

1 Office of Disciplinary Counsel v. Manogg.

2 [Cite as *Disciplinary Counsel v. Manogg* (1996), \_\_\_\_ Ohio St.3d \_\_\_\_.]

3 *Attorneys at law -- Misconduct -- Permanent disbarment -- Conviction of*  
4 *using false Social Security numbers in violation of Section*  
5 *408(g)(2), Title 42, U.S. Code -- Illegal conduct involving moral*  
6 *turpitude -- Conduct involving fraud, deceit, dishonesty, or*  
7 *misrepresentation -- Conduct prejudicial to the administration of*  
8 *justice -- Conduct that adversely reflects on fitness to practice law --*  
9 *Failure to refuse employment in litigation in which attorney knows*  
10 *that he ought to be called as a witness -- Acquisition of interest in*  
11 *client's litigation -- Filing suit on client's behalf that attorney knows*  
12 *would merely harass another.*

13 (No. 94-2669--Submitted September 13, 1995--Decided January 10,  
14 1996.)

15 ON CERTIFIED REPORT by the Board of Commissioners on Grievances  
16 and Discipline of the Supreme Court, No. 92-54.

17 In a complaint filed on October 19, 1992, relator, Office of  
18 Disciplinary Counsel, charged respondent, Philip M. Manogg of Newark,  
19 Ohio Attorney Registration No. 0025402, with three counts of professional  
20 misconduct involving violations of, *inter alia*, DR 1-102(A)(3) (illegal  
21 conduct involving moral turpitude), 1-102(A)(4) (conduct involving fraud,

1   deceit, dishonesty, or misrepresentation), 1-102(A)(5) (conduct prejudicial  
2   to the administration of justice), 1-102(A)(6) (conduct that adversely  
3   reflects on fitness to practice law), 5-101(B) (failure to refuse employment  
4   in litigation in which attorney knows or should know that he ought to be  
5   called as a witness), 5-103(A) (acquisition of interest in client's litigation),  
6   and 7-102(A)(1) (filing suit on client's behalf that attorney knows would  
7   merely harass or injure another). A panel of the Board of Commissioners on  
8   Grievances and Discipline of the Supreme Court ("board") heard the matter  
9   on July 8, 1994.

10         The panel found that respondent had violated DR 1-102(A)(3), (4),  
11   and (6) as alleged in Count I of the complaint. Evidence submitted to  
12   substantiate this count established that respondent was convicted on June  
13   19, 1992 of two felony counts of having used false Social Security numbers  
14   in violation of Section 408(g)(2), Title 42, U.S. Code. He was sentenced to  
15   the maximum permitted by sentencing guidelines--eight months'  
16   imprisonment on each count, with the sentences to be served concurrently  
17   and followed by three years of supervised release. Respondent was also  
18   ordered to perform two hundred hours of community service. On July 30,

1 1992, respondent was placed on indefinite suspension from the practice of  
2 law pursuant to Gov.Bar R. V(5)(A)(3) (automatic suspension for  
3 conviction of felony).

4 Respondent supplied the false Social Security numbers in 1989 to  
5 substantiate aliases in ill-fated attempts to obtain a post office box and to  
6 establish a corporate checking account. Respondent apparently concocted  
7 the name “Kenneth Wilson” to obtain the post office box, and he posed as a  
8 deceased attorney of whom he had heard while practicing in Columbus,  
9 Ohio, to deceive the bank. In pronouncing respondent’s sentence, the  
10 federal district court judge discussed the circumstances surrounding  
11 respondent’s crimes, stating:

12 “The basis for this sentence is that it is obvious that the defendant  
13 went through some extensive planning in order to put a scheme together; the  
14 fact that he had a law degree has raised several additional questions as to  
15 how he was really going to get around without being detected. To place this  
16 individual on probation would not likely impress him with the seriousness  
17 of his actions; [especially] \*\*\* considering that he was well aware of the  
18 possible consequences of this type of behavior. Apparently through this act

1 [he was] involved in very serious economic or white collar crime activity  
2 which leaves a great many victims with serious financial hardships.”

3 Evidence before the panel confirmed the federal judge’s suspicions of  
4 respondent’s fraudulent scheming. The investigating agent for the United  
5 States Department of Health and Human Services, Office of the Inspector  
6 General testified that, in addition to using false Social Security numbers,  
7 respondent had produced fabricated pieces of identification when the agent  
8 questioned him in connection with the corporate bank account, including an  
9 international certification, driver’s license, and motor vehicle permit.  
10 Respondent checked probate court records to falsify this identification and  
11 he had even placed his photograph on some of it to identify himself as the  
12 deceased attorney.

13 Respondent testified that he used an alias to open the bank account  
14 after he became involved with someone, whose name he could not recall,  
15 who had set up at least two “contractual” companies outside the United  
16 States. According to respondent, this person he could not identify wanted to  
17 transfer funds from these companies into this country without encountering  
18 adverse tax consequences, so respondent suggested formation of companies

1 or corporations by the same name in the United States, and he opened at  
2 least one corporate checking account to accept transfer of the offshore  
3 funds. Respondent used the deceased attorney's identity and not his own to  
4 open the account because he "wasn't 100% sure what [the unidentified  
5 person] was going to do."

6 Respondent also testified that he used a fictitious name to request a  
7 post office box after learning of some "deal going around" involving "an  
8 insurance company or something out of some southern state," which he  
9 considered a money-making opportunity. Respondent told the trustee of  
10 another "contractual" company, the Wheatley Company, and a farmer who  
11 had transferred assets to the Wheatley Company about this "deal" to  
12 encourage their participation. According to respondent:

13 "\*\*\*\* [T]he deal was that if you allowed [the insurance company  
14 personnel] to put a mortgage on your real estate that they would give you--  
15 let me see how this thing supposedly worked.

16 "The note you would sign to them would be, like, at eight percent.  
17 They would in turn sign a note to you for, like, 10 percent. And I guess the  
18 benefit to them [was] their assets would be increased because they would

1 have this mortgage on paper. They could in turn then write additional  
2 [insurance] policies. I [have] forgotten what kind of policies they were  
3 writing. And I found out about this through a friend of mine, and, you  
4 know, the old saying if it sounds too good to be true it probably is.

5 “\*\*\* I talked with \*\*\* [the farmer and the trustee]. Did they want to  
6 try this thing to have a little bit of income for the Wheatley Company and  
7 maybe putting a mortgage on [to] protect some of the assets of the Wheatley  
8 Company. And they said \*\*\* they’d tried it. Before I told them I would do  
9 it, [I said] let’s run some fake deals through to see if they accept them.

10 “\*\*\* I didn’t want to use my name because this friend of mine  
11 obviously knows it came from me, and I wanted to test it. So I ran a couple  
12 deals through and they accepted it. Just made up property, and I used this  
13 name Kenneth Wilson as a post office drop to have the stuff mailed to.

14 “And so I tried a couple more just to see. I even tried one at a  
15 cemetery and they were going to loan I forget how many millions of dollars  
16 on a cemetery. And I said time out. At that point I suggested that the  
17 Wheatley Company not do it, and again I used fake ID when I opened the  
18 post office box \*\*\*.”

1           In his machinations to “test” the mortgage loan “deal,” respondent  
2 also made up fake property deeds and appraisals to convince the insurance  
3 company that he owned the property. He apparently also obtained a second  
4 post office box by identifying himself as the deceased attorney and again  
5 using that attorney’s Social Security number; however, respondent has not  
6 been charged for this incident.

7           With respect to the allegations in Count II, the panel found that  
8 respondent had violated DR 1-102(A)(5) and (6), and 7-102(A)(1).  
9 Evidence submitted to substantiate this count established that respondent  
10 represented another “contractual” company, the Bearing Company, in an  
11 action to recover certain property and damages and to obtain an injunction  
12 before Judge Richard M. Rogers of the Marion County Court of Common  
13 Pleas. Respondent ultimately dismissed this suit, and Judge Rogers  
14 subsequently sanctioned him on May 21, 1991, pursuant to R.C. 2323.51  
15 and Civ. R. 11 and 37(B) and (D), for instituting a frivolous cause of action  
16 designed merely to harass and having no legal basis. In affirming Judge  
17 Rogers’s judgment, the Court of Appeals for Marion County cited the  
18 following examples, among others, of respondent’s frivolous conduct: (1)

1 he filed his suit realizing that his client was a sham organization due to his  
2 failure to register it as business trust pursuant to the requirements of R.C.  
3 Chapter 1746; (2) he made false representations to the trial court concerning  
4 his client's business activities and the corresponding need to register it as a  
5 business trust; (3) he engaged in retaliatory tactics when defendants in his  
6 lawsuit asserted his failure to comply with R.C. Chapter 1746, including the  
7 filing of an absolutely groundless motion for default judgment; and (4) he  
8 and his client failed to appear for a scheduled deposition without notice or  
9 explanation.

10 With respect to the allegations in Count III, the panel found  
11 respondent had violated DR 5-101(B) and 5-103(A).<sup>1</sup> Evidence submitted  
12 to substantiate this count established that respondent defended the Wheatley  
13 Company against a creditor's suit in Wyandot County, Ohio, before Judge  
14 Robert D. Walker, formerly of the Hancock County Court of Common Pleas  
15 and sitting by assignment. Judge Walker explained to the panel that the  
16 Wheatley Company had originally been conceived as a common-law real  
17 estate trust and had been created in the West Indies. Judge Walker did not

1 consider use of the term “company” to describe a real estate trust legitimate  
2 under Ohio law, see R.C. 1746.06, so he apparently dismissed the Wheatley  
3 Company as a party. In response, respondent evidently registered the  
4 Wheatley Company as an Ohio corporation, appointing himself as the  
5 corporation’s president, and re-entered the suit, which by then included  
6 various cross-claims. Judge Walker subsequently disqualified respondent  
7 from acting as counsel for the Wheatley Company on June 3, 1991 due to  
8 his proprietary interest and probable participation as a witness. Judge  
9 Walker described respondent’s conduct as “[a] blatant abuse of process.”

10 Before recommending a sanction for this misconduct, the panel  
11 reviewed the record for mitigating evidence, but found none. The panel was  
12 struck by respondent’s inability to recognize the gravity of his wrongdoing,  
13 as well as his complete lack of candor and remorse. The panel also noted  
14 that respondent was evasive, at times obstructive, and often needlessly  
15 litigious throughout the disciplinary proceeding. Thus, the panel  
16 recommended the sanction suggested by relator--that respondent be  
17 permanently disbarred from the practice of law.

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<sup>1</sup> The panel found this violation even though relator suggested at the hearing

1           The board adopted the panel’s report, including its findings of fact,  
2 conclusions of law, and recommendation of permanent disbarment.

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4           *Geoffrey Stern*, Disciplinary Counsel, and *Sally Ann Steuk*, Assistant  
5 Disciplinary Counsel, for relator.

6           *Philip M. Manogg, pro se.*

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8           *Per Curiam.* In his objections to the board’s report, respondent first  
9 argues a denial of due process because he was not permitted to dispute the  
10 factual and legal findings of Judges Rogers and Walker. Respondent also  
11 complains that he was permitted only an hour or so to show that his  
12 disqualification and sanction did not rise to the level of professional  
13 misconduct. We reject these arguments because respondent cites no  
14 authority to suggest that an unfettered opportunity to collaterally attack final  
15 court orders is constitutionally required in disciplinary proceedings.

16           Respondent also takes issue with many of the board’s findings of fact  
17 pertaining to the allegations of his misconduct in court; however, these

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that it was abandoning prosecution of the alleged misconduct.

1    infractions are hardly our main concern. We are most troubled, as was the  
2    panel and board, by respondent's propensity to scheme and deceive without  
3    any moral appreciation for the lies he tells or the fraud he perpetrates.  
4    Indeed, we find respondent's testimony and conduct as manifested in this  
5    record so duplicitous that we cannot credit even the representations he  
6    offers to support his objections. His objections are, therefore, overruled.

7           Upon review of the record, we concur in the board's findings that  
8    respondent violated DR 1-102(A)(3), (4), (5), and (6) as alleged in Counts I  
9    and II of the complaint. We also fully agree that the final orders issued by  
10   Judges Rogers and Walker, together with the testimony of both judges,  
11   provided ample credible evidence that respondent violated DR 5-101(B), 5-  
12   103(A), and 7-102(A)(1). Finally, we concur that respondent's misconduct  
13   warrants the sanction of permanent disbarment. Respondent is, therefore,  
14   ordered permanently disbarred from the practice of law in Ohio. Costs  
15   taxed to respondent.

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*Judgment accordingly.*

1 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER

2 and COOK, JJ., concur.

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