

ORIGINAL

IN THE SUPREME COURT OF OHIO

	:	
<b>Stark County Bar Association,</b>	:	<b>CASE NO. 2012-2072</b>
	:	
<b>Relator</b>	:	
	:	<b>RELATOR'S OBJECTIONS TO THE</b>
<b>Agatha Martin Williams</b>	:	<b>BOARD OF COMMISSIONERS'</b>
Reg. No. 0052652	:	<b>FINDINGS OF FACT AND</b>
	:	<b>CONCLUSIONS OF LAW AND</b>
	:	<b>BRIEF IN SUPPORT</b>
<b>Respondent</b>	:	

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**RELATOR'S OBJECTIONS TO THE BOARD OF  
COMMISSIONERS' FINDINGS OF FACT AND CONCLUSIONS  
OF LAW AND BRIEF IN SUPPORT**

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## INTRODUCTION

### A. Objection

Relator Stark County Bar Association objects to the sanction recommended in the report of the Board of Commissioners on Grievances and Discipline. The Board recommends that Respondent Agatha Martin Williams be indefinitely suspended from the practice of law.<sup>1</sup> The Bar disagrees. Williams should be disbarred, not indefinitely suspended.

### B. Summary of Argument

The longstanding presumption of this court is that attorneys who steal from their clients are disbarred. Agatha Martin Williams stole more than \$175,000.00 from her clients. In addition to stealing from her clients, Respondent fraudulently endorsed a check, stole money from an estate, requested a grievant not to cooperate with the bar investigation and lied under oath in a deposition taken by relator. During the pendency of the complaint, Williams gambled \$47,569.77 out of state on at least 73 different days and lied about her conduct to her psychiatrist, gambling counselor and the Ohio Lawyer Assistance Program. She has made no restitution to her multiple, vulnerable clients.

Disbarment is the appropriate sanction. Not indefinite suspension.

### C. Procedural Background

The panel heard the testimony of respondent, Agatha Martin Williams, and twelve other witnesses in a single day hearing held on August 30, 2012. Substantially all the facts pertaining to Counts One through Five of the Relator's Complaint were stipulated. The

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<sup>1</sup> The report was filed with the Court on December 10, 2012 and is attached as Appendix A. See S. Ct. Prac. R.6.2(B)(5)(b).

parties moved to dismiss Counts Six and Seven. The motion was granted and Counts Six and Seven were dismissed. Count Eight involved criminal charges arising from Counts One through Four and thus no separate findings were issued by the board as to Count Eight.

As a consequence of the stipulations and testimony at the hearing, the board found multiple repeated violations of the Rules of Professional Conduct. The violations included:

- Three violations of Prof. Cond. R. 1.3 (acting with reasonable diligence and promptness);
- Two violations of Prof. Cond. R. 1.5(a)(collecting an excessive fee);
- Two violations of Prof. Cond. R. 1.5(c)(requiring contingency fee in writing);
- One violation of Prof. Cond. R. 1.8 (taking on financial obligation of client);
- One violation of Prof. Cond. R. 1.8(e)(guaranteeing financial assistance to client);
- Four violations of Prof. Cond. R. 1.15(a)(hold property of a client or third personal separate from a lawyer's own property);
- Two violations of Prof. Cond. R. 1.15(c)(taking unearned funds out of IOLTA account);
- Two violations of Prof. Cond. R. 1.15(a)(d) and (e)(removing funds from the IOLTA account for which a third party had an interest);
- One violation of Prof. Cond. R. 1.15(d)(failing to turn over client file);
- Three violations of Prof. Cond. R. 8.4(b)(committing an illegal act that reflects adversely on lawyers honesty or trustworthiness);
- Four violations of Prof. Cond. R. 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation);

- One violation of Prof. Cond. R. 8.4(d)(engaging in conduct prejudicial to administration of justice);
- Three violations of Prof. Cond. R. 8.4(h)(conduct adversely reflecting on lawyers fitness to practice law); and
- One violation of Gov. Bar Rule V(4)(G)(failure to cooperate in investigation).

## **I. Facts Supporting The Board's Finding Of Misconduct**

Agatha Martin Williams engaged in thefts, deceit and neglect again and again over many, many years. This conduct was conceded by stipulation and confirmed by the Findings of Fact of the Board of Commissioners on Grievances and Discipline.

### **A. Count One - Kevin Jackson**

Kevin Jackson was seriously injured in a car accident on July 10, 2005. A month later he hired Respondent Williams to represent him. Attorney Williams settled the case on October 12, 2006 for the policy limits of \$100,000.

A significant lien existed in favor of the medical plan who had paid the bills, Stark County Schools Council or Governments and AultCare Corporation. Respondent was unable to settle the lien. On June 12, 2007, the client signed a release, but the check from the tortfeasor carrier could not be cashed because it required the endorsement of the medical plan. The check became stale and was reissued by the insurer.

After having her client sign the second check, on December 21, 2007, Respondent fraudulently endorsed the signature of AultCare Corporation on the check and deposited it in her IOLTA account. In the ensuing two years, Respondent withdrew the entire settlement of \$100,000 for her own personal use, supporting her extensive traveling and gambling. It was only after a lawsuit by the medical plan that respondent gathered together

the funds to reach a settlement in April of 2010. The client was paid \$25,294.75 as his portion of the settlement proceeds almost five years after the accident. Respondent credited herself a 40% fee, or \$40,000 as part of the settlement.<sup>2</sup>

On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.3 I (A)( I) and/or (A)(3) [forgery], a felony of the fourth degree in connection with her endorsement of the settlement check.

Consistent with the stipulations and findings, the Board found the following misconduct as a result of the Jackson representation:

1. The fee taken by Respondent was contrary to the provisions of the contingency fee contract which anticipated a 40% fee only if a trial date was set in the case, not as a result of a third party lawsuit against Attorney Williams and her client. This violates Prof. Cond. R. 1.5(a) and 1.5(c);
2. Respondent violated Prof. Cond. R. 1.3 in that she failed to act with reasonable diligence and promptness in representing her client;
3. By endorsing the name of AultCare on the Progressive Insurance check and by spending funds in her IOLTA account that were not her own, Respondent violated Prof. Cond. R. 8.4 by committing an illegal act or acts that reflects adversely on her honesty and trustworthiness (Prof. Cond. R. 8.4(b)) as well as engaging in conduct involving dishonesty, fraud, deceit and misrepresentation (Prof. Cond. R. 8.4(c));

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<sup>2</sup> The full description of the misconduct can be found in the stipulation of the parties, adopted by the Board.

4. By not preserving funds of her client in the IOLTA account, Respondent violated Prof. Cond. R. 1.15(a);
5. By taking fees that were unearned out of the IOLTA account, Respondent violated Prof. Cond. R. 1.15(c); and,
6. By removing funds in which a third party had an interest from her IOLTA account and putting them to her own use, Respondent violated Prof. Cond. R. 1.15(a), (d) and (e).<sup>3</sup>

#### **B. Count Two - Kathryn White**

Williams represented Kathryn White in a serious personal injury claim arising from an auto accident that occurred on February 24, 2009. The claim was settled for the policy limits of \$100,000.00. Respondent deposited the properly endorsed \$100,000.00 settlement draft in her IOLTA account on August 24, 2009. She then proceeded to withdraw all of the funds from the IOLTA account.

Despite her promise to pay the health plan of White from the proceeds of settlement, Williams did not do so. As a result, Kathryn and her husband were sued by their health plan for failing to reimburse them for medical bills paid. A default judgment has been taken against the Mr. and Mrs. White and the wages of Mrs. White continue to be garnished. The Whites have received nothing from the settlement.

In the course of the Bar investigation Respondent Williams visited the Whites in their home on a Sunday in March 2011, falsely represented that they would be paid, and requested that they not cooperate in the Bar investigation.<sup>4</sup>

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<sup>3</sup> Report at 4.

On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds from Kathryn and Robert White.

This conduct resulted in the following stipulated violations of the Rules agreed to by the Board:

1. Respondent violated Prof. Cond. R. 1.3 in that she failed to act with reasonable diligence and promptness in representing her client;
2. In violation of Prof. Cond. R. 1.5(c)(2) Respondent took a fee by removing funds from the IOLTA account without the preparation of a closing statement;
3. By personally guaranteeing the payment of liens arising from Kathryn White's medical bills, from the settlement proceeds, Respondent violated Prof. Cond. R. 1.8(e) in that she guaranteed financial assistance to the client;
4. By personally guaranteeing the payment of liens arising from Kathryn White's medical bills, Respondent violated Prof. Cond. R. 1.8 in that she took on a financial obligation that did or reasonably could affect her professional judgment;
5. By not preserving funds of her client in the IOLTA account, Respondent violated Prof. Cond. R. 1.15(a);

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<sup>4</sup> See Tr. at 123. The full description of the misconduct involving Mr. and Mrs. White can be found in the stipulation of the parties, adopted by the Board.

6. By taking fees that were unearned out of the IOLTA account, Respondent violated Prof. Cond. R. 1.15(c)<sup>5</sup>;
7. By removing funds in which a third party had an interest from her IOLTA account and putting them to her own use, Respondent violated Prof. Cond. R. 1.15(a), (d) and (e);
8. By visiting the Whites and attempting to dissuade them from cooperating with the representative of the Stark County Bar Association Grievance Committee, Respondent failed to cooperate in the investigation of this matter in violation of Gov. Bar V(4)(G); and,
9. In violation of Prof. Cond. R. 1.15(d), Respondent failed to turn over the client file of Kathryn White and Robert E. White when requested.<sup>6</sup>

### **C. Count Three - Carlton Lemon Estate**

Respondent was hired by her family friend, Sarrah Talbert, to represent her and administer the estate of Sarrah's deceased son, Carlton Lemon. After she was named administratrix of the estate, Williams proceeded to steal nearly all the cash assets of the estate. On April 13, 2012, the Franklin County Common Pleas Court issued a judgment against Agatha Martin Williams in the amount of \$17,043.11 finding that \$11,651.71 was missing from the assets of the Lemon Estate and that additional costs were incurred by the estate due to the defalcation of Respondent.<sup>7</sup>

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<sup>5</sup> Comment to Prof. Cond. R. 1.15 specifically points out that the rule applies to estate funds: "A lawyer should maintain separate trust accounts when administering estate money."

<sup>6</sup> Report at 4.

<sup>7</sup> The full description of the misconduct involving the Carlton Lemon Estate can be found in the stipulation of the parties, adopted by the Board.

On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.02(A)(I) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds from the Lemon Estate.

The following rule violations were found by the Board:

1. Respondent violated Prof. Cond. R. 1.15 (a) by failing to hold property of client or third persons separate from the lawyer's own property<sup>8</sup>;
2. Because of the many delays that occurred, Respondent violated Prof. Cond. R. 1.3 requiring reasonable diligence and promptness in representing a client;
3. Respondent violated Prof. Cond. R. 8.4(b) by engaging in illegal activity that reflects adversely on the lawyer's honesty or trustworthiness;
4. The conduct of Respondent involved dishonesty, fraud, deceit, and misrepresentation, thereby violating Prof. Cond. R. 8.4(c);
5. In violating numerous court orders Williams prejudiced the administration of justice in violation of Prof. Cond. R. 8.4(d); and,
6. The conduct of Respondent adversely reflects on her fitness to practice law in violation of Prof. Cond. R. 8.4(h).<sup>9</sup>

#### **D. Count Four - Sarrah Talbert**

Respondent represented Sarrah Talbert in applying for and obtaining the life insurance proceeds that arose due to the untimely death of her son Carlton Lemon.

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<sup>8</sup> Comment to Prof. Cond. R. 1.15 specifically points out that the rule applies to estate funds: "A lawyer should maintain separate trust accounts when administering estate moneys."

<sup>9</sup> Report at 5.

Williams deposited the \$81,599.13 check in her IOLTA account on March 19, 2010. In the ensuing months, more than \$65,000.00 of those funds were taken from the IOLTA by Williams and spent.<sup>10</sup>

On February 10, 2012, Respondent pled guilty to a violation of RC. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds of Sarrah Talbert.

The following rule violations were found by the Board:

1. Respondent violated Prof. Cond. R. 1.15(a) by failing to hold property of her client separate from the lawyer's own property;
2. Respondent violated Prof. Cond. R. 8.4(b) by engaging in illegal activity that reflects adversely on the lawyer's honesty or trustworthiness;
3. The conduct of Respondent involved dishonesty, fraud, deceit, and misrepresentation, thereby violating Prof. Cond. R. 8.4(c); and,
4. The conduct of Respondent adversely reflects on her fitness to practice law in violation of Prof. Cond. R. 8.4(h).<sup>11</sup>

The Board found a violation of Prof. Cond. R. 8.4(d)(conduct prejudicial to the administration of justice). Although this violation was alleged and stipulated to, the Bar believes both the charge and stipulation are inappropriate for the conduct stipulated to in Count IV. The conduct did not involve any court or other administrative or deliberative body.<sup>12</sup>

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<sup>10</sup> The full description of the misconduct involving Sarrah Talbert can be found in the stipulation of the parties, adopted by the Board.

<sup>11</sup> Report at 6.

<sup>12</sup> Report at 6.

### **E. Count Five - Lucy Gates**

Williams represented Lucy Gates in connection with pension benefits of her deceased husband. In April of 2008, respondent obtained for Gates a lump sum payment of \$70,538.85 and the resumption of future monthly payments. Little legal work was required – four letters to her client, seven letters to the employer and no document preparation other than a one page affidavit. Williams charged a 40% contingency fee despite the absence of a contingency fee agreement, and charged another \$10,000.00 as litigation expense, even though there was no litigation.

As a result of this conduct, Williams stipulated and the panel found violations of the following Rules of Professional Conduct:

1. Respondent violated Prof. Cond R. 1.5 by charging, and collecting a clearly excessive fee;
2. Williams violated Prof. Cond. R. 1.5(c) by taking a contingent fee without a written agreement;
3. Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation thereby violating Prof. Cond. R. 8.4(c); and,
4. The behavior of Respondent adversely reflects on her fitness to practice law in violation of Prof. Cond. R. 8.4(h).<sup>13</sup>

In an apparent typographical error, the Board references a violation of Prof. Cond. R. 1.15 (safekeeping client funds). The rule does not apply to the stipulated conduct in Count V and was not alleged by the bar or stipulated by the parties. In addition, the Board found a violation of Prof Cond. R. 8.4(d)(conduct prejudicial to the administration of justice).

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<sup>13</sup> Report at 6.

Although this violation was alleged and stipulated to, the Bar believes both the charge and stipulation is inappropriate for the conduct stipulated to in Count Five.

**F. Count Six – Michael Lacey and Count Seven – Devin L. Jordan**

The parties jointly moved that Count Six and Seven be dismissed. The Board granted the motion.<sup>14</sup>

**G. Count Eight - Felony Convictions**

On February 10, 2012, Respondent pled guilty in Stark County Common Pleas Court to one count of forgery (R.C. 2913.31(A)(1) and/or (A)(3), four counts of grand theft (R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) and one count of theft (R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3). (Exhibit E-45.) This plea involved the Jackson, White, Lemon, and Talbert matters. The Board found these allegations subsumed into the conclusions of law relative to Counts One through Four and made no additional findings of misconduct as to Count Eight.<sup>15</sup>

**II. Objection – Williams Should Be Disbarred Not Indefinitely Suspended**

The Board concluded that Williams should be indefinitely suspended. The Bar disagrees. Disbarment is the appropriate sanction.

**A. Aggravating and Mitigating Facts**

Section 10 of the Board of Commissioners Rules Governing Procedure on Complaints and Hearings states:

Each disciplinary case involves unique facts and circumstances. In striving for fair disciplinary standards, consideration will be given to specific

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<sup>14</sup> Report at 1.

<sup>15</sup> Report at 7.

professional misconduct and to the existence of aggravating or mitigating factors.<sup>16</sup>

The section goes on to state that any specific aggravating or mitigating factors must be considered along with relevant Supreme Court precedent.<sup>17</sup>

A review of precedent and the aggravating and mitigating factors in this case compels a finding that Williams should be disbarred, not indefinitely suspended.

### **1. Aggravating Circumstances**

The rule lists nine aggravating circumstances for the Board to consider. Seven of them apply to Respondent:

a. *Williams acted with a "dishonest or selfish motive".*<sup>18</sup> All of the conduct to which Agatha Martin Williams has stipulated and for which there is testimony was done with a selfish motive. There has been no fact offered nor argument made other than that *at all times* Williams acted in her own personal interest. The sole purpose in her actions was to steal her clients' money to satisfy her own personal appetites – gambling and extensive travel.

b. *Respondent engaged in a "pattern of misconduct".*<sup>19</sup> There is no dispute that Williams engaged in a pattern of misconduct – stealing her clients' money, commingling it, spending it and lying to her clients. This repetitive conduct spanned at least four years, from December of 2007 into 2011.

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<sup>16</sup> BCGD Proc. Reg. 10(A).

<sup>17</sup> BCGD Proc. Reg. 10(B).

<sup>18</sup> BCGD Proc. Reg. 10(B)(1)(b).

<sup>19</sup> BCGD Proc. Reg. 10(B)(1)(c).

c. *Agatha Martin Williams committed "multiple offenses"*<sup>20</sup> of the Rules of Professional Conduct. Attached as Appendix "B", is a chart of the 31 rule violations found by the Board.<sup>21</sup>

d. *Respondent "failed to cooperate in the disciplinary process"*<sup>22</sup>. On March 13, 2011, Williams visited grievant Kathleen White at her home in Warren, Ohio and told her that "she was visiting people who were being talked to as part of an investigation of her IOLTA account".<sup>23</sup>

"During the March 13, 2011 meeting, Respondent indicated that she still had the money from the settlement, and that it was in her IOLTA account. During the course of the meeting, Respondent promised to provide the Whites with a check the following week." No check was received.<sup>24</sup>

At the hearing, grievant Kathryn White testified that after being assured that her money was safe and was forthcoming, Williams departing comment was "Don't help them prosecute me." (Tr. 127). Fortunately, White continued to cooperate with the Bar.

Williams' attempt to gain the non-cooperation of a witness and the deceit outlined below should be considered severely aggravating conduct and a failure to cooperate.

e. *Williams has engaged in systemic "deceptive practices during the disciplinary process"*.<sup>25</sup> The focus of this disciplinary proceeding has been the attempt of Respondent to develop evidence of a mitigating "mental disability" – an "addiction" to gambling. For this

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<sup>20</sup> BCGD Proc. Reg. 10(B)(1)(d).

<sup>21</sup> The chart does not include those violations found in error as described above.

<sup>22</sup> BCGD Proc. Reg. 10(B)(1)(e).

<sup>23</sup> Stip. num. 59.

<sup>24</sup> Stip. num. 60.

<sup>25</sup> BCGD Proc. Reg. 10(B)(1)(f).

claim to be given weight by the Board under BCGD Proc. Reg. 10(B)(2)(g) the evidence must reflect “a sustained period of successful treatment.”<sup>26</sup>

During the pendency of this disciplinary proceeding, Agatha Martin Williams has engaged in a comprehensive effort to deceive those involved in evaluating or addressing her “gambling addiction.” Respondent deceived the Bar, testifying in her March 30, 2012 deposition that she had last gambled in 2011 (Jt. Exh. 1, Exh. H – depo. at 12-13). In fact, her gambling had continued unabated in the first three months of 2012.<sup>27</sup> While the record is limited to only the Rivers and Wheeling Casinos as well as the personal bank record, it nevertheless shows that Respondent continued to gamble on at least eleven occasions in January and February of 2012. One of those occasions was only a month before her deposition. At the hearing Williams admitted she testified untruthfully in her deposition. (Tr. 39-40.)

This deceit extended to those who were providing her mental health treatment. On January 18, 2012, Williams lied to her psychiatrist, telling him that she “hasn’t been near any casinos” when in fact she continued to gamble throughout the fall of 2011 and on January 1, 3, 4, 5, 8, 9 and 10. (Jt. Exh. 1, Exh. K – Morris depo. at 25, Appendix C.)

Williams lied to Lynn Burkey, her gambling counselor, stating in September of 2011 that she had stopped gambling. (Jt. Exh. 1., Exh. J – Burkey depo. at 31.) As admitted at the hearing, Williams was gambling as recently as the week before the August 30, 2012 disciplinary hearing. (Tr. 60.) Over the course of seven months of individual and group

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<sup>26</sup> BCGD Proc. Reg. 10(B)(2)(g)(iii).

<sup>27</sup> The records of Williams’ gambling activity can be found at Jt. Exh. 1, Exh. G. A summary of these records of Respondent after the filing of the disciplinary complaint is attached as Appendix C.

therapy starting with her initial visit on September 6, 2011 and ending with Burkey's deposition on April 9, 2012, Williams never once revealed that she was continuing to gamble. (Burkey depo. at 32.) In fact she secretly gambled on **fifty-four different days**<sup>28</sup> while only attending eighteen counseling sessions. (Burkey depo. at 36.)

Williams lied to the Ohio Lawyers Assistance Program. Despite calling OLAP routinely to report her treatment progress as required by her August 3, 2011 contract (Resp. exh. 2), Respondent only once acknowledged reversion to gambling.<sup>29</sup> Since the OLAP contract was signed, the limited records demonstrate gambling by Agatha Martin Williams on **sixty-six different days** from the time the contract was signed to the disciplinary hearing on August 30, 2012.<sup>30</sup>

f. *The victims of the misconduct of Agatha Martin Williams were extremely vulnerable and suffered severe harm.*<sup>31</sup>

Kathryn White was severely injured in a car accident requiring spinal and shoulder surgery. Williams stole her \$100,000.00 settlement. In the midst of her recovery her husband lost his job. Medical bills went unpaid. A reimbursement claim of the employer health plan was ignored by Respondent. Suit was filed by the plan and a default judgment

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<sup>28</sup> Based on only the gambling records of Rivers Casino in Pittsburgh and Wheeling Island Casino (Exhibit G in Jt. Exh. A) and the bank records (Exhibit B), Williams gambled in 2011 on September 11, 13, 14, 16, 17, 20, 22, 23, 24, 29 and 30, October 1, 3, 4, 5, 6, 22, 27 and 31, November 1, 3, 7, 11, 12, 13, 17, 27, 28, 29 and 30, and December 1, 18, 14, 15, 19, 21, 22, 23, 24, and 29. In 2012, Williams gambled on January 1, 3, 4, 5, 8, 9, 10, 22 and 28, and February 8, 9, 10, 13 and 28.

<sup>29</sup> Testimony of OLAP representative Stephanie Krznarich at 161-162.

<sup>30</sup> In addition between the time of the OLAP contract signing on August 3, 2011 and the first visit to the gambling counselor Burkey on September 6, 2011, Williams gambled on August 11, 13, 14, 18, 23, 24, 28, 29, and 30 and September 1 and 3. See Appendix C. Also unreported to OLAP was the gambling trip taken one week before the disciplinary hearing.

<sup>31</sup> BCGD Proc. Reg. 10(B)(1)(h).

in excess of \$60,000.00 was rendered against the Whites. Kathryn White continues to have her wages garnished. (Tr. 130-131.)

Williams stole life insurance proceeds from 76 year old Sarrah Talbert in an amount in excess of \$65,000.00. Payment of these funds were triggered by the premature death of Sarrah Talbert's son, Carlton Lemon. (Tr. 64.) The theft occurred within weeks of the death of Sarrah Talbert's husband. (Tr. 63.) In addition, to the recent death of her son and her husband, Sarrah was herself ill, requiring dialysis three times a week. (Tr. 61.) As a result of the theft, Sarrah had to prematurely leave the assisted living facility where she was residing. (Tr. 76.) In addition she had to use her very limited funds to fund the education of her grandson. (Tr. 75-76).

Two of the other thefts were from the Estate of Carlton Lemon and the Estate of Dorothy Williams. There were small estates totally under the control of Respondent.

Finally, Kevin Jackson waited two and one-half years for his settlement check. It occurred only after Williams had spent the settlement, was sued by a subrogated carrier and was finally able to pull together the funds to settle the matter. The subrogated health plan had its name fraudulently endorsed on the settlement check and likewise had to wait for its money. (Stip. ¶¶19, 20, 21.)

g. *Williams has failed to make restitution to any of her victims.* Including her winnings, Respondent gambled \$47,569.77 between the time the bar complaint was filed on June 22, 2011 and the hearing on August 30, 2012.<sup>32</sup> Williams has made no effort to make restitution to her victims. Instead of making restitution – as she so passionately committed to at the hearing (Tr. 262, 265, 271) – Williams continued to spend her money

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<sup>32</sup> See Appendix C.

on gambling. Since the filing of this disciplinary case on July 22, 2011, Respondent has spent at least seventy-two days gambling. Nothing has been repaid to her injured clients. (Tr. 45.)

## 2. Mitigating Circumstances

There are seven potential mitigating circumstances to be considered under BCGD Proc. Reg. 10(B). Only three arguably apply here.

a. *"Absence of a disciplinary record."*<sup>33</sup> Williams has not been previously disciplined.

b. *"Character or reputation."*<sup>34</sup> Respondent Williams brought forward a number of witnesses to testify about her character and reputation prior to disclosure of her multi-year theft. None of them knew of her conduct until she was forced to disclose it on the eve of her criminal guilty plea.

c. *"Imposition of other penalties or sanctions."*<sup>35</sup> Williams has been convicted of six felonies in the Stark County Common Pleas Court. (Jt. Exh. 1, Exh. E-46). By agreement, counsel have stipulated to the supplementation of the record with the sentencing order of Judge Brown of the Stark County Common Pleas Court.

This March order imposes a five year "community control" sentence on the Respondent requiring her to make restitution "in the amount of \$166,354.94 as follows: \$26,000.00 to Kathryn White; \$48,000.00 to Dinesol Plastic; \$66,250.00 to Sarah Talbert; \$18,879.94 to Estate of Dorothy Williams; \$7,225.00 to Estate of Carlton Lemon." The court also imposed a fine of \$27,500.00.

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<sup>33</sup> BCGD Proc. Reg. 10(B)(2)(a).

<sup>34</sup> BCGD Proc. Reg. 10(B)(2)(b).

<sup>35</sup> BCGD Proc. Reg. 10(B)(2)(c).

Under the terms of the Community Control Sentence, Williams was not permitted to leave the state without permission. As a result of the revelation at the disciplinary hearing of her recent out of state trip to gamble, the Stark County Common Pleas Court revoked the Community Control Sentence and imposed the full eight and a half year prison sentence.<sup>36</sup>

d. *Mental disability.*<sup>37</sup> Substantial hearing and deposition testimony was presented by the Respondent in an attempt to establish a “mental disability” that the court will allow to mitigate her conduct. As the Board found, this testimony and evidence was inadequate to establish mental disability mitigation.

There is no evidence of successful treatment of the gambling addiction of Respondent as required by Board rule.<sup>38</sup> Indeed, the OLAP assistant director, Stephanie Krznarich, testified that the treatment *has not been successful*. (Tr. 197.) This was obvious from the evidence before the board. Even with incomplete gambling records, the record shows that since beginning treatment in August of 2011, Williams has gambled on sixty-six different days. In other words, on every fourth day, Williams was in a casino. During treatment. This is not “successful” treatment for a “sustained” period of time. The effort to deceive the providers to create an impression of success was not successful.

The gambling addiction of Respondent is not mitigating of her conduct.

#### **B. Supreme Court Precedent Supports Disbarment for Agatha Martin Williams**

[I]t is true that we ordinarily accept the panel’s and board’s conclusions as to the propriety of an attorney’s conduct or the appropriate sanction, and to that extent, our decisions reflect deference to their expertise. But as the ultimate arbiter of misconduct and sanctions in disciplinary cases, this court is not bound by factual and legal conclusions drawn by either the panel or the

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<sup>36</sup> See Supplemental Hearing Exh. Q, R.

<sup>37</sup> BCGD Proc. Reg. 10(B)(2)(g).

<sup>38</sup> BCGD Proc. Reg. 10(B)(2)(g).

board. See *Cincinnati Bar Ass'n. v. Powers*, 119 Ohio St.3d 473, 2008 Ohio 4785, 895 N.E.2d 172, ¶21. Accord *Disciplinary Counsel v. Furth* (2001), 92 Ohio St.3d 173, 181, 2001 Ohio 1308, 754 N.E.2d 219; *Ohio State Bar Assn. v. Reid* (1999), 85 Ohio St. 3d 327, 330, 708, N.E.2d 193. Thus, we need not defer to either's conclusions and remain free to exercise our independent judgment as to evidentiary weights and applicable law.

*Disciplinary Counsel v. Kelly*, 121 Ohio St.3d 39, 2009 Ohio 317, 901 N.E.2d 798, ¶11.

The facts of this case require disbarment. This court has a longstanding presumption that attorneys – like Williams – who have engaged in a pattern of misconduct involving dishonesty, misappropriation, and a lack of cooperation in a disciplinary proceeding be disbarred. *Disciplinary Counsel v. Wickerham*, 132 Ohio St.3d 205, 2012 – Ohio – 2580, 970 N.E.2d 932.

While acknowledging this presumption, the Board rejected it citing two cases, *Disciplinary Counsel v. Zapor*, 127 Ohio St.3d 372, 2010 Ohio 5769, 939 N.E.2d 1230 and *Columbus Bar Association v. Thomas*, 124 Ohio St. 3d 498, 2010 Ohio 604, 924, N.E.2d 352 where an indefinite suspension was ordered and not disbarment. The Bar submits that *Zapor* and *Thomas* did not engage in conduct of the gravity of Williams. In fact, a comparison of the conduct starkly reveals how serious is the misconduct of Williams.

- Williams stole over \$175,000.00 from four clients. Zapor stole \$20,000.00 from one client and Thomas stole \$32,600.00 from a single client.
- Williams stole the client funds in order to travel and gamble. Both Zapor and Thomas stole the money because of financial difficulties.

- Williams made no effort to repay her harmed clients. She spent her money on gambling and travel, not restitution. Zapor was destitute, but paid \$800.00 in restitution. Thomas made complete restitution.
  - Williams did not cooperate in the disciplinary process. She attempted to keep a witness from cooperating and lied to the Bar in deposition.
- In contrast, Zapor and Thomas were both fully cooperative.

The only guidance that *Zapor* and *Thomas* should provide to this Court is that they are different in nature from this case. While an indefinite suspension may have been proper for Attorneys Zapor and Thomas, it is not proper in this case.

In addition to *Zapor* and *Thomas*, the Bar acknowledges that this Court has at times departed from the presumption of disbarment in theft cases. However, it is helpful to acknowledge how different was the conduct in these cases than the conduct of Williams. See e.g. *Disciplinary Counsel v. Muntean*, 127 Ohio St.3d 427, 2010 Ohio 6133, 940 N.E.2d 942 (complete restitution made, lawyer self-reported conduct); *Disciplinary Counsel v. Peterson*, 2012 Ohio 5719 (Dec. 6, 2012)(complete restitution by lawyer, lawyer self-reported conduct).

The Stark County Bar Association would submit that the conduct of Williams more closely matches that of the following cases where disbarment was ordered. *Cleveland Metro. Bar Ass'n. v. Toohig*, 2012 Ohio 5202 (Nov. 15, 2012)(alcoholism evidence unsuccessful to prove mitigation, multiple instances of misappropriation from trust account, willful disregard of clients' interests); *Cincinnati Bar Assn. v. Sanz*, 128 Ohio St.3d 373, 2011 Ohio 766, 944 N.E.2d 674 (misappropriation of \$180,000.00 in trust funds, failing to respond to requests from beneficiaries for funds); and *Cleveland Metro. Bar Ass'n.*

v. *Parrish*, 121 Ohio St.3d 610, 2009 Ohio 1969, 906 N.E.2d 1113 (misappropriation of \$172,000.00 in funds of clients, neglect).

Perhaps most helpful to the Court is the permanent disbarment case of *Toledo Bar Ass'n. v. Mason*, 118 Ohio St.3d 412, 2008 Ohio 2704, 889 N.E.2d 539. This is how this court described the *Mason* misconduct in a later disciplinary case:

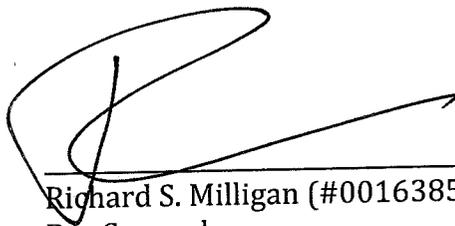
In *Mason*, a lawyer failed to pay settlement proceeds owed to a client, wrote a bad check to a client, failed to pay medical bills from settlement proceeds as promised, ignored clients calls, and failed to cooperate in the investigation of this misconduct, forcing the Board to drop the resolve the resulting charges on default. We permanently disbarred the lawyer for having engaged in "a continuous course of conduct involving deceit, misappropriation of clients' funds, neglect of clients' cases, failure to account for fees, failure to make restitution, and failure to cooperate in the investigation of this misconduct," finding that he was not fit to practice law.

*Disciplinary Counsel v. Burse*, 124 Ohio St.3d 85, 92-93, 2009 Ohio 6180, 919 N.E.2d 198.

The *Mason* conduct mirrors that of Respondent Williams.

### **Conclusion**

Given the gravity of the misconduct of Williams both before and during the grievance proceedings, disbarment is the only appropriate sanction. Agatha Martin Williams should no longer be on the rolls as an attorney in the State of Ohio.

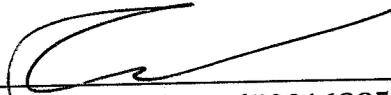


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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing objections have been served upon the Board of Commissioners on Grievances and Discipline, Richard A. Dove, Secretary, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215, and upon respondent's counsel Alvin E. Mathews, Jr., attorney for Respondent, at 115 W. Main St. Suite 400, Columbus, OH 43215, via regular U.S. mail, postage paid, this 4<sup>th</sup> day of January 2013.

  
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Richard S. Milligan (#0016385)

# **APPENDIX**

## **A**

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

12-2072

FILED  
DEC 10 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

In re:	:	
Complaint against	:	Case No. 11-060
Agatha Martin Williams Attorney Reg. No. 0052652	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Stark County Bar Association	:	
Relator	:	

OVERVIEW

{¶1} A formal hearing was held in this matter on August 30, 2012, in Canton, before a panel consisting of members, Patrick Sink, Bernard Bauer, and Roger S. Gates, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Respondent, Agatha Martin Williams, was present at the hearing and was represented by Alvin Mathews. Richard S. Milligan and Dimitrios S. Pousoulides represented Relator.

{¶2} The third amended complaint contains five counts (Counts One through Five) alleging that Respondent repeatedly engaged in misconduct by stealing and/or mishandling client funds and a sixth count (Count Eight) regarding her criminal convictions in the theft of client funds. At the August 30, 2012 hearing, Relator requested dismissal of Counts Six and Seven of the third amended complaint, and the panel unanimously ordered the dismissal of those counts by entry dated August 31, 2012.

{¶3} Based upon the stipulations and the evidence presented at the hearing, the Panel concludes that Respondent committed multiple violations of Prof. Cond. R. 1.3 (diligence); Prof. Cond. R. 1.5 (fees and expenses); Prof. Cond. R. 1.8 (conflict of interest); Prof. Cond. R. 1.15 (safekeeping client funds); Prof. Cond. R. 8.4(b) (illegal act that reflects adversely on the lawyer's honesty or trustworthiness); Prof. Cond. R. 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); Prof. Cond. R. 8.4(d) (conduct that is prejudicial to the administration of justice); and Prof. Cond. R. 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law). The panel also concludes that, by attempting to dissuade a client from cooperating with Relator's investigation, Respondent committed misconduct by violating Gov. Bar R. V, Section 4(G) (failure to cooperate in the investigation). The panel recommends dismissal of the alleged violation of Prof. Cond. R. 8.4(a) (violate or attempt to violate the Ohio Rules of Professional Conduct) as such charges are based upon the same facts which support the foregoing violations and are redundant and unnecessary.<sup>1</sup>

{¶4} Since the completion of the hearing, Relator has submitted supplemental evidence documenting that Respondent had, prior to the hearing in this matter, violated the terms of the community control sanction imposed by the Stark County Court of Common Pleas in its original sentencing order and that the court has revoked the community control sanction and imposed the prison sentence on each of the counts. Therefore, Respondent has been committed to the Ohio Department of Rehabilitation and Corrections for incarceration for up to eight and one-half years.

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<sup>1</sup> Relator filed a fourth amended complaint on July 11, 2012 that added two additional counts of misconduct. By agreement of counsel, the parties agreed to proceed at the August 30, 2012 hearing on the allegations contained in the third amended complaint and the stipulations filed by the parties on August 23, 2012. Hearing Tr. 14-15 and August 31, 2012 entry of the panel chair.

{¶5} Based upon the evidence presented in aggravation and mitigation, the panel recommends that Respondent be indefinitely suspended from the practice of law and that she be considered for reinstatement only after proof of compliance with several conditions set forth below.

#### **FINDINGS OF FACT AND CONCLUSION OF LAW**

{¶5} Respondent is a graduate of the University of Akron Law School and was admitted by examination on May 20, 1991. Respondent's registration status is active.

{¶6} The material facts relating to the charges of misconduct are not disputed and are set forth in the parties' stipulation. The panel adopts the stipulated facts as its findings of fact for purposes of this report. These facts can be summarized as follows.

#### **Count One—Jackson Matter**

{¶7} Respondent was retained to represent Kevin Jackson on a contingent fee basis in regards to personal injuries he suffered in an automobile accident. Respondent settled the claim for \$100,000 and attempted to negotiate a settlement of a subrogation claim for medical bills paid by the claimant's insurance company. When the subrogee failed to sign the check from the tortfeasor's insurer, Respondent endorsed the check without the subrogee's authority and deposited the check in her IOLTA. After the subrogee filed suit against Jackson, Respondent negotiated a settlement and wrote checks to disburse the funds from her IOLTA account. However, between the time Respondent deposited the tortfeasor's insurer's check and the time she wrote the distribution checks, Respondent had withdrawn all of the money from her IOLTA account and converted it to her own use. On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.31(A)(1) and/or (A)(3) [forgery], a felony of the fourth degree in connection with her endorsement of the settlement check.

{¶8} The parties stipulated and the panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.3; Prof. Cond. R. 1.5; Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(b); and Prof. Cond. R. 8.4(c).

**Count Two—White Matter**

{¶9} Respondent was retained to represent Kathryn White and her husband on a contingent fee basis in regards to personal injuries Ms. White suffered in an automobile accident. After representing to the insurance company that she would personally accept full responsibility for payment of her client's medical bills, Respondent settled the White's claims for the policy limits and received a check for \$100,000 made payable to Mrs. and Mr. White and Respondent. After her clients endorsed the check, Respondent deposited the check into her IOLTA account. Respondent negotiated with Mr. White's employer, Dinesol Plastics, to attempt to settle the claim for medical expenses paid by Dinesol. Without ever making any distribution to either her clients or Dinesol, Respondent withdrew and converted all of the settlement proceeds from her IOLTA account. After becoming aware that Relator was conducting an investigation concerning her IOLTA account, Respondent visited her clients and falsely assured them that she still had the money from the settlement in her IOLTA account and that she would be sending them a check. Respondent also attempted to dissuade her clients from cooperating with Relator's investigation. On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds from Kathryn and Robert White.

{¶10} The parties stipulated and the panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.3; Prof. Cond. R. 1.5; Prof. Cond. R. 1.8; and Prof.

Cond. R. 1.15. The parties stipulated and the panel also concludes that Respondent violated Gov. Bar R. V, Section 4(G).

### **Count Three—Lemon Estate**

{¶11} Respondent was retained by Sarrah Talbert to file and administer the estate of Talbert's deceased son Carlton Lemon. After she was appointed by the probate court as administrator of the estate, Respondent collected \$10,378.94 from the decedent's checking account and deposited those funds into a checking account she established as administrator of the estate. Without authority from the probate court, Respondent made multiple withdrawals from the estate checking account which she deposited into her personal checking account. Despite the court's issuance of a citation, Respondent failed to account to the probate court for the estate funds and was removed as administrator. On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds from the Lemon Estate.

{¶12} The parties stipulated and the Panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.3; Prof. Cond. R. 1.5; Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(b); Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

### **Count Four—Talbert Claim Regarding Life Insurance Proceeds**

{¶13} In addition to collecting money from Carlton Lemon's checking account, Respondent assisted Sarrah Talbert with processing a claim for the proceeds of a life insurance policy on Mr. Lemon's life. Respondent obtained a check made payable to Sarrah Talbert in the amount of \$81,599.13, which Respondent deposited into her IOLTA account after obtaining Talbert's endorsement of the check. Although Respondent issued an initial check from her IOLTA account to Talbert in the amount of \$4,730.68 and thereafter paid Talbert a total of

\$12,000 by issuing sixteen monthly checks of \$750 each, Respondent withdrew and dissipated the remainder of the life insurance proceeds. On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds of Sarrah Talbert.

{¶14} The parties stipulated and the panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(b); Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

#### **Count Five—Gates Matter**

{¶15} Respondent was retained by Lucy Gates to pursue Ms. Gates' employer for unpaid pension payments. Although she received a \$600 retainer, Respondent did not have Gates sign a written fee agreement. The matter was resolved without litigation by a resumption of monthly payments to Gates and a lump sum payment of the outstanding unpaid balance in the amount of \$70,538.85. Respondent disbursed \$34,215.54 to Gates while retaining a 40 percent fee of \$24,215.54 and an additional \$10,000 as litigation expenses. Respondent did not commence any litigation in this matter, and thus incurred no litigation expenses. Her legal work in connection with the matter consisted of four letters to her client, seven letters to the employer, and no documents other than a one-page affidavit.

{¶16} The parties stipulated and the panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.5; Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R.8.4(h).

#### **Count Eight—Felony Convictions<sup>2</sup>**

{¶17} In connection with the conduct described in Counts One through Four, Respondent pled guilty and was convicted on February 10, 2012 in the Stark County Common

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<sup>2</sup> As noted in ¶2 of this report, the panel has dismissed Counts Six and Seven of the third amended complaint.

Pleas Court to one count of forgery R.C. 2913.31(A)(1) and/or (A)(3), four counts of grand theft R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3), and one count of theft R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3).

{¶18} The panel concludes that the conduct involved in these criminal convictions is subsumed in the conclusions of law relative to Counts One through Four, and the panel makes no additional findings of misconduct in regard to Count Six.

### AGGRAVATION, MITIGATION, AND SANCTION

{¶19} When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties Respondent violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743. The panel must also weigh evidence of the aggravating and mitigating factors listed in BCGD Proc. Reg. 10(B). *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251.

{¶20} The panel concludes that the following aggravating factors are present:

- Dishonest or selfish motive;
- Pattern of misconduct;
- Multiple offenses;
- Failure to cooperate in the disciplinary process—although Respondent appears to have been cooperative following the filing of the complaint in this matter, she initially attempted to discourage clients from cooperating with Relator's investigation;
- Vulnerability of and resulting harm to victims of the misconduct; and
- Failure to make restitution.

{¶21} The panel concludes that the following mitigating factors are present:

- Absence of a prior disciplinary record;

- Character or reputation--Respondent presented eight character witnesses who attested to Respondent's moral character, her commitment to becoming an attorney, her work ethic, and her involvement in her church and community activities. The witnesses believed her gambling and the theft of client's money was totally out of character for the person they knew Respondent to be. At the time of the hearing, Respondent had gained employment, and her employer testified that he believed she had the qualities to learn his business as a major defense contractor, that she would be successful despite her legal problems, and that she would be able to earn sufficient money to pay back the money she had stolen. Her employer saw Respondent as a person in the community who provides encouragement and support to people who need a push; he saw her as the type of person that people in the African-American community could look up to. The fact that Respondent became an attorney and was viewed as being successful was an inspiration to young people in the community;
- Imposition of other penalties or sanctions—Respondent was convicted of multiple criminal offenses and is currently incarcerated following her violation of conditions of the community control sanction originally ordered by the Court. Respondent has been sentenced to incarceration for eight and one-half years and began her period of incarceration since the hearing in this matter; and
- Acknowledgement of the wrongness of her actions--Respondent fully acknowledged that she had "messed up" and that her conduct had injured and disappointed numerous people. She testified that the person who she was when she was gambling was not her true self. Although she admitted that she is "not at a place" where she can practice at this time, Respondent claimed that she was committed to correcting her behavior and making full restitution of those she had harmed.

{¶22} Much of the evidence at the hearing focused on Respondent's claim that the panel should consider her depression and her gambling addiction as a mitigating factor. Although testimony from multiple health care providers established that Respondent suffers from major depression and adjustment disorder, the more significant diagnosis was Respondent's impulse control disorder which caused a gambling addiction. Respondent testified that her gambling began to get out of control around 2007, when she was under a lot of stress from various family issues. Respondent also stated that she was required to travel a lot due to her sister's serious illness and that she would gamble whenever she was near a casino. Respondent also made frequent trips to Pittsburgh and Wheeling to gamble.

{¶23} Although the panel has no difficulty concluding that Respondent's gambling in addition contributed to her misconduct in this matter, the panel cannot conclude that Respondent has successfully completed an approved course of treatment for her disability or that she is able to return to an ethical professional practice at the present time under any set of conditions. Although Stephanie Krznarich testified that Respondent's compliance with her OLAP contract had been very good, the evidence established that Respondent was regularly gambling while she was treating with a specialist in gambling addictions and being monitored and supported by OLAP. In fact, the evidence established that Respondent had gambled within the last couple of weeks before the hearing and that she had failed to attend numerous sessions with her gambling addiction therapist.

{¶24} In short, the panel cannot conclude that Respondent has established the criteria required by BCGD Proc. Reg. 10 for the panel to consider Respondent's mental disability as a mitigating factor.

{¶25} Based upon the serious harm caused by Respondent's misconduct and the fact that she has continued to gamble while this matter was pending while leading her treating professionals to believe that she was attempting to stop gambling, Relator strongly recommends that Respondent be permanently disbarred. Respondent acknowledges that she is unable to ethically practice at this time and recommends an indefinite suspension.

{¶26} The presumptive disciplinary sanction for a pattern of misconduct involving dishonesty, misappropriation, and lack of cooperation in disciplinary proceedings is disbarment. *Disciplinary Counsel v. Wickerham*, 132 Ohio St.3d 205, 2012-Ohio-2580. Although disbarment is the presumptive sanction for misappropriation of client funds, mitigating circumstances can support the penalty of indefinite suspension. *Disciplinary Counsel v. Zapor*, 127 Ohio St.3d 372,

2010-Ohio-5769. Because each disciplinary case is unique, the court is not limited to the factors specified in the rule but may take into account all relevant factors in determining what sanction to impose. *Ohio State Bar Assn. v. Resnick*, 128 Ohio St.3d 56, 2010-Ohio-6147.

{¶27} While the purpose of the disciplinary process is the protection of the public, a countervailing goal is to “take care not to deprive the public of attorneys who, through rehabilitation, may be able to ethically and competently serve in a professional capacity.” *Columbus Bar Assn. v. Larkin*, 128 Ohio St.3d 368, 2011-Ohio-762. In its *Larkin* decision, the Supreme Court adopted the recommendation of the Board for an indefinite suspension where there was evidence of the respondent’s mental illness or substance abuse but a failure to meet all of the criteria for establishing it as a mitigating factor. *Id.* at ¶10. *Accord, Columbus Bar Assn. v. Van Sickle*, 128 Ohio St.3d 376, 2011-Ohio-774, and *Columbus Bar Assn. v. Thomas*, 124 Ohio St.3d 498, 2010-Ohio-604. In its *Thomas* decision, the Court approved an indefinite suspension rather than disbarment where the respondent had stolen client funds, hidden the theft from his client, and failed to make restitution. The Court recognized that the respondent would have “a difficult journey back to reinstatement” but that he should not be disbarred because he was financially unable to make restitution.

{¶28} In the instant case, the Panel has concluded that Respondent is truly sorry for the harm she has caused and that her gambling addiction contributed to her misconduct even though she is unable to establish the criteria required for that addiction to be considered as a mitigating factor. Given the amount of restitution which will be required and the fact that she may well spend the next eight and one-half years in prison, Respondent will surely have “a difficult journey back to reinstatement.” Were it not for the witnesses who testified that they believe that Respondent is fundamentally a person of good character and that they are willing to continue to

support Respondent in her struggle to overcome her gambling addiction, the Panel would have no hesitation recommending disbarment. However, if Respondent is ultimately able to be rehabilitated and to gain control over her addiction, Respondent's friends have convinced the Panel that she is worthy of another chance.

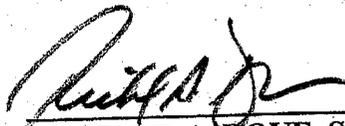
{¶29} For the foregoing reasons, the panel recommends that Respondent be indefinitely suspended from the practice of law and that in addition to the requirements set forth in Gov. Bar R. V for reinstatement, Respondent should not be reinstated unless she has satisfied all of the following conditions:

- Completed her prison term and satisfied all other sanctions associated with her criminal convictions;
- Made full and complete restitution;
- Demonstrated that she is in compliance with any post-release control conditions; and
- Following her release from prison, Respondent is able to demonstrate that she has successfully completed a professional course of treatment for her gambling addiction, is no longer gambling, and is engaged in an on-going support program, as prescribed by OLAP, of not less than five years in duration, to prevent a recurrence of her gambling so that she can return to the ethical practice of law.

### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 7, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Agatha Martin Williams, be indefinitely suspended from the practice of law, with reinstatement subject to the conditions set forth in ¶29 of this report. The Board further recommends that the costs 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.**



**RICHARD A. DOVE, Secretary**

**APPENDIX  
B**

**Agatha Martin Williams  
Case # 2012-2072 Appendix B**

VIOLATIONS		1st Count Jackson	2nd Count White	3rd Count Lemon	4th Count Talbert	5th Count Gates
1.3	(requiring reasonable diligence and promptness in representing a client)	X	X	X		
1.5(a)	(prohibiting a lawyer from making an agreement for, charging, or collecting an illegal or clearly excessive fee)	X				X
1.5(c)	(contingent fee agreement in writing)	X				X
1.8	(took on financial obligation of client)		X			
1.8(e)	(guaranteed financial assistance to the client)		X			
1.15(a)	(hold property of client or third persons separate from the lawyer's own property)	X	X	X	X	
1.15(c)	(taking fees that were unearned out of the IOLTA account)	X	X			
1.15(a), (d), (e)	(removing funds in which a third party had an interest from IOLTA account and putting them to own use).	X	X			
1.15(c)(2)	(take a contingency fee without a closing statement)		X			
1.15(d)	(failed to turn over client file upon request)		X			
8.4(b)	(prohibiting illegal activity that reflects adversely on the lawyer's honesty or trustworthiness)	X		X	X	
8.4(c)	(prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation)	X		X	X	X
8.4(d)	(prohibiting conduct that is prejudicial to the administration of justice)			X		
8.4(h)	(prohibiting conduct that adversely reflects on the lawyer's fitness to practice law)			X	X	X
Rule V(4)(G)	Gov. Bar Rule V(4)(G)(failed to cooperate in the investigation)		X			

**APPENDIX**  
**C**

# Agatha Martin Williams Gambling

June 26, 2011 to February 28, 2012

	Date	Casino	Hours	Minutes	Win/Loss	Cash In	Chips In	Casino charges room/meals
1	6/26/2011	Wheeling Island	2.42		631.00	\$325.00		
2	7/6/2011	Wheeling Island	7.70		-140.00	\$940.00	\$325.00	
3	7/7/2011	Wheeling Island	3.42		6,400.00	\$200.00		
4	7/9/2011	Wheeling Island	4.42		-220.00	\$720.00	\$500.00	
5	7/15/2011	Wheeling Island	10.32		163.50	\$2,158.30	\$750.00	
6	7/16/2011	Wheeling Island	8.14		-871.00	\$1,336.00	\$925.00	
7	7/21/2011	Wheeling Island	2.44		384.00	\$400.00	\$166.00	
8	7/24/2011	Wheeling Island	1.74		-95.00	\$425.00		
9	7/28/2011	Rivers	4.82	289.25	1,600.00	\$1,815.00		
10	8/11/2011	Wheeling Island	6.03		1,820.00	\$220.00	\$860.00	
11	8/13/2011	Wheeling Island	4.42		-1,150.90	\$837.75	\$775.00	
12	8/14/2011	Wheeling Island	0.23		-122.00	\$34.50	\$100.00	
13	8/18/2011	Rivers	3.58	215	2,700.00	\$300.00	\$1,000.00	
14	8/23/2011	Wheeling Island	7.66		230.00	\$470.00	\$205.00	
15	8/24/2011	Wheeling Island	5.30		1,315.00	\$520.00	\$350.00	
16	8/28/2011	Wheeling Island	8.27		255.00	\$510.00	\$1,150.00	
17	8/29/2011	Wheeling Island	12.83		-20.00	\$1,477.00	\$691.00	
18	8/30/2011	Wheeling Island	2.19		-320.00	\$400.00	\$60.00	
19	9/1/2011	Rivers	1.92	115.3	-360.00	\$382.40		
20	9/3/2011	Wheeling Island	13.29		-760.00	\$1,720.00	\$775.00	
21	9/11/2011	Wheeling Island	6.91		3,410.00	\$790.00	\$100.00	
22	9/13/2011	Wheeling Island	7.32		-296.00	\$1,403.00		
23	9/14/2011	Wheeling Island	1.51		1,970.00	\$500.00	\$100.00	\$32.75
24	9/16/2011		1.90		800.00	\$320.00	\$500.00	
25	9/17/2011	Wheeling Island	4.06		404.00	\$1,072.00	\$125.00	
26	9/22/2011	Wheeling Island	1.97		-120.00	\$200.00		
27	9/23/2011	Wheeling Island	5.28		200.00		\$200.00	
28	9/24/2011	Rivers	1.22	73.19	-536.00	\$733.00		
29	9/29/2011	Rivers	2.91	174.7	1,879.70	\$851.60	\$200.00	
30	9/30/2011		10.80		4,040.00	\$1,140.00		
31	10/1/2011		1.25		-390.00	\$390.00		
32	10/3/2011		12.63		-1,445.00	\$1,785.00	\$410.00	
33	10/4/2011	Rivers	7.15	429.1	997.54	\$2,241.00		
34	10/5/2011	Rivers	0.63	37.61	-134.00	\$513.42		
35	10/6/2011	Rivers	2.93	175.52	-75.00	\$650.00		
36	10/6/2011	Rivers	0.53		-440.00	\$440.00		
37	10/27/2011	Rivers	5.72	343.38	1,005.20	\$502.80	\$100.00	
38	10/31/2011	Rivers	2.03	121.77	-100.00	\$100.00		
39	11/1/2011	Rivers	0.14	8.45	-24.95	\$57.30		
40	11/3/2011	Rivers	1.63	98	470.00	\$290.00		
41	11/7/2011	Wheeling Island	0.33	19.8	-41.00	\$144.00		
42	11/11/2011	Rivers	1.28	76.95	-500.00	\$500.00		
43	11/12/2011	Rivers	1.53	92	-325.00	\$850.00		
44	11/13/2011	Rivers	3.09	185.66	168.11	\$119.50		
45	11/17/2011	Rivers	6.11	366.44	505.00	\$1,120.00	\$500.00	
46	11/27/2011	Rivers	6.10	365.75	5,995.00	\$740.00	\$300.00	
47	11/28/2011	Rivers	4.52	270.98	1,213.00	\$812.00	\$205.00	
48	11/29/2011	Rivers	6.58	395.09	-545.00	\$1,375.00		
49	11/30/2011	Rivers	3.26	195.79	-244.03	\$748.00	\$400.00	
50	12/1/2011	Rivers	2.45	146.98	135.00	\$400.00	\$130.00	
51	12/8/2011	Rivers	2.32	139.07	215.00	\$360.00		
52	12/14/2011	Wheeling Island	0.09	5.4	-11.00	\$39.10		
53	12/14/2011	Wheeling Island	0.42	25.2	-18.00	\$186.45		

**EXHIBIT**  
**B**

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