

**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**

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

Respondent

Disciplinary Counsel

Relator

OVERVIEW

{¶1} This matter was heard on July 11, 2018 before a panel consisting of James D. Caruso, Frank C. Woodside, III and Peggy J. Schmitz, panel chair. None of the panel members resides in the appellate district from which the complaint arose.

{¶2} On April 16, 2018, pursuant to the panel's recommendation, the Board accepted the parties' agreement for consent to discipline and recommended its acceptance by the Supreme Court. The consent agreement included a recommended sanction of a six-month suspension from the practice of law, with the entire suspension stayed on condition that Respondent engage in no further misconduct.

{¶3} On May 14, 2018, the Supreme Court issued an order rejecting the recommended sanction and remanding the cause to the board for further proceedings, including consideration of a more severe sanction. *Disciplinary Counsel v. Mason*, 2018-Ohio-1858.

{¶4} Upon remand, the matter was set for hearing, Relator and Respondent submitted comprehensive stipulations of fact, rule violations, mitigation, and aggravation and stipulated exhibits. In addition, the parties submitted a joint brief on sanction, expressing their agreement

that the appropriate sanction in this matter is a one-year suspension from the practice of law, with the entire suspension stayed on the conditions that Respondent (a) submit to an OLAP evaluation and cooperate fully with its terms and all treatment recommendations, and (b) commit no further misconduct.

{¶5} Based upon the parties' stipulations and evidence presented at the hearing, 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 as discussed below, the panel believes that the appropriate sanction is a one-year suspension from the practice of law, with the final six months stayed, and that conditions be placed on Respondent's reinstatement and the stayed portion of the suspension.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent was present at the hearing and represented by Robert P. DeSanto. Michelle R. Bowman appeared on behalf of Relator. Respondent testified at the hearing, as did Respondent's partners in the law firm of Mason, Mason & Kearns, Josiah Mason, who is Respondent's father, and Joseph Kearns.

{¶7} This case consists of two counts. Count I involves Respondent's criminal conviction, following an Alford¹ plea, of solicitation in violation of R.C. 2907.24(A)(1), a misdemeanor of the third degree. Count II involves a consensual sexual relationship between Respondent and a client whom he was representing in a divorce matter.

{¶8} The panel adopts the agreed stipulations of fact and incorporates them herein as if fully rewritten.

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

{¶9} Respondent was admitted to the practice of law in Ohio on May 8, 1989 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

Count I—Respondent’s Criminal Conviction

{¶10} On April 4, 2016, the Ashland Police Department filed a five-count criminal complaint against Respondent in the Ashland Municipal Court, *State of Ohio v. Thomas Mason*, Case No. 2016CRB-00417.

{¶11} In the complaint, Respondent was charged with five counts: (a) soliciting, a misdemeanor of the third degree; (b) possession of criminal tools, a misdemeanor of the third degree; (c) intimidation of a witness, a misdemeanor of the first degree; (d) obstructing justice, a misdemeanor of the fourth degree; and (e) falsification, a misdemeanor of the first degree.

{¶12} Count A of the criminal complaint alleged that Respondent engaged in sexual activity for hire on three occasions between May 29, 2015 and June 25, 2015. The allegations in the criminal complaint arose from a sting operation conducted by local law enforcement in the summer of 2015.

{¶13} The circumstances leading up to Respondent’s criminal charges involved Respondent answering a Craigslist advertisement. Respondent contends that, unbeknownst to him, the woman whom he met and thereafter engaged in what he believed to be a consensual dating relationship was actually a prostitute.

{¶14} On December 8, 2016, Respondent entered an Alford plea to Count A, soliciting, a third degree misdemeanor, in violation of R.C. 2907.24(A)(1), in return for the dismissal of the remaining four counts of the criminal complaint.

{¶15} The court, as noted in its entry, conducted a Crim. R. 11 colloquy with Respondent and determined that he “rationally and intelligently concluded that his interests require entry of a

plea of guilty, notwithstanding his belief that he is innocent.” Further, the court found “the record contains strong evidence of actual guilt and that the defendant’s plea is motivated either by a desire to seek a lesser penalty or a fear of the consequences of a jury trial, or both.” *State of Ohio v. Thomas Mason*, Case No. 2016CRB-00417.

{¶16} At sentencing, the court imposed a \$500 fine plus costs of the proceeding.

{¶17} Although Respondent admitted in the stipulations that he had no business placing himself in the situation that led to the criminal charges being brought against him, he clarified during the conduct hearing, in response to questioning by the Relator, that his stipulation to a violation of Prof. Cond. R. 8.4(h) did not pertain to the conduct alleged in Count I:

Q. And you would agree that this – that your conduct in that matter violates Rule of Professional Conduct 8.4(h)?

A. You know, I -- you know, I’m sworn to tell the truth. And when you ask me whether that particular complaint and what occurred violates the Rules of Professional Conduct, I would say no.

Hearing Tr. 31.

{¶18} When questioned further by his own counsel and by members of the panel, Respondent reiterated his belief that his conduct, with regard to the criminal matter, did not violate Prof. Cond. R. 8.4(h). Hearing Tr. 31-34. Moreover, he maintained that he was innocent of the criminal charges, despite his guilty plea and the finding of the trial court that the record contained strong evidence of actual guilt. Hearing Tr. 36-37. He denied that he paid for sex as alleged in Stip. Ex. 2, a copy of the criminal complaint, which stated that money had been exchanged on three occasions, in the amount of \$80 on two occasions and \$50 on the third occasion. Respondent indicated that these accusations were false and were made against him because of a detective’s desire to get back at him for his “tough” cross-examinations of the detective in other cases. Hearing Tr. 57-60. He also insinuated that the woman he was accused of soliciting, who was

acting as a confidential informant for the police department, had lied about the matter for her own benefit. Hearing Tr. 60. He asserted that he pled guilty to the criminal charge of soliciting only to avoid negative publicity. Hearing Tr. 61. Respondent also testified that he was addicted to Nuvigil, a prescription medication that he takes for a sleep disorder, and that “there was some question of whether or not [the medication] had anything to do with these violations,” but “cannot say if they did or didn’t.” Hearing Tr. 49. To summarize, Respondent attempted to minimize the incident, accepted little or no responsibility for his own criminal conduct, and blamed others. The only remorse he demonstrated was in regard to his own embarrassment and public humiliation.

Count II—Shreve Matter

{¶19} As a result of the criminal investigation giving rise to the allegations in Count I, the Attorney General’s office, acting as special assistant prosecuting attorney, provided Relator with electronic communications indicating a sexual relationship between Respondent and his client, Melissa Shreve, whom he represented in a divorce matter.

{¶20} On or about October 9, 2014, Shreve contacted Respondent’s law firm for legal representation in a divorce matter. She spoke to Respondent via telephone and on that same date, respondent agreed to handle her divorce.

{¶21} Shreve did not sign a fee agreement, nor did she pay a retainer.

{¶22} Although Respondent sent Shreve an invoice for legal services, Respondent was not paid, and stipulated that he would not attempt to collect fees for his legal representation of Shreve.

{¶23} Respondent had never met Shreve before he began representing her in October 2014.

{¶24} In or about late October, Respondent visited Shreve at her residence to review and discuss paperwork relating to her divorce.

{¶25} A few days later, Respondent and Shreve engaged in a consensual sexual relationship.

{¶26} Thereafter, Respondent and Shreve had sex on multiple occasions during October and November 2014.

{¶27} Between at least January 22, 2015 and March 5, 2015, Respondent and Shreve exchanged more than 300 short message service (SMS) or text messages, many of which contained sexually explicit language and innuendos.

{¶28} On February 19, 2015, Respondent filed a complaint for divorce on behalf of Shreve.

{¶29} Respondent represented Shreve throughout the pendency of her divorce litigation that was finalized on October 19, 2015.

{¶30} Shreve was not satisfied with some aspects of her divorce decree and continued to request that Respondent contact her ex-husband, Kennie, about unresolved property and financial issues.

{¶31} From November 17, 2015 until April 18, 2016, Respondent and Shreve continued to exchange more than 1,400 SMS or text messages discussing post-decree issues and other personal matters. Many of the texts contained sexually explicit language and innuendos.

{¶32} Subsequently, Shreve read in the newspaper that Respondent had been charged with a criminal complaint, as identified in Count I. As a result, she contacted the Ashland Police Department to report her sexual relationship with Respondent.

{¶33} Although the sexual relationship between Respondent and Shreve was consensual, Shreve was going through an emotional divorce, leaving her in a vulnerable state.

{¶34} During this same time, Respondent was experiencing his own marital discord and subsequent divorce.

{¶35} Nevertheless, it does not appear that the sexual relationship between Respondent and Shreve negatively impacted respondent's legal representation in Shreve's divorce proceeding.

Rule Violations

{¶36} The parties stipulated that Respondent's conduct violates 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]. However, it is clear from Respondent's testimony that he does not acknowledge the Prof. Cond. R. 8.4(h) violation in connection with Count I, maintains his innocence, and blames others for his conviction.

{¶37} The panel finds, by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.8(j) by engaging in a consensual sexual relationship during the time he represented a woman he had not met prior to becoming engaged as her legal representative in a divorce matter.

{¶38} Despite Respondent's assertions to the contrary, the panel also finds, by clear and convincing evidence, that Respondent's conduct in both Count I and Count II violates Prof. Cond. R. 8.4(h), and that such conduct, as it relates to Count I, is not specifically prohibited by another disciplinary rule; and as it relates to Count II (sexual relationship with a vulnerable client, coupled with sexually explicit text messages over the course of more than a year while continuing to represent the client in a divorce matter) is so egregious as to warrant an additional finding that it

adversely reflects on the lawyer's fitness to practice law. *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, ¶21.

AGGRAVATION, MITIGATION, AND SANCTION

Aggravating Factors

{¶39} The parties stipulated to the following mitigating factors as listed in Gov. Bar R. V, Section 13(C):

- *Absence of a prior disciplinary record*—Respondent was admitted to the practice of law on May 8, 1989 and has no record of prior discipline.
- *Cooperative attitude toward the proceedings*—Respondent fully cooperated with the disciplinary investigation of this matter and has demonstrated cooperation with the board and relator in all proceedings subsequent to the filing of the formal complaint.
- *Good character or reputation*—Respondent submitted three letters from individuals attesting to his good character and competency as an attorney. The sentiments expressed in the letters submitted by Respondent's father and law partner, Josiah Mason, and his law partner, Joseph Kearns, were reiterated in their testimony before the panel. Hearing Tr. 84-98; Stip. Ex. 10.
- *Imposition of other penalties or sanctions*—Respondent was found guilty of soliciting, a third-degree misdemeanor, pursuant to an Alford plea in the Ashland County Municipal Court. The court imposed a \$500 fine, plus costs of the proceeding.

{¶40} Respondent also testified that he was addicted to Nuvigil, a drug that had been prescribed for his alleged sleep disorder, and that just two weeks prior to the hearing, he had reached out to OLAP and to his family doctor to address the addiction. Hearing Tr. 67-71. Although there is no evidence that this addiction contributed to his misconduct, Respondent's testimony forms the basis for the panel's recommendation, set forth below, that he undergo an OLAP evaluation prior to being permitted to resume the practice of law.

Mitigating Factors

{¶41} Relator and Respondent stipulated to the following aggravating factors as listed in Gov. Bar R. V, Section 13(B):

- *A dishonest or selfish motive*—Respondent engaged in sexual activity with his client while handling her divorce representation in order to satisfy his own selfish and personal interests.
- *Multiple offenses*—Respondent was charged with five misdemeanor criminal counts. Subsequent to a plea agreement, Respondent entered an Alford plea to Count A, soliciting, a third-degree misdemeanor. The remaining criminal counts were dismissed. During the criminal investigation, it was discovered that Respondent was involved in a consensual sexual relationship with a client while representing her in a divorce proceeding.
- *Vulnerability of and resulting harm to the victim of his misconduct*—Respondent engaged in a sexual relationship with his client while representing her in a contentious and emotional divorce proceeding.

{¶42} The panel finds that Respondent’s refusal to acknowledge the wrongful nature of his conduct, as set forth in ¶¶17-18, *supra*, constitutes an additional aggravating factor pursuant to Gov. Bar. R. V, Section 13(B)(7). As the Supreme Court stated in *Disciplinary Counsel v. Forbes*, 122 Ohio St.3d 171, 175, 2009-Ohio-2623:

[A] disciplinary proceeding is not an appropriate forum in which to collaterally attack a criminal conviction.” [citation omitted]. The judgment entries of respondent’s convictions conclusively establish his guilt of the charged offenses [citation omitted]. And to the extent that respondent attempts to minimize his culpability, he fails to acknowledge it and thereby exhibits the aggravating feature set forth in [former] BCGD Proc. Reg. 10(B)(1)(g).

Sanction

{¶43} When imposing sanctions for attorney misconduct, the Supreme Court of Ohio considers relevant factors including the ethical duties the lawyer violated, the applicable aggravating and mitigating factors, any other relevant factors, and sanctions imposed in similar

cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743; *Ashtabula Cty. Bar Assn. v. Brown*, 151 Ohio St.3d 63, 2017-Ohio-5698.

{¶44} 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.² The parties also noted, however, that, while some of Respondent's misconduct in the divorce matter was similar to those of attorneys who received public reprimands, his sexually explicit texts to his client over the course of a year and a half during and after his representation of the client in her divorce, together with his criminal conviction for solicitation, distinguishes this case from the aforementioned cases, and warrants a greater sanction. The panel agrees.

{¶45} In their joint brief on sanctions, Relator and Respondent compared Respondent's conduct to that of the respondent in *Disciplinary Counsel v. Moore*, 101 Ohio St. 3d 261, 2004-Ohio-734. Moore was suspended for one year, fully stayed, with conditions that he be placed on two years' probation and continue treatment and counseling approved by OLAP. Moore made unsolicited and inappropriate sexual comments to a client while representing her in a traffic offense and engaged in sexual relations with another client while representing her in a child custody case. The Supreme Court found that Moore had no prior disciplinary record, cooperated fully in the disciplinary proceedings and presented evidence of good character. The Court also found Moore's expressions of sorrow and regret to have some mitigating effect. Unlike Moore, however, Respondent was convicted of a crime, and fails to acknowledge the wrongful nature of his criminal conduct. Rather than showing remorse for his wrong-doing in the criminal matter, he blames

² 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.

others for his conviction. For that reason, the panel believes that Respondent's conduct warrants an actual suspension.

{¶46} The case of *Cleveland Metro. Bar Assn. v. Sleibi*, 144 Ohio St.3d 257, 2015-Ohio-2724, involved violations of Prof. Cond. R. 1.8(j) and 8.4(h). Sleibi engaged in sexual relations with four clients and sent sexually explicit text messages to at least three of the clients. The Supreme Court found aggravating factors of dishonest or selfish motive, pattern of misconduct, multiple offenses, and harm to multiple clients, and mitigating factors of no prior discipline, cooperative attitude, evidence of good character and an underlying mental health disability. Sleibi was suspended for two years with six months stayed on conditions.

{¶47} In the recent case of *Ohio State Bar Assn. v. Jacob*, 150 Ohio St. 3d 162, 2017-Ohio-2733, the Supreme Court suspended Jacob for two years with the second year stayed on condition that he commit no further misconduct. Jacob was a municipal court judge who was found guilty of five misdemeanors: three counts of solicitation (soliciting at least three women to engage in sexual relations for hire), and two counts of falsification (amending a charge without the city prosecutor's presence or consent, and signing and journalizing an entry that falsely indicated the prosecutor had authorized the charge). Jacob's convictions resulted in findings that he violated Prof. Cond. R. 8.4(h), in addition to Jud. Cond. R. 1.2 (requiring a judge to act at all times in a manner that promotes public confidence in the independence integrity and impartiality of the judiciary and to avoid impropriety and the appearance of impropriety), Prof. Cond. R. 8.4(b) (an illegal act that reflects adversely on a lawyer's honesty and 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). Like Respondent, Jacob presented mitigating factors, including no prior discipline, a cooperative attitude toward the disciplinary

proceeding, demonstration of good character and reputation, and a criminal sentence for his misconduct. Also like Respondent, Jacob's aggravating factors included a selfish motive (sexual gratification), a pattern of misconduct, multiple offenses, and a refusal to acknowledge the wrongful nature of some of his misconduct.

{¶48} Although Respondent's conduct and aggravating and mitigating factors are similar to those in *Sleibi* and *Jacob*, Respondent's conduct affected only one client, as opposed to four in *Sleibi*. His criminal activity involved only one individual rather than multiple individuals as in *Jacob*, and the heightened concern that existed because of Jacob's position as an elected official does not exist in this case. Accordingly, the panel believes that a lesser sanction will serve the primary purpose of protecting the public.

{¶49} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for one year, with the final six months stayed. As a condition of reinstatement, the panel recommends that Respondent be required to provide evidence that he has submitted to a comprehensive OLAP evaluation and provide the results of that evaluation. The stayed portion of the suspension shall be conditioned on (a) Respondent's compliance with any OLAP contract and treatment or counseling recommendations resulting from the OLAP evaluation, and (b) Respondent engaging in no further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on August 3, 2018. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Thomas Locke Mason, be suspended from the practice of law in Ohio for one year, with the final six months stayed. As a condition of reinstatement, the panel recommends that Respondent be required to provide

evidence that he has submitted to a comprehensive OLAP evaluation and provide the results of that evaluation. The stayed portion of the suspension shall be conditioned on (1) Respondent's compliance with any OLAP contract and treatment or counseling recommendations resulting from the OLAP evaluation, and (2) Respondent engaging 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 findings of fact, conclusions of law, and recommendation as that of the Board.

A handwritten signature in black ink, appearing to read "Richard A. Dove", is written over a horizontal line. The signature is stylized and cursive.

RICHARD A. DOVE, Director