

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

In re:

Complaint against

Case No. 2017-056

**Thomas Locke Mason
Attorney Reg. No. 0041663**

**Report and Recommendation of
the Board of Professional Conduct**

Respondent

Disciplinary Counsel

Relator

DISCIPLINE BY CONSENT

{¶1} This matter was submitted to a hearing panel consisting of Frank C. Woodside, III, James D. Caruso, and Peggy J. Schmitz, panel chair, pursuant to a consent to discipline agreement filed by the parties on March 2, 2018. No member of the hearing panel resides in the appellate district from which the complaint arose or served on the probable cause panel that certified the complaint to the Board.

{¶2} The hearing panel finds that this agreement was filed on a timely basis and conforms to the requirements of Gov. Bar R. V, Section 16. The panel recommends acceptance of the agreement, including the stipulated facts and stipulated violations of the following Rules of Professional Conduct:

- *Prof. Cond. R. 8.4(h)* [conduct that adversely reflects on the lawyer's fitness to practice law]; and
- *Prof. Cond. R. 1.8(j)* [a lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced].

{¶3} The violations stemmed from two separate and unrelated incidents. The first incident involved Respondent’s Alford¹ plea to a third degree misdemeanor offense of soliciting, in violation of R.C. 2907.24(A)(1), in *State of Ohio v. Thomas Mason*, Ashland Municipal Court, Case No. 2016 CRB-00417. The second incident involved a sexual relationship between Respondent and his client, “Melissa,” whom he represented in a divorce matter. Based on the stipulated facts, Respondent’s relationship with Melissa was legal and consensual, and does not appear to have negatively impacted Respondent’s legal representation in Melissa’s divorce case.

{¶4} The parties stipulated to the aggravating factors of (a) a dishonest and selfish motive, (b) multiple offenses, and (c) the vulnerability of and resulting harm to victims of Respondent’s misconduct. The parties also stipulated to the mitigating factors of (a) no prior discipline, (b) a cooperative attitude toward the proceedings, (c) the imposition of other penalties and sanctions in the criminal matter,² and (d) evidence of good character and reputation. The panel also notes that Melissa paid no retainer in connection with the divorce matter, and, although Respondent invoiced Melissa for his legal services, he has not received payment, and stipulated that he will not attempt to collect any fees in that matter.

{¶5} The parties agreed to the sanction of a six-month suspension, fully stayed on the condition that Respondent engage in no further misconduct.

{¶6} The parties noted that the Supreme Court has consistently held that a public reprimand is the appropriate sanction for attorneys who engage in sexual relationships with clients when the relationships are legal and consensual and have not compromised the clients’ interests.³

¹ *North Carolina v. Alford* (1971), 400 U.S.25, 91 S.Ct. 160, 27 L.Ed.2d 162.

² Respondent was fined \$500 and ordered to pay the court costs in connection with his criminal conviction.

³ See, for example, *Cincinnati Bar Assn. v. Schmalz*, 123 Ohio St.3d 130, 2009-Ohio-4159; *Cincinnati Bar Assn. v. Wieczorek*, 135 Ohio St.3d 434, 2013-Ohio-1743; and *Disciplinary Counsel v. Detweiler*, 127 Ohio St.3d 73, 2010-Ohio-5033.

The parties also properly noted, however, that, while Respondent's misconduct in the divorce matter was similar to those of attorneys who received public reprimands for their misconduct, Respondent's criminal conviction for solicitation distinguishes this case from the aforementioned cases, and warrants a greater sanction.

{¶7} In *Cleveland Metro. Bar Assn. v. Paris*, 148 Ohio St.3d 55, 2016-Ohio-5581, the Court cited its consistent disapproval of conduct by lawyers who solicit sexual activity with clients, and acknowledged that a wide range of disciplinary measures, from public reprimand to disbarment, has been imposed for such conduct, based on the "relative impropriety of the situation." In addition to violating Prof. Cond. R. 1.8(j), Paris violated Prof. Cond. R. 1.3 [diligence], and the Court imposed a six-month fully stayed suspension.⁴ As in this case, *Paris* involved mitigating factors of no prior disciplinary record and cooperation, and aggravating factors of selfish motive, multiple offenses and harm to a vulnerable client.

{¶8} Similarly, in *Disciplinary Counsel v. Hines*, 133 Ohio St.3d 166, 2012-Ohio-3929, the Court rejected the recommendation of a public reprimand and, instead, imposed a six-month, fully stayed suspension, for stipulated violations of Prof. Cond. R. 1.8(j) and 8.4(h), involving a respondent's sexual relationship and co-habitation with a client whom he represented in a domestic relations matter. Following a domestic dispute between the respondent and his client, Hines filed criminal charges (later dismissed) against his client, terminated the client-attorney relationship and failed to take steps to protect the client's rights. As in this case, the *Hines* case included mitigating factors of no prior discipline, cooperation, and positive reputation, and aggravating factors of selfish motive and harm to a vulnerable client.

⁴ Three justices dissented and would have imposed the six-month actual suspension recommended by the hearing panel and Board.

{¶9} A six-month suspension, fully stayed on condition of no further misconduct, was also imposed in *Disciplinary Counsel v. Hillis*, 139 Ohio St.3d 319, 2014-Ohio-2113, a case cited by the parties. In that case, Hillis, an elected part-time law director, pled no contest to the misdemeanor offenses of solicitation and criminal trespass, and was found to be in violation of Prof. Cond. R. 8.4(h). The case did not involve sexual activity with a client, as in this case. The Court noted that the facts in *Hillis* were similar to those in *Richland Cty. Bar Assn. v. Brightbill*, 56 Ohio St.3d 95, 564 N.E.2d 471 (1990), in which a public reprimand was imposed. The Court agreed with the parties, however, that the six-month fully-stayed suspension was warranted based on Hillis' position as an elected public official.

{¶10} Cases in which sanctions more severe than a six-month fully stayed suspension have been imposed generally involve factors which are not present in this case, such as sexual activity with multiple clients or prior discipline. See, for example, *Disciplinary Counsel v. Bunstine*, 136 Ohio St.3d 276, 2013-Ohio-3681, in which Bunstine solicited "other arrangements" for his fee and went to the client's home after being told not to do so. Bunstine, who had been disciplined previously for a violation of Prof. Cond. R. 8.4(c), was given a one year suspension with six months stayed. See, also, *Cleveland Metro. Bar Assn. v. Sleibi*, 144 Ohio St.3d 257, 2015-Ohio-2724, involving sexual relations with four clients, resulting in a suspension of two years with six months stayed on conditions; *Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 529, 2013-Ohio-1747, involving text messages including solicitations of sex and a nude photo of the respondent as well as prior discipline for similar misconduct, and resulting in a one-year actual suspension; *Cleveland Metro. Bar Assn. v. Lockshin*, 125 Ohio St.3d 529, 2010-Ohio-2207, involving inappropriate sexual communications with five clients (one of whom was a minor), a potential witness and a law enforcement officer; false testimony; failure to file a timely appeal on

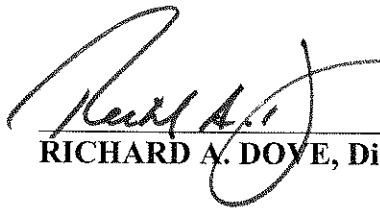
behalf of a client; and failure to follow recommendations for sex offender treatment. Lockshin was suspended indefinitely.

{¶11} Upon consideration of the rules violated, applicable mitigating and aggravating factors, and Supreme Court precedent, the panel recommends acceptance of the consent to discipline agreement and imposition of the sanction of a six-month suspension, fully stayed on condition that Respondent engage in no further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on April 13, 2018. The Board voted to accept the agreement entered into by Relator and Respondent and recommends that Respondent, Thomas Locke Mason, be suspended for a period of six months, with the suspension stayed in its entirety on the condition that Respondent engage in no further misconduct. The Board also recommends that Respondent be ordered to pay the costs of this proceeding.

Pursuant to the order of the Board of Professional Conduct, I hereby certify the forgoing report and recommendation as that of the Board.



RICHARD A. DOYE, Director