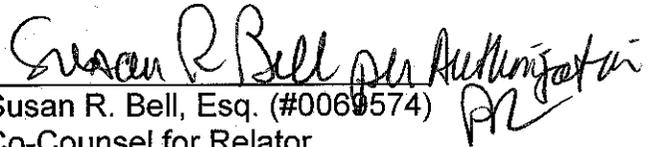
Because this Court has ordered that "Respondent may petition for reinstatement once he has completed the term of supervised release imposed by the federal court in his underlying criminal case, but not before the two-year period that respondent must wait before petitioning for reinstatement pursuant to Gov.Bar R. V(10(B))" (Opinion at ¶ 26), and because Respondent "does not object to or in any way challenge this Court's imposition of his indefinite suspension of the requirement that he complete or otherwise be released from his term of supervised release by the federal court before applying for reinstatement," (Motion at 1), Relator respectfully requests that this Court deny Respondent's motion and allow no credit for time served under interim suspension.

Respectfully submitted,

CINCINNATI BAR ASSOCIATION



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Relator's Response to Respondent's Motion for Reconsideration was mailed by First Class United States mail, postage prepaid, to David W. Greer, Counsel for Respondent, 400 National City Center, 6 North Main St., Dayton, OH 45402; James P. Fleisher, Co-Counsel for Respondent, 400 National City Center, 6 North Main St., Dayton, OH 45402; and Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, 65 S. Front St., 5th Floor, Columbus, OH 43215 on this 5 day of August, 2010.



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