

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In re:

Case No. 2014-081

Complaint against

**James William Thomas, Jr.
Attorney Reg. No. 0074051**

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

Respondent

Disciplinary Counsel

Relator

OVERVIEW

{¶1} This matter came before a panel consisting of Patrick Sink, David Hardymon, and William Novak, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was represented by George Jonson. Scott Drexel appeared on behalf of Relator.

{¶3} On April 10, 2015, just prior to the scheduled hearing in this case, the parties filed a joint motion to waive hearing and to adopt agreed stipulations of fact, conclusions of law, aggravating and mitigating factors, exhibits, and sanction in this matter prior to the hearing.

{¶4} Given that Respondent was unable to be personally present at the hearing because of his incarceration at Pickaway Correctional Institution in Orient, Ohio and that there were no unresolved issues, the motion to waive hearing was granted.

{¶5} This case involved Respondent's misconduct that arose from theft charges filed against Respondent in a Bill of Information on April 28, 2014. Respondent was charged with

two third degree felony counts of theft in violation of R.C. 2913.02(A)(3), one fourth degree felony count of theft from an elderly or disabled person in violation of R.C. 2913.02(A)(3), and three first degree misdemeanor counts of knowingly making a false statement or knowingly swearing or affirming the truth of previously made false statements in violation of R.C. 2921.13(A)(10). The theft charges against Respondent arose out of his theft of funds from four individuals on whose behalf Respondent had been appointed by the Preble County Probate Court as guardian of their respective persons and/or estates. On April 30, 2014, Respondent pled no contest to each of the charges contained in the Bill of Information. On June 17, 2014, Respondent was sentenced to a prison term of four and one-half years and ordered to make restitution to the victims in a total amount of \$208,095.15.

{¶6} On July 22, 2014, the Supreme Court of Ohio suspended Respondent for an interim period based upon the felony convictions. *In re Thomas*, 140 Ohio St.3d 1224, 2014-Ohio-3174.

{¶7} Based upon the parties' stipulations and evidence presented by way of exhibits, the panel finds by clear and convincing evidence that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedents, which are adequately set forth in the agreed stipulations, the panel recommends that Respondent be indefinitely suspended from the practice of law, with credit for time served under the interim felony suspension, and with reinstatement subject to conditions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶8} Respondent was admitted to the practice of law in the state of Ohio on November 13, 2001 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶9} For misappropriating funds during his course of service as guardian of persons and/or estates of the individuals set forth in the stipulations of fact, Respondent violated the following provisions of the Ohio Rules of Professional Conduct:

- Prof. Cond. R. 8.4(b) [an 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]; and
- Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice].

{¶10} By filing false inventories with the Preble County Probate Court in order to conceal his theft of funds from the individuals set forth in the stipulations of fact, Respondent violated the following provisions of the Ohio Rules of Professional Conduct:

- Prof. Cond. R. 3.3(a)(1) [making a false statement of fact or law to a tribunal];
- Prof. Cond. R. 3.3(a)(3) [offering evidence that the lawyer knows is false];
- Prof. Cond. R. 8.4(b);
- Prof. Cond. R. 8.4(c); and
- Prof. Cond. R. 8.4(d).

MITIGATION, AGGRAVATION, AND SANCTION

{¶11} The panel agrees with the following stipulated aggravating factors.

{¶12} *A dishonest or selfish motive*—Respondent used the monies that he misappropriated from his victims primarily to further his use of ephedrine, to which he was addicted, and to compensate for the loss of law practice income caused by his drug use.

{¶13} *Multiple offenses*—Respondent stole funds from at least four persons for whom he was acting as guardian. The theft of funds occurred on multiple occasions, over a period of more than six years. He also attempted to conceal his theft of funds by filing false inventories with the Preble County Probate Court on at least three occasions.

{¶14} The panel finds and agrees with the following stipulated mitigating factors.

{¶15} *Absence of a prior disciplinary record*—Respondent has no prior record of

discipline.

{¶16} *A timely, good faith effort to make restitution or to rectify the consequences of his misconduct*—To date, the sum of \$89,950 has been paid by Respondent's professional liability insurance carrier (American Guarantee & Liability Insurance Company) to the guardian of Jeryl Sims. In addition, on behalf of Respondent, his father (James W. Thomas, Sr.) has refunded unearned fees totaling \$1,650 to two of Respondent's former clients when Respondent was unable to complete the legal services for which he was retained, as a result of his arrest for the charges that form the basis for this proceeding. Finally, Respondent's father has agreed to make monthly restitution payments of \$750 on Respondent's behalf and is currently working with Respondent's attorney in the criminal case to agree upon an apportionment of those payments among the victims of Respondent's misconduct.

{¶17} *Full and free disclosure to the Board and/or cooperative attitude toward the proceedings*—Through his counsel, Respondent has fully participated in these proceedings. He has fully and freely admitted his wrongdoing, as evidenced both by his answer to the complaint in this proceeding and in the agreed stipulations.

{¶18} *Character and reputation*—Respondent submitted positive character letters from thirteen individuals, including two judges, three clients, his pastor, an Ohio Highway Patrol officer, and numerous friends and relatives.

{¶19} *Imposition of other penalties or sanctions*—As a result of his criminal conviction, Respondent has been sentenced to state prison for a term of four and one-half years. He is currently serving his prison sentence at Pickaway Correctional Facility in Orient, Ohio. In addition, the court has imposed a restitution obligation upon Respondent in the total sum of \$208,095.15, of which \$118,145.15 remains to be paid.

{¶20} *A diagnosis of a disorder by a qualified health care professional or qualified chemical dependency professional*—After his criminal conviction on April 30, 2014, but prior to being sentenced on June 17, 2014, Respondent successfully completed a five-week residential treatment program at The Ridge in Milford, Ohio. Todd S. Carran, M.D., Medical Director at The Ridge confirmed Respondent’s addiction and opined that, if Respondent remains in recovery, his addictive behaviors are less likely to recur. Respondent’s ephedrine addiction significantly contributed to the misconduct for which he was criminally prosecuted, and convicted, and upon which the disciplinary charges in this proceeding are based.

{¶21} In recommending the sanction, the panel is guided by the stipulations, specifically mitigating factors which include, but are not limited to, the good faith attempt to make restitution and the diagnosis of a disorder by a qualified health professional who opined that if Respondent remains in recovery, his addictive behaviors are less likely to recur and that his ephedrine addiction significantly contributed to the misconduct for which he was charged.

{¶22} While the Board and the Supreme Court recognize that Respondent has a presumptive sanction of disbarment for misappropriation, mitigating circumstances can justify an indefinite suspension. The parties in the stipulations were guided by the sanctions as set forth in the case law of *Disciplinary Counsel v Zapor*, 127 Ohio St.3d 372, 2010-Ohio-5769; and *Disciplinary Counsel v. Anthony*, 138 Ohio St.3d 129, 2013-Ohio-5502. Both cases involved respondents who misappropriated funds while in a position of trust. While in *Zapor*, respondent did not establish the necessary connection between his impairment and his misconduct, an indefinite suspension was still rendered based upon his confession to the misappropriation and his attempts to resolve his substance abuse and gambling problems. As respects *Anthony*, the Supreme Court concluded that respondent’s gambling disorder, execution of an OLAP contract,

and the commencement of treatment with a clinical psychologist should be given weight as a mitigating factor and resulted in an indefinite suspension.

{¶23} Based upon the foregoing stipulations, as well as mitigating factors which included no prior disciplinary record; cooperation with the disciplinary process; positive character letters; and his four and one-half year period of state imprisonment that he is currently serving, the panel agrees with the stipulated indefinite suspension with credit for the period of his interim suspension imposed following his criminal conviction. Respondent's reinstatement to the practice of law shall be subject to the following conditions:

- a. Respondent shall not seek reinstatement to the practice of law until he has completed his period of incarceration and has paid the restitution ordered by the court in *State of Ohio v. James W. Thomas, Jr.*, Preble County Case No. 14 CR 011521;
- b. Respondent must have complied with all terms and conditions of his criminal probation;
- c. Respondent must successfully complete an OLAP-approved treatment plan for substance abuse and addiction; and
- d. Respondent must continue with a treatment program that will address his clinical substance addiction and his commitment to treatment must continue up to and through any attempt on his part to seek reinstatement.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on June 12, 2015. The Board adopted the findings of fact and conclusions of law of the panel and adopted the sanction recommended by the panel of an indefinite suspension with credit for time served under the interim felony suspension imposed on July 22, 2014. With regard to the conditions of reinstatement from the indefinite suspension, the Board modified the condition set forth in ¶23a. of this report to delete reference to the restitution ordered by the court in *State v. Thomas* and to specify that, as a condition of reinstatement, Respondent be required to make full restitution in the amount of \$208,095.15, which includes all moneys owed to the victims of Respondent's misconduct and his professional

liability insurance carrier. The Board further adopted the additional conditions of reinstatement set forth in ¶23b., c., and d. of this report and recommends that Respondent be ordered to pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

RICHARD A. DOVE, Director