

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1748 Disciplinary Docket No. 3
Petitioner :
v. : No. 103 DB 2011
MICHAEL THOMAS TOOLE, : Attorney Registration No. 44361
Respondent : (Luzerne County)

ORDER

PER CURIAM:

AND NOW, this 25th day of November, 2014, there having been filed with this Court by Michael Thomas Toole his verified Statement of Resignation dated September 18, 2014, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of Michael Thomas Toole is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania retroactive to November 10, 2011; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

Mr. Justice Stevens did not participate in the consideration or decision of this matter.

A True Copy Patricia Nicola
As Of 11/25/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1748 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 103 DB 2011
v.	:	
	:	Attorney Registration No. 4361
MICHAEL THOMAS TOOLE	:	
Respondent	:	(Luzerne County)

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1748 Disciplinary Docket No. 3
Petitioner	:	
	:	
v.	:	No. 103 DB 2011
	:	
MICHAEL THOMAS TOOLE	:	Attorney Registration No. 44361
Respondent	:	(Luzerne County)

RESIGNATION STATEMENT UNDER RULE 215, PA. R.D.E.

I, Michael Thomas Toole, hereby resign from the practice of law in the Commonwealth of Pennsylvania in conformity with Rule 215 of the Pennsylvania Rules of Disciplinary Enforcement, (hereafter "Pa.R.D.E.") and further state as follows:

COUNT 1: VOLUNTARY RESIGNATION

1. I was admitted to the Bar of the Commonwealth of Pennsylvania on November 12, 1985.
2. I desire to resign from the Bar of the Commonwealth of Pennsylvania.
3. This resignation is freely and voluntarily rendered.
4. I am not being subjected to coercion or duress.
5. I am fully aware of the implications of submitting this resignation, including the fact it is irrevocable, and that I can only apply for reinstatement to the practice of law pursuant to the provisions of Pa.R.D.E. 218(b).
6. I am presently without representation, having been given a full and fair opportunity to obtain counsel in connection with these matters.

7. I am aware that the matters which were the subject of my criminal prosecution in the United States District Court for the Middle District of Pennsylvania, docketed to No. 3:09-CR-385, are also the subject of an investigation by the Office of Disciplinary Counsel, which matter is still pending and will be concluded by the filing of this Resignation Statement.

8. In connection with my federal prosecution, I pled guilty to the following:

Count 1 - Corrupt Receipt of Reward for Official Action Concerning Program Receiving Federal Funds in violation of 18 U.S.C. § 666(a)(1)(B) (See the Superseding Information attached hereto as "Exhibit A"); and

Count 2 - Making and Subscribing a False Individual Tax Return in violation of 26 U.S.C. § 7206(1) (See Count 2 of the Information attached hereto as "Exhibit B"); (It should be noted that Count 1 of this Information was dismissed by the Court upon request of the U.S. Attorney's Office because the type of honest services fraud allegedly committed by me did not constitute a valid nor viable criminal offense based on the United States Supreme Court rulings in *Skilling v. United States*, 130 S.Ct. 2896 (2010); *Black v. United States*, 130 S.Ct. 2963 (2010); and *Weyhrauch v. United States*, 130 S.Ct. 2971 (2010)).

9. On April 8, 2011, I received a sentence of imprisonment of thirty (30) months on each count, to be served concurrently, and was ordered to pay a fine in the amount of \$2,500 and an assessment for costs in the amount of \$100 on each count. The Court also ordered that upon my release from imprisonment, I be placed on supervised release for a term of three (3) years (See the Amended Judgment in a Criminal Case attached as "Exhibit C"). There was no restitution owed, and prior to sentencing, I voluntarily paid all income taxes, penalties and interest owed to the Internal Revenue Service without the filing of any other legal or civil proceedings. The \$5,000 fine and \$200 assessment for costs

were also paid in full shortly after my sentence was imposed.

10. I know and acknowledge that my criminal conviction, in and of itself, constitutes an independent basis for discipline pursuant to Pennsylvania Rule of Disciplinary Enforcement 203(b)(1).

11. Having previously admitted my criminal misconduct in the aforesaid criminal proceedings, I again admit that the facts upon which this disciplinary investigation is predicated are true.

12. I am submitting my resignation because I know that I cannot successfully defend against charges predicated upon the conduct under investigation, which conduct is in violation of Rules of Professional Conduct 8.4(b) involving criminal conduct.

13. Although I am respectfully requesting consideration concerning the effective date of my disbarment, which request is hereinafter set forth in Count 2, I am fully aware that the Supreme Court of Pennsylvania will decide and establish the effective date as the Court deems appropriate under the circumstances.

14. I am hereby unconditionally submitting my resignation from the Bar of the Commonwealth of Pennsylvania, without regard to whatever effective date is select for my disbarment.

WHEREFORE, I respectfully request that my resignation from the Bar of the Commonwealth of Pennsylvania be accepted.

COUNT 2: EFFECTIVE DATE OF DISBARMENT

15. On December 2, 2009, the criminal Information against me and my written Plea Agreement thereto were filed in the United States District Court for the Middle District of Pennsylvania to Docket No. 3:09-CR-385.

16. On December 3, 2009, an Order of the Supreme Court of Pennsylvania was

filed at No. 336 Judicial Administration Docket, relieving me of any and all judicial and administrative responsibilities as a Judge of the Court of Common Pleas of Luzerne County.

17. On December 29, 2009, in accordance with my Plea Agreement to the aforesaid criminal Information, I entered a guilty plea before the United States District Court for the Middle District of Pennsylvania.

18. On December 30, 2009, another Order was entered by the Supreme Court of Pennsylvania, again filed at No. 336 Judicial Administration Docket, terminating my salary and benefits as a Judge.

17. Since my removal from the bench in December of 2009, I have never again engaged in the practice of law.

18. On May 2, 2011, I began serving my 30-month term of imprisonment.

19. On November 10, 2011, six (6) months into my two and one half (2½) year term of imprisonment, the Supreme Court of Pennsylvania issued an Order placing me on temporary suspension from the practice of law.

20. As a result of my voluntary resignation from the Bar of the Commonwealth of Pennsylvania, I am aware that an effective date must be set for my disbarment.

21. Based on the foregoing, and in consideration of the fact that I have not practiced law since the end of 2009, I respectfully submit there are several dates which could possibly be selected as the effective date of my disbarment: (1) the date on which I was effectively removed from the bench by the Supreme Court, which was December 3, 2009; (2) the date on which my judicial salary and benefits were terminated by the Supreme Court, which was December 30, 2009; (3) the date on which I began to serve my term of imprisonment, which was May 2, 2011; (4) the date of my temporary suspension by the

Supreme Court, which was November 10, 2011; or (5) a date in the near future when an Order of the Supreme Court is eventually entered in this matter.

22. I understand that in accordance with the provisions of Pa.R.D.E. 218(b), I am prohibited from even applying for reinstatement to the practice of law until the expiration of at least five years from the effective date of disbarment, and I am also aware of the length of time it generally takes thereafter to complete the process and secure a decision on a Petition for Reinstatement.

23. In light of the aforesaid time-frames, I understand that the effective date of my disbarment will establish the minimum amount of time mandated by the Rules of Disciplinary Enforcement before which I am precluded from seeking reinstatement.

24. I am also aware that it is possible that I may never be granted reinstatement.

25. I respectfully request that the effective date of my disbarment be made retroactive to December 30, 2009, which was the date on which the Supreme Court officially ended my legal position as Judge, and after which I never practiced law again.

26. In the alternative, I respectfully request that the effective date of my disbarment be made retroactive to May 2, 2011, the date on which I began to serve my term of imprisonment, which would mean I will not have practiced law for almost six and one half (6½) years before I am even permitted to seek reinstatement.

27. I understand that in most cases, if a retroactive effective date is set for disbarment, it is generally the date of temporary suspension by the Supreme Court, however, making my disbarment retroactively effective to November 10, 2011 will mean that I will not have practiced law for almost (7) years before I am even permitted to begin the reinstatement process.

28. Even though I may never gain reinstatement to the Bar of the Commonwealth of Pennsylvania, I respectfully request that my effective date be established at the earliest possible date that the Disciplinary Board and the Supreme Court deem appropriate.

WHEREFORE, I respectfully request that a retroactive effective date be set for my voluntary resignation from the Bar of the Commonwealth of Pennsylvania.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Respectfully submitted:

9-18-14

Date

Michael T. Toole

Michael T. Toole

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	CRIMINAL NO. 3:CR-09-385
)	
v.)	(Judge Conaboy) 10-317
)	
MICHAEL T. TOOLE,)	
)	
Defendant.)	ELECTRONICALLY FILED

S U P E R S E D I N G I N F O R M A T I O N

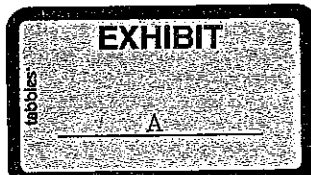
THE UNITED STATES ATTORNEY CHARGES:

Count 1

18 U.S.C. §§ 666

(Corrupt Receipt of Reward for Official Action
Concerning Programs Receiving Federal Funds)

1. At all times material to this Superseding Information, the Defendant MICHAEL T. TOOLE was an elected judge for the Luzerne County Court of Common Pleas. As an elected judge of the Court of Common Pleas for Luzerne County, defendant MICHAEL T. TOOLE was an agent of a number of government entities, including, but not limited to, the Commonwealth of Pennsylvania, the Pennsylvania Unified Judicial System, Luzerne County, the Luzerne County Court of Common Pleas and the Administrative Office of the Pennsylvania Courts, a government agency of the Commonwealth of Pennsylvania that employed defendant MICHAEL T. TOOLE as a judge. These entities qualify as local governmental agencies under federal law and annually received federal assistance in excess of \$10,000 during a one-year period for each of the years from 2005 through 2008.



2. As a member of the Luzerne County Court of Common Pleas, MICHAEL T. TOOLE exercised discretionary decision-making authority on behalf of the Pennsylvania Unified Judicial System and the Luzerne County Court of Common Pleas and was an agent of the Commonwealth of Pennsylvania, Luzerne County, and the Administrative Office of Pennsylvania Courts. Among other discretionary decision-making activities, MICHAEL T. TOOLE issued rulings on contested motions brought by litigants.

3. From in or about the exact date being unknown, to in or about September 2008, in the Middle District of Pennsylvania, and elsewhere, the defendant,

MICHAEL T. TOOLE,

did knowingly, intentionally and corruptly accept, and agree to accept things of value as gratuities from an attorney, hereinafter referred to as PARTICIPANT #1. These things of value included multiple free uses of a New Jersey beach house. MICHAEL T. TOOLE accepted these things of value as gratuities intending to be rewarded for a discretionary decision made by MICHAEL T. TOOLE that was to the benefit of PARTICIPANT #1.

4. Specifically, in March 2006, defendant MICHAEL T. TOOLE presided over a proceeding to select a neutral arbitrator for an uninsured/underinsured motorist arbitration in which PARTICIPANT #1 served as plaintiff's attorney. Defendant MICHAEL T. TOOLE, through use of an intermediary, secretly asked PARTICIPANT #1 to tell the defendant MICHAEL T. TOOLE the name of the person PARTICIPANT #1 wished to serve as the neutral arbitrator in the

arbitration. PARTICIPANT #1, through use of the intermediary, told the defendant MICHAEL T. TOOLE the name of the person PARTICIPANT #1 wished to be appointed. Thereafter, during a judicial proceeding in the presence of counsel for all of the litigants, the defendant MICHAEL T. TOOLE appointed the neutral arbitrator requested by PARTICIPANT #1 under the guise that the appointment was made impartially. The award from the arbitration was approximately one million dollars.

5. Thereafter, defendant MICHAEL T. TOOLE accepted things of value as gratuities, including multiple free uses of a New Jersey beach house, intending to be rewarded for the discretionary decision made by MICHAEL T. TOOLE that was to the benefit of PARTICIPANT #1.

In violation of Title 18, United States Code, § 666(a)(1)(B).

Peter J. Smith / MAC

PETER J. SMITH
UNITED STATES ATTORNEY

10 / 17 / 2010

DATE

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) NO. *3:09-CR-385*
)
 v.)
)
 MICHAEL T. TOOLE,)
)
 Defendant.)

I N F O R M A T I O N

THE UNITED STATES ATTORNEY CHARGES:

FILED
SCRANTON
DEC 02 2009
PER *[Signature]*
DEPUTY CLERK

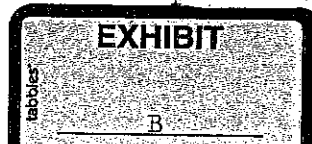
Count 1
18 U.S.C. §§ 1343, 1346
(Honest Services Wire Fraud)

1. From in or about July 2005, the exact date being unknown, to in or about September 2008, in the Middle District of Pennsylvania and elsewhere, the defendant,

MICHAEL T. TOOLE,

devised and intended to devise a material scheme and artifice to defraud the citizens of the Commonwealth of Pennsylvania, the Judiciary of the Commonwealth of Pennsylvania, and litigants before the Luzerne County Court of Common Pleas of their right to the honest services of MICHAEL T. TOOLE, as a judge of the Court of Common Pleas for Luzerne County, performed free from deceit, favoritism, bias, self-enrichment, self-dealing, concealment, and conflict of interest.

2. At all times material to this Information, the defendant MICHAEL T. TOOLE was an elected judge of the Court of Common Pleas of Luzerne County. Defendant MICHAEL T. TOOLE owed a fiduciary duty to the public not to realize personal financial gain through his office other than compensation provided by law, to refrain from



conflicts of interest or seeking or accepting improper influence and to file a truthful and complete annual statement of financial interests, reporting certain direct and indirect sources of income and gifts. The fiduciary duty owed by the defendant was imposed by law. The sources of the fiduciary duty included, but were not limited to: Article 5, §§ 17(b) and 17(c) of the Pennsylvania Constitution, the Pennsylvania Code of Judicial Conduct and Orders of the Pennsylvania Supreme Court.

3. During the time period alleged in this Information, defendant MICHAEL T. TOOLE corruptly abused his position as judge for the Court of Common Pleas for Luzerne County and defrauded the citizens of the Commonwealth of Pennsylvania, the Judiciary of the Commonwealth of Pennsylvania, and litigants before the Luzerne County Court of Common Pleas of their right to the honest services of MICHAEL T. TOOLE. One way the defendant MICHAEL T. TOOLE corruptly abused his position was by concealing an ongoing financial relationship with an attorney, hereinafter referred to as PARTICIPANT #1, who represented parties in civil litigation matters pending before defendant MICHAEL T. TOOLE. During the time period alleged in this Information, defendant MICHAEL T. TOOLE accepted things of value from PARTICIPANT #1, including multiple free uses of a New Jersey beach house controlled by PARTICIPANT #1. The defendant MICHAEL T. TOOLE accepted free use of the beach house during the summer season when MICHAEL T. TOOLE'S free use of the house resulted in his receipt of a benefit worth thousands of dollars.

4. At all times material to this Information, judges of the Court of Common Pleas for Luzerne County facilitated arbitration hearings designed to resolve claims of plaintiffs attempting to recover damages from their insurance providers under the uninsured/underinsured motorist provisions of their insurance policies. As part of the arbitration process, the plaintiff's attorney selected an arbitrator, commonly referred to as "the plaintiff's arbitrator," and the insurance company defendant's attorney selected an arbitrator commonly known as "the defense arbitrator." The plaintiff and the defendant were also encouraged to agree upon an impartial third arbitrator, known as "the neutral arbitrator" who, in many instances, had the "neutral" deciding vote in the outcome of the arbitration, including the amount of money damages awarded, if any. If the plaintiff and the defendant could not agree upon an impartial neutral arbitrator, they were required to file a motion with the Luzerne County Court of Common Pleas requesting a judge of the Court of Common Pleas to appoint an impartial neutral arbitrator.

5. After defendant MICHAEL T. TOOLE's first free use of PARTICIPANT #1's beach house, defendant MICHAEL T. TOOLE, in his capacity as a judge for the Court of Common Pleas for Luzerne County, exercised discretionary decision-making authority in an uninsured/underinsured motorist arbitration proceeding in which PARTICIPANT #1 acted as attorney for a plaintiff. In March 2006, defendant MICHAEL T. TOOLE presided over a proceeding to select a neutral arbitrator for an uninsured/underinsured motorist

arbitration in which PARTICIPANT #1 served as plaintiff's attorney. Defendant MICHAEL T. TOOLE, through use of an intermediary, secretly asked PARTICIPANT #1 to tell the defendant MICHAEL T. TOOLE the name of the person PARTICIPANT #1 wished to serve as the neutral arbitrator in the arbitration. PARTICIPANT #1, through use of the intermediary, told the defendant MICHAEL T. TOOLE the name of the person PARTICIPANT #1 wished to be appointed. Thereafter, during a judicial proceeding in the presence of counsel for all of the litigants, the defendant MICHAEL T. TOOLE appointed the neutral arbitrator requested by PARTICIPANT #1 under the guise that the appointment was made free from deceit, bias, favoritism, self-enrichment, and conflict of interest. In fact, however, the appointment was corrupt, deceptive, and biased and was made in a manner that undermined the fairness and integrity of the arbitration process since defendant MICHAEL T. TOOLE had previously received things of value from PARTICIPANT #1, did not recuse himself from the matter, did not disclose to the other parties to the litigation his receipt of things of value from PARTICIPANT #1, and did not disclose to the other parties in the litigation his secret ex-parte communication with PARTICIPANT #1.

6. In approximately November 2007, the parties jointly filed a motion before defendant MICHAEL T. TOOLE to force the arbitrators to render an opinion in the case. Despite his receipt of things of value from PARTICIPANT #1, defendant MICHAEL T. TOOLE once again did not recuse himself from ruling on the motion, did not disclose his receipt of things of value from PARTICIPANT #1, and did not

disclose his previous secret and improper ex-parte communication with PARTICIPANT #1. Defendant MICHAEL T. TOOLE exercised his discretion to act and issued an order directing the arbitrators to rule upon the case within a limited period of time.

7. It was further a part of the scheme and artifice to defraud that, in the summer of 2008, defendant MICHAEL T. TOOLE and PARTICIPANT #1 took affirmative action to conceal the fact that defendant MICHAEL T. TOOLE had received free use of PARTICIPANT #1'S beach house and to create a false impression that the defendant MICHAEL T. TOOLE had paid for use of the beach house.

8. For the purpose of executing the above-described material scheme and artifice to defraud and to deprive the citizens of the Commonwealth of Pennsylvania, the Judiciary of the Commonwealth of Pennsylvania, and litigants before the Luzerne County Court of Common Pleas of their right to the honest services of MICHAEL T. TOOLE, defendant MICHAEL T. TOOLE transmitted and caused to be transmitted by means of wire communication in interstate commerce writings, signals and sounds, namely, materially false statements of financial interest that were filed with the Administrative Office of the Pennsylvania Courts, through use of the Internet. For example, a statement of financial interests filed by defendant Michael Toole on April 28, 2006, was filed electronically, in interstate commerce, through use of the Internet. Statements of financial interests filed by defendant MICHAEL T. TOOLE on April 28, 2006, April 30, 2007, and May 1, 2008 were all materially false to the extent that they did not identify PARTICIPANT #1, and

others, as sources of income and gifts received by defendant
MICHAEL T. TOOLE.

In violation of Title 18, United States Code, §§ 1343 and
1346.

THE UNITED STATES ATTORNEY FURTHER CHARGES:

Count Two

26 U.S.C. § 7206(1)
(Subscribing and Filing a Materially False Tax Return)

1. On or about April 18, 2008, in the Middle District of Pennsylvania and elsewhere, the defendant,

MICHAEL T. TOOLE,

a resident of Luzerne County, Pennsylvania, did willfully make and subscribe, and did cause to be made and subscribed, an IRS Form 1040, which was verified by a written declaration that it was made under the penalties of perjury, and which defendant MICHAEL T. TOOLE did not believe to be true and correct as to every material matter. That IRS Form 1040, which was prepared and signed in the Middle District of Pennsylvania and was filed with the Internal Revenue Service, reported the defendant's taxable income for the year 2006 to be \$303,808, whereas, as he then and there knew and believed, the defendant's actual taxable income for the year 2006 was materially more than that amount.

2. In 2005, defendant MICHAEL T. TOOLE referred a case to an attorney in Luzerne County, who will hereinafter be referenced as PARTICIPANT #2.

3. Following settlement of this case, defendant MICHAEL T. TOOLE accepted a cash referral fee in October of 2006 of

approximately \$30,000 from PARTICIPANT #2. Defendant MICHAEL T. TOOLE failed to report this income on his income tax return.

In violation of Title 26, United States Code, § 7206(1).



DENNIS C. MANNENSCHMIDT
UNITED STATES ATTORNEY

12-2-09

DATE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

VS.

MICHAEL T. TOOLE

CASE NUMBER: 3:CR-09-385
USM NUMBER: 67910-067

Frank W. Nocito, Esq., John R. Carroll, Esq.
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count 2 of the original Information & Count 1 of the Superseding Information.
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title/Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count Number(s)</u>
26 U.S.C. § 7206(I)	Making and Subscribing a False Individual Tax Return	4/18/2008	Count 2
18 U.S.C. § 666(a)(1)(B)	Corrupt Receipt of Reward for Official Action Concerning Program Receiving Federal Funds.	3/2006	Count 1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____.
- Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence or, mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material change in economic circumstances.

April 8, 2011
Date of Imposition of Sentence

Richard P. Conaboy

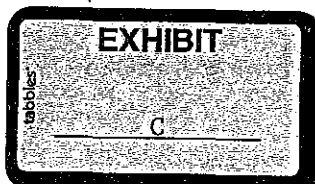
RICHARD P. CONABOY
UNITED STATES DISTRICT JUDGE

4/12/11
Date

FILED
SCRANTON

APR 12 2011

PER CT
DEPUTY CLERK



Defendant: Michael T. Toole
Case Number: 3:CR-09-385

Judgment-Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of thirty (30) months on each count , to be served concurrently.

You can appeal your conviction if you believe that your guilty plea was somehow unlawful or involuntary, or if there is some other fundamental defect in the proceedings that was not waived by your guilty plea. You also have a statutory right to appeal your sentence under certain circumstances, particularly if you think the sentence is contrary to law. With few exceptions, any notice of appeal must be filed within 14 days after sentence is imposed on you.

If you are unable to pay the cost of an appeal, you may apply for leave to appeal in forma pauperis. If you so request, the Clerk of the Court will prepare and file a notice of appeal on your behalf."

The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the Defendant participate in the Bureau of Prisons 500 hour drug and alcohol treatment Program.

The Court further recommends that the Bureau of Prisons designate a facility for the service of the Defendant's which is proximal to the Defendant's family who reside in Northeastern Pennsylvania.

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district.

- at _____ a.m./p.m. on _____.
- as notified by the U.S. Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

- before 2 p.m. on May 2, 2011.
- as notified by the United States Marshal.
- as notified by the probation office.

The defendant is to contact the United States Marshal's Office no later than three days prior to the above date to be notified of the place of confinement.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____

_____, with a certified copy of this judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: Michael T. Toole
Case Number: 3:CR-09-385

Judgment-Page 3 of 5

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. This term consists of one (1) year on Count 2 and three (3) years on Count 1 to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm, ammunition destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable).

The defendant shall comply with the requirement of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, The Bureau of Prisons, or any state sex offender registration agency in which he or she resides works, is a student, or was convicted of a qualifying offense. (Check, if applicable).

The defendant shall participate in an approved program for domestic violence. (Check, if applicable).

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached pages.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to such controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time a home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) the defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the deft's ability to pay restitution, fines or special assessments.

Additional Conditions

1) The defendant shall submit to one drug test within 15 days of commencing supervision and at least two periodic drug tests thereafter for use of a controlled substance;

2) The defendant shall cooperate in the collection of a DNA sample as directed by the probation officer, unless a sample was collected during imprisonment;

3) The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment schedule for payment of restitution, fines, or special assessment;

4) The defendant shall provide the probation officer with access to any requested financial information;

5) The defendant shall cooperate with the Internal Revenue Service in the collection of taxes due and owing;

6) The defendant shall undergo a mental health evaluation and, if recommended, the defendant shall satisfactorily complete a program of outpatient or inpatient mental health treatment;

7) The defendant shall undergo a substance abuse evaluation and, if recommended, the defendant shall satisfactorily complete a program of outpatient or inpatient substance abuse treatment;

8) The defendant shall abstain from the use and consumption of alcohol and alcoholic beverages; and

9) The defendant shall not seek nor accept any public or elective office or position of public trust.

In the event the fine is not paid in full prior to the commencement of supervised release, the defendant shall, as a condition of supervised release, satisfy the amount due in monthly installments of no less than \$100 to commence thirty (30) days after release from confinement.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____

_____ Date

U.S. Probation Officer/Designated Witness

_____ Date

Defendant: Michael T. Toole
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 200.00	\$ 5,000	\$ N/A

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245 C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. 3664(i), all non federal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS</u>	<u>RESTITUTION ORDER</u>	<u>PRIORITY OF PERCENTAGE</u>
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TOTALS	_____	_____	_____
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Restitution amount ordered pursuant to plea agreement \$ _____.

The defendant shall pay interest on restitution and fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, for offenses committed on or after September 13, 1994 but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ 200.00 due immediately, balance due
 not later than _____ or
 in accordance with C, D, E F below; or
- B Payment to begin immediately (may be combined with C, D, or F below): or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of Supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

THE COURT FINDS that the defendant has the ability to pay a fine. **IT IS ORDERED** that the defendant shall pay to the Clerk, U.S. District Court, the sum of \$5,200 consisting of a fine of \$2,500 on each count and a special assessment of \$100 on each count. The fines and special assessments are payable to the Clerk, U.S. District Court. The special assessments are due immediately. Payment of interest is waived.

During the term of imprisonment, the fine is payable every three months in an amount, after a telephone allowance, equal to 50 percent of the funds deposited into the defendant's inmate trust fund account.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.