

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

<b>In re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 11-086</b>
<b>Mark Allan Anthony</b>	:	<b>Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio</b>
<b>Attorney Reg. No. 0056048</b>	:	
<b>Respondent</b>	:	
<b>Disciplinary Counsel</b>	:	
<b>Relator</b>	:	

**13-0226**

**OVERVIEW**

{¶1} A formal hearing was held in this matter on June 19, 2012 before a panel consisting of Martha Butler Clark, David E. Tschantz, and Sanford E. Watson, chair. None of the panel members is from the appellate district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint.

{¶2} Relator was represented by Karen Osmond and James Ambrose represented Respondent.

{¶3} The complaint was filed October 10, 2011 by Relator. Count One of the complaint alleges violations of DR 1-102(A)(3) [conduct involving moral turpitude]; DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law]. Count Two of the complaint alleges Respondent failed to his felony conviction in violation of Prof. Cond. R. 8.3(a).

<b>FILED</b>
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CLERK OF COURT SUPREME COURT OF OHIO

{¶4} On June 1, 2012, the parties entered into stipulations of fact and violations, and jointly recommended a sanction. At the hearing, the panel accepted the stipulations of fact and violations, granted Relator's motion to dismiss Count Two of the complaint, and considered the aggravating and mitigating factors and the appropriate sanction.

{¶5} The misconduct in this proceeding consists of Respondent's felony conviction for one count of grand theft, a fourth-degree felony. Respondent misappropriated \$118,000 from St. Francis de Sales Catholic Church in Lebanon, Ohio ("St. Francis"). The theft occurred while he was working fulltime as the business manager for the parish. Respondent, thereafter, stipulated to the theft and conviction, and cooperated in the disciplinary proceedings. The parties' stipulated to a joint recommendation of a sanction consisting of an indefinite suspension, with credit for time served from the date of his May 10, 2011 interim suspension. *In re: Mark Allan Anthony*, Supreme Court Case No. 2011-0765.

{¶6} During the hearing, Respondent presented evidence of a gambling addiction and his efforts at rehabilitation as mitigating factors. While the panel agrees that the gambling addiction evidence was persuasive, there remains an unmet need for restitution. Accordingly, the panel agrees with the parties' joint recommendation of a sanction consisting of an indefinite suspension with credit for time served, with one difference. The panel also recommends that Respondent enter into a plan to make restitution payments.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶7} Respondent was admitted to the practice of law in the state of Ohio on November 20, 1991.

{¶8} Respondent testified that he graduated from the University of Dayton law school in 1991. For the first 11 years of practice, Respondent worked as a litigator for three different law firms in Dayton. At those firms, there was "a lot of pressure" and the expectation that he

would “bill an awful lot of hours.” After 11 years of practice, Respondent decided that he “just needed to do something else” and that is when he applied for the job at St. Francis. Respondent attributes the demands of private practice as leading to his gambling addiction.

{¶9} As an attorney, Respondent is subject to the Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and the Supreme Court Rules for the Government of the Bar of Ohio.

{¶10} In or about 2004, Respondent voluntarily ceased the active practice of law to focus on his employment at St. Francis.

{¶11} On December 2, 2005, the Supreme Court of Ohio suspended respondent from the practice of law for failing to file a certificate of registration and for failing to pay applicable attorney registration fees.

{¶12} Respondent remains suspended from the practice of law pursuant to the Court’s December 2, 2005 order.

{¶13} On January 9, 2009, the Supreme Court of Ohio additionally suspended Respondent from the practice of law for failing to complete the requisite number of continuing legal education hours, failing to file a final reporting transcript on or before January 31, 2008, and failing to file evidence of or come into compliance with his CLE obligations as required by Gov. Bar R. X, Section 6 (B). *01/09/2009 Case Announcements*, 2009-Ohio-40.

{¶14} Respondent remains suspended from the practice of law pursuant to the Court’s January 9, 2009 order.

{¶15} On May 10, 2011, the Supreme Court of Ohio suspended Respondent from the practice of law for an interim period pursuant to a 2007 felony conviction. *In re: Mark Allan Anthony*, Supreme Court Case No. 2011-0765.

{¶16} Respondent remains suspended from the practice of law pursuant to the Court's May 10, 2011 order.

{¶17} In 2002, Respondent began working for St. Francis in Lebanon, Ohio as a full-time "business manager."

{¶18} At all times relevant to this complaint, St. Francis consisted of approximately 800-1000 families and an elementary school (kindergarten through 8th grade).

{¶19} At no time during his employment at St. Francis, did Respondent represent St. Francis in any legal matters.

{¶20} Respondent was hired by Father Robert Schmitz; however, on or about November 23, 2003, Father Bernard Weldishofer became pastor of St. Francis.

{¶21} As business manager, Respondent had access to and was a signatory on all of St. Francis' banking accounts. Respondent also had access to St. Francis' credit card account.

{¶22} Starting in August 2002 and continuing through May 2006, Respondent misappropriated parish funds for his own personal expenses, including but not limited to the payment of personal obligations pursuant to a Chapter 13 bankruptcy that he had filed in May 2005.

{¶23} During this period of time, Respondent wrote at least 60 checks to himself or to cash from parish funds, and he made a number of withdrawals from various parish accounts. Respondent also used the parish credit card account over 60 times to pay for personal expenses.

{¶24} In total, Respondent misappropriated approximately \$118,000 in parish funds.

{¶25} In or about May of 2006, a member of the St. Francis' finance committee discovered Respondent's thefts while preparing a financial report for St. Francis.

{¶26} On May 18, 2006 and although not yet aware of the extent of Respondent's thefts, Father Weldishofer confronted Respondent about the thefts.

{¶27} On the same day, Respondent admitted his thefts and resigned from his position as business manager at St. Francis.

{¶28} In the fall 2006, Respondent paid \$10,000 to St. Francis as partial restitution.

{¶29} On November 27, 2006, Respondent was indicted in the Warren County Court of Common Pleas on one count of aggravated theft, a felony of the third degree.

{¶30} On December 15, 2006, Respondent pled not guilty to the indictment.

{¶31} On February 15, 2007, Respondent pled guilty to an amended charge of grand theft - a felony of the fourth degree.

{¶32} On March 22, 2007, Respondent was sentenced to 12 months in prison and ordered to pay \$118,891 in restitution.

{¶33} On the same day, Respondent was taken into custody, and he arrived at the London Correctional Facility on March 26, 2007.

{¶34} On May 14, 2007, Respondent filed a motion for judicial release.

{¶35} On July 17, 2007, the trial court granted Respondent's motion for judicial release; however, the court ordered that Respondent be held in custody until a hearing on the conditions for judicial release could be held.

{¶36} On August 3, 2007, a hearing on the conditions for judicial release was held.

{¶37} On the same day, Respondent's sentence was modified to five years of community control, and the court again ordered that respondent pay \$118,891 in restitution during the period of community control.

{¶38} Between September 2007 and March 2011, Respondent made monthly payments towards his court-ordered restitution. In total, Respondent paid \$3,425 towards his court-ordered restitution for a total of \$13,425 in restitution.

{¶39} On December 30, 2010, Respondent's probation officer, Christopher Evans, filed a "Report of Community Control Violation" with the Warren County Court of Common Pleas. The alleged violation was based on Respondent's failure to make the minimum monthly restitution payments.

{¶40} Respondent's final community control violation hearing was set for February 22, 2011; however, the matter was continued until March 30, 2011.

{¶41} On February 16, 2011, Respondent filed a motion to modify restitution.

{¶42} The community control violation hearing scheduled for March 30, 2011 did not occur. Instead, the prosecutor, Respondent's counsel, and the judge met in chambers.

{¶43} On March 31, 2011, the court "unsuccessfully" terminated Respondent from community control via entry.

{¶44} On April 24, 2011, Respondent filed a motion for a nunc pro tunc order requesting that the court revise its March 31, 2011 order classifying Respondent's termination from community control as "unsuccessful" claiming that Respondent had made restitution exceeding what could be legally ordered by the court.

{¶45} Having not heard anything from the court on the motion for nunc pro tunc order, Respondent filed a notice of appeal with the Warren County Court of Common Pleas on May 2, 2011.

{¶46} Within a week of filing the notice of appeal, Respondent and/or his attorney received a phone call from a member of the court's staff informing him that the March 31, 2011 order would be revised if Respondent dismissed the appeal.

{¶47} In light of the Respondent's motions and the applicable case law, on May 12, 2011, the trial court vacated its "unsuccessful" termination and ordered Respondent "successfully" terminated from community control.

{¶48} On May 16, 2011, the court dismissed Respondent's alleged community control violation.

{¶49} At the time of Respondent's thefts, the Archdiocese of Cincinnati maintained an "Employee Dishonesty" coverage policy with Lloyds of London Insurance Company. Per the policy, the Archdiocese was responsible for the first \$100,000 of any employee dishonesty claim under a "Self Insured Retention" policy (SIR).

{¶50} In order to fund the SIR, the Archdiocese required parishes and other entities within the diocese to pay a pre-determined amount into a fund. Proceeds from the fund were used to pay claimed losses within the SIR, as well as to purchase excess insurance.

{¶51} The Archdiocese contracted with Gallagher Basset Services Inc. to administer its SIR fund and to handle outside claims with insurance companies, such as Lloyds of London.

{¶52} On August 24, 2006, Father Weldishofer authored a statement regarding Respondent and Respondent's thefts from St. Francis. In this statement, Father Weldishofer estimated Respondent's thefts at "just over \$150,000."

{¶53} On February 21, 2007, Reboul and Henderson, an independent investigative accounting agency, informed Gallagher Bassett that it estimated St. Francis's losses to be \$116,885.

{¶54} On March 19, 2007, Father Weldishofer informed Gallagher Basset that the Reboul and Henderson report had failed to include two items that were included by the prosecutor in its calculations, and that when these two items were included, the total amount of loss should be at least \$127,649.15.

{¶55} Gallagher and Bassett accepted a loss amount of \$127,649.15.

{¶56} On June 5, 2007, Gallagher and Bassett caused a \$100,000 check to be issued to St. Francis from the Archdiocese's SIR fund.

{¶57} Gallagher and Bassett then worked with Lloyds of London to obtain the remainder of the claimed loss amount (\$27,649.15) pursuant to the Archdiocese's insurance policy with them.

{¶58} On February 6, 2008, Gallagher and Bassett caused a check for \$27,149.15 to be issued to St. Francis, which represented the remainder of the claimed loss amount minus a \$500 deductible that was in place at the time.

{¶59} Of the \$13,425 Respondent made in restitution, \$10,000 went directly to St. Francis and \$3,425 went to Lloyds of London pursuant to the Archdiocese's policy with Lloyds of London which required that any restitution be first paid to Lloyds of London.

{¶60} In total, St. Francis received \$137,149.15 to cover its losses - \$100,000, which was funded by the Archdiocese's SIR Fund; \$27,149.15, which was funded by Lloyds of London; and \$10,000, which was funded by Respondent.

{¶61} The panel accepted the parties' stipulated violations and finds by clear and convincing evidence that the above acts resulted in violations of: DR 1-102(A)(3); DR 1-102(A)(4); and DR 1-102(A)(6). The panel accepts Relator's dismissal of the violation of Prof. Cond. R. 8.3(b) alleged in Count Two of the complaint and dismisses that alleged violation.

## AGGRAVATION, MITIGATION, AND SANCTION

{¶62} The parties stipulated to Respondent's prior disciplinary history for attorney registration suspension as an aggravating factor. The panel additionally finds that (1) Respondent had a selfish or dishonest motive; (2) Respondent engaged in a pattern of misconduct; (3) caused harm to the public; and (4) failed to make restitution.

{¶63} The panel finds the following aggravating factors: multiple offenses and the submission of false evidence and false statements during the disciplinary process. Although redundant, the submission of false evidence and statements also implicates a dishonest or selfish motive.

{¶64} The parties stipulated, as mitigating factors, that (1) Respondent's only prior disciplinary history is his attorney registration suspension; (2) Respondent has had other penalties or sanctions imposed upon him in the related criminal proceedings including the conviction and prison sentence, and (3) Respondent fully and freely disclosed his conduct to Relator and cooperated in the disciplinary investigation. The panel additionally finds that Respondent had a gambling addiction and started a course of treatment for it, entered into a contract with OLAP, joined Gamblers Anonymous, and at the time of hearing, was actively working with a sponsor.

{¶65} Relator and Respondent offered a stipulated recommended sanction of an indefinite suspension with credit for time served from the date of Respondent's felony suspension on May 10, 2011. The parties relied upon *Disciplinary Counsel v. Kelly*, 121 Ohio St.3d 39, 2009-Ohio-317 and *Disciplinary Counsel v. Muntean*, 127 Ohio St.3d 427, 2010-Ohio-6133. At the hearing, Respondent further argued that restitution was not required because the Archdiocese's SIR fund and Lloyds of London made full restitution to St. Francis.

{¶66} The panel generally agrees that an indefinite suspension with credit for time served is the appropriate sanction in this matter, but takes issue with Respondent's argument that he is not required to make restitution. Both cases cited by the parties, required the payment of restitution. See *Kelly* at ¶20 (full restitution was made a condition for reinstatement); and *Muntean* at ¶5 (restitution was made as part of criminal sentence).

{¶67} Here, Respondent understood his obligation to make restitution and made good faith efforts to pay restitution. Respondent paid a total of \$13,425 before the criminal trial court determined that "restitution has been met by the insurance carrier for the victim in this case." While payment by an insurance carrier may have satisfied the criminal court's restitution requirements, it does not satisfy the Supreme Court of Ohio's obligation to protect the public from harm. In *Disciplinary Counsel v. Young*, 113 Ohio St.3d 36, 2007-Ohio-975, the Court held that guardianship estate was significantly harmed by the loss of \$40,000 notwithstanding repayment of the loss by sureties and required compliance with a restitution payment plan as a condition of reinstatement.

{¶68} As in *Young*, Respondent's theft significantly harmed St. Francis Parish in that it lost at least \$118,000 in parish funds "notwithstanding that the loss was ultimately repaid by sureties." See *Young* at ¶29. Moreover, at least \$100,000 of the reimbursed funds came from the Archdiocese SIR fund. The Archdiocese SIR fund, as Respondent admitted during the hearing, is funded by the contributions of parishioners. Thus, Respondent's theft harmed every parishioner who contributed to that fund.

{¶69} Accordingly, the panel finds that the appropriate sanction is an indefinite suspension with credit for time served from the date of Respondent's felony suspension, with reinstatement conditioned upon the successful completion of an OLAP approved treatment plan

for gambling addiction and the establishment of a restitution payment plan. The restitution payment plan should require that restitution be made in the amount of \$118,000 including restitution to the Archdiocese of Cincinnati in the amount of \$90,000 (giving credit for the \$10,000 already paid), and \$14,575 to Lloyds of London (giving credit for the \$3,425 already paid). The panel further recommends that if Respondent is reinstated, that he be placed on probation to be monitored by OLAP until the successful completion of his restitution payment plan.

### **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 February 1, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Mark Allan Anthony, be indefinitely suspended from the practice of law in Ohio, with reinstatement subject to the conditions set forth in ¶69 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**