

[J-92-2013]
IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1773 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 157 DB 2011
	:	
v.	:	Attorney Registration No. 66294
	:	
	:	(Delaware County)
	:	
PATRICK JOSEPH DONAHUE,	:	
Respondent	:	Argued: November 20, 2013

ORDER

PER CURIAM:

FILED: NOVEMBER 26, 2013

Upon consideration of the Report and Recommendations of the Disciplinary Board dated June 27, 2013, and following oral argument, it is hereby

ORDERED that Patrick Joseph Donahue is disbarred from the Bar of this Commonwealth and he shall comply with all the provisions of Rule 217, Pa. R.D.E. It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa. R.D.E.

A True Copy Patricia Nicola
As Of 11/26/2013

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1773 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 157 DB 2011
v.	:	
	:	Attorney Registration No. 66294
PATRICK JOSEPH DONAHUE	:	
Respondent	:	(Delaware County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

Following an Order of the Supreme Court referring this matter, on February 10, 2012, Office of Disciplinary Counsel filed a Petition for Discipline against Patrick Joseph Donahue. The Petition charged Respondent with violations of the Rules of Professional Conduct and Disciplinary Enforcement arising out of Respondent's criminal conviction for possession of child pornography and invasion of privacy. Respondent filed an Answer to Petition on March 6, 2012.

A disciplinary hearing was held on May 9, 2012 and July 20, 2012 before a District II Hearing Committee comprised of Chair Nicholas E. Chimicles, Esquire, and Members John F. Cordisco, Esquire, and David R. Jacquette, Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on November 2, 2012, concluding that Respondent violated the Rules as charged in the Petition, and recommending that he be disbarred retroactive to February 10, 2012.

Respondent filed a Brief on Exceptions on November 27, 2012 and requested oral argument before the Board.

Petitioner filed a Brief Opposing Exceptions on December 10, 2012.

Oral argument was held on January 17, 2013 before a three-member panel of the Board.

This matter was adjudicated by the Disciplinary Board at the meeting on January 23, 2013.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is vested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all

disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Patrick Joseph Donahue. He was born in 1961 and was admitted to practice law in the Commonwealth of Pennsylvania in 1992. He is currently on active status and maintains an office at 428 Baltimore Pike, Suite 201, Media, Delaware County PA 19063. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of Pennsylvania.

3. Respondent has no prior history of discipline.

4. On March 25, 2002, Respondent entered a plea of guilty in the Court of Common Pleas of Lackawanna County to two counts of possession of a computer depiction of a child under 18 years of age in a prohibited sexual act and two counts of photographing another person without the person's consent in a place where the person has an expectation of privacy. (ODC Exh. 4; ODC Exh. 5; N.T. May 9, 2012 p. 206)

5. On March 17, 2003, Respondent was sentenced to incarceration for six months in the Lackawanna County Prison to be served one week every four months commencing April 5, 2003. Upon completion of that portion of the sentence, Respondent was placed on parole for 18 months, 29 days, followed by consecutive 36 months' probation with credit for 90 days. (ODC Exh. 3)

6. As a result of the guilty plea, Respondent was required to comply with 42 Pa.C.S. Section 9792, *et seq.*, requiring his registration as a sexual offender. This is currently a lifetime reporting requirement. (N.T. May 9, 2012, p. 226)

7. Respondent never reported his conviction to the Disciplinary Board. (ODC Exh. 8; N.T. May 9, 2012, p. 209-210; N.T. July 17, 2012, p. 25-27)

8. At the time of his conviction in 2003, Respondent was aware of his duty to report such conviction to the Disciplinary Board as required by Pa.R.D.E. 214(a). (N.T. May 9, 2012, p. 207-208)

9. Since at least 2005, Respondent was aware that his criminal defense attorney had not reported Respondent's conviction to the Disciplinary Board. (N.T. May 9, 2012, p. 208-209)

10. Respondent's personal story is sad; it includes sexual abuse as a child and, in 1994, Respondent was diagnosed with a serious medical condition, non-Hodgkin's lymphoma. (N.T. May 9, 2012, p. 182)

11. In the period subsequent to the diagnosis and prior to his criminal actions, Respondent had bouts of depression as a result of various family issues and financial problems. (N.T. May 9, 2012, p. 188-189, 192-193)

12. At the time of the misconduct, Respondent was having financial difficulties and was looking for business opportunities. (N.T. May 9, 2012, p. 189)

13. In late 1996, Respondent began collecting pornographic images on his law office computer. Between 1996 and his arrest in 2001, Respondent collected over 100,000 images, at least 5,000 of which were images of naked children performing prohibited sexual acts. (ODC Exh. 7; ODC Exh. 13, p. 4)

14. Respondent claims that at the time he did not know that child pornography would be retrieved, yet he fully admits that the program which he installed on his computer collected pornography depicting children less than 18 years of age in prohibited sexual acts. (N.T. May 9, 2012, p. 191-192; N.T. July 20, 2012, p. 16)

15. Respondent's decision to collect pornography on his computer was at least partially a business decision that he discussed in advance with his brother and his wife. (N.T. May 9, 2012, p. 189-190, 199; N.T. July 17, 2012, p. 15)

16. A client suggested to Respondent that they start a pornographic website. Respondent intended to go into the business of providing "content" for a pornographic website. Included in the pornography was child pornography. (N.T. May 9, 2012, p. 189-191, July 20, 2012, p. 14-15)

17. This business was never realized. (N.T. May 9, 2012, p. 192)

18. Respondent was aware that his collection of pornography included the depiction of children less than 18 years of age in prohibited sexual acts. He had, at some point, sorted, edited and organized his pornography collection. He deleted all homosexual pornography and stored the child pornography on a CD-ROM labeled "Young." (ODC Exh. 7; ODC Exh. 13)

19. Respondent claims not to recall moving child pornography images to a CD-ROM labeled "Young" and further claims he never saw what was on "any of those things." (N.T. July 20, 2012, p. 17-19)

20. Respondent did not have any contact with a minor child.

21. At some point prior to his arrest on May 18, 2001, Respondent placed a hidden video camera in the bathroom of his law office. For at least several weeks prior to his arrest, he photographed females in his law office in various stages of undress while using the toilet facilities. (ODC Exh. 7; N.T. May 9, 2012, p. 196-197)

22. Respondent provided no real explanation for the camera in the law office bathroom. (N.T. May 9, 2012, p. 196) He doesn't know why he did it, and he claims

that he saw a "couple of photos," but "for the most part" it was "just a blur." (N.T. May 9, 2012, p. 197)

23. The investigation of the camera episode by the police led to the seizure of Respondent's computer and the discovery of the child pornography. (N.T. May 9, 2012, p. 198-199)

24. Since 2006, Respondent has been employed by the Law Office of Lee Herman and has performed his duties in a sufficient and trustworthy manner. (N.T. May 9, 2012, p. 44-47, 60-61, 67, 72, 75, 220)

25. The duties performed by Respondent are in the nature of paralegal responsibilities. Respondent has not signed any legal documents while working for Mr. Herman and has purposefully avoided appearing in court. (N.T. May 9, 2012, p. 37-39, 60-61, 72)

26. Respondent presented the testimony of Robert Sing, D.O. Dr. Sing has treated Respondent for approximately four years and sees him on a monthly basis. (N.T. May 9, 2012, p. 119)

27. Dr. Sing has treated Respondent for a thyroid deficiency, which is currently under control, as well as depression and general anxiety disorder associated with post traumatic stress disorder. (N.T. May 9, 2012, p. 130, 134, 135)

28. Respondent still suffers from depression but is able to function. (N.T. May 9, 2012, 134, 135)

29. Dr. Sing made no causal connection between Respondent's depression and his acts of misconduct.

30. The testimony of Dr. Steven Samuel, Ph.D., was by stipulation as set forth in his written report dated May 1, 2012. (Exh. R-1(a))

31. Dr. Samuel concluded that Respondent's criminal behavior "was not directly related to [Respondent's history of] depression but that his depression nevertheless represented a dynamic factor that was present proximal to the time of his criminal behavior and which contributed to the behavior." (Exh. R-1(a), 8)

32. Respondent presented the testimony of Lee Herman, Esquire, Han-Jolyon Lammers, Esquire, Joseph Diorio, Esquire, and Salvatore Barbuscio.

33. Mr. Herman employs Respondent at his law office and has known Respondent for approximately seven years. Mr. Herman was aware of Respondent's criminal actions as far as the child pornography conviction, but had no recollection of the invasion of privacy conviction. (N.T. May 9, 2012, p. 40-41)

34. Mr. Lammers has known Respondent for four or five years. Mr. Lammers is Respondent's landlord and they have established a friendship. (N.T. May 9, 2012, p. 50) Mr. Lammers is aware of Respondent's criminal conviction and believes that Respondent is remorseful. (N.T. May 9, 2012, p. 52-53)

35. Mr. Diorio is an attorney at the Law Office of Lee Herman and has known Respondent for approximately three years. Mr. Diorio was told by Respondent about the misconduct some two months prior to the disciplinary hearing. (N.T. May 9, 2012, p. 62) Mr. Diorio was aware of the child pornography conviction but was unaware of the invasion of privacy conviction. (N.T. May 9, 2012, p. 63)

36. Mr. Barbuscio has been the manager of the Law Office of Lee Herman for two years and knows Respondent in that capacity, and knew him for a few years prior to that time. Respondent told Mr. Barbuscio about his conviction about six to eight weeks prior to the disciplinary hearing. (N.T. May 9, 2012, p. 73)

37. Respondent testified on his own behalf.

38. Respondent admits that his conduct was inexcusable and has damaged the public perception of lawyers. (N.T. May 9, 2012, p. 233)

39. Respondent fulfilled his criminal sentence and successfully completed the probation portion of the sentence. He paid all costs and fines and completed all mandatory therapy. (N.T. May 9, 2012, p. 206-207)

40. Respondent testified that he believed that his criminal defense lawyer would report the conviction to the Disciplinary Board. (N.T. May 9, 2012, p. 208; N.T. July 20, 2012, p. 25)

41. Respondent received an annual attorney registration form in 2003 and at that time realized that his lawyer had not reported the conviction. (N.T. May 9, 2012, p.208-209)

42. Respondent researched the issue and realized that he should have reported his own conviction. (N.T. May 9, 2012, p. 209)

43. Respondent took no steps to report himself and instead registered inactive status on subsequent attorney registration forms. (N.T. May 9, 2012, p. 209-210) At that time he was living in Florida. Upon his return to Pennsylvania in approximately 2006-2007, he resumed active status. (N.T. May 9, 2012, p. 211, 212)

44. Respondent admits that he ignored the issue of reporting his conviction because he felt that his law license was the only thing he had left in his life. (N.T. May 9, 2012, p. 210)

45. Respondent admits that he was aware for at least seven years that he was deficient in reporting his conviction. He further admits that he made an inexcusable error in judgment in not reporting his conviction. (N.T. May 9, 2012, p. 210-211; N.T. July 20, 2012, p. 26)

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Disciplinary Enforcement:

1. Pa.R.D.E. 203(b)(1) – Conviction of a serious crime is an independent ground for discipline.
2. Pa.R.D.E. 214(a) – An attorney convicted of a serious crime shall report the fact of such conviction within 20 days to the Secretary of the Board.
3. Respondent failed to meet his burden of proof that he suffered from a psychiatric disorder which was a causal factor in the misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

Respondent has been convicted of multiple counts of the crimes of possession of a computer depiction of a child under 18 years of age in a prohibited sexual act and photographing another person without the person's consent in a place where the person had an expectation of privacy. The Board's responsibility is to recommend the appropriate level of discipline to address this misconduct. As there is no *per se* discipline in Pennsylvania for particular types of misconduct, the Board must analyze the underlying conduct in the context of the aggravating and mitigating circumstances in order to reach an appropriate recommendation. Office of Disciplinary Counsel v. Chung, 695 A.2d 405 (Pa. 1997). We must consider, *inter alia*, the events surrounding the criminal conviction, the gravity and nature of the misconduct, and the presence of aggravating or mitigating factors.

Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999); Office of Disciplinary Counsel v. Gwendolyn Harmon, 72 Pa. D&C 4th 115 (2004).

While Respondent had no direct contact with any minor, his obtaining and possessing illegal child pornography in the form of at least 5,000 images facilitated the exploitation of children. Respondent's stated purpose and decision to collect pornography, including child pornography, was based on a business decision to provide content for a pornographic website. Respondent discussed this decision with his wife and brother. Despite his claims to the contrary, Respondent was aware that his collection of pornography included child pornography, as the child pornography was stored on a CD-ROM labeled "Young."

Additionally, Respondent placed a hidden camera in the bathroom of his law office and captured images of females in his law office bathroom in various stages of undress while using the bathroom facilities. For these crimes, Respondent was sentenced to incarceration for six months and probation for 36 months. Respondent was required to register as a sexual offender pursuant to 42 Pa.C.S. Section 9792.

Respondent failed to report his conviction in 2003 to the Disciplinary Board as required pursuant to Pa.R.D.E. 214(a). Even after Respondent became aware in 2005 that his criminal defense attorney had not reported him, Respondent took no steps to fulfill his obligation under the Rules of Enforcement. Instead, Respondent chose to take inactive status from the practice of law for several years, and then resumed active status upon his return to Pennsylvania. For at least seven years, Respondent was fully aware that he was deficient in reporting his conviction but took no action. In fact, Respondent never reported his conviction, as this matter came to the attention of Petitioner by the complaint of an unidentified person.

Disciplinary sanctions are intended to protect the public from unfit attorneys and maintain the integrity of the legal system. Office of Disciplinary Counsel v. Stern, 526 A.2d 1180 (Pa. 1987). There is no doubt that the Rules of Disciplinary Enforcement mandate that discipline be imposed in this matter; Petitioner and Respondent differ as to the degree of discipline.

Respondent sought mitigation under Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), claiming that his depression had a causal link to his criminal actions. However, we find that Respondent did not meet the standard for mitigation pursuant to Braun, which establishes that a psychological disorder, if proven to be a causal factor of the misconduct, will be considered as a mitigation factor. Here, the lack of a specific diagnosis and failure to establish a causal connection to the misconduct preempts the application of this standard. Respondent offered the testimony and report of two witnesses on this topic. The first, Dr. Robert Sing, D.O., was not qualified to testify beyond the fact the depression was reported by Respondent and the physiological reasons for that depression. Dr. Sing had no training or education as a psychologist or psychiatrist and would not be able to establish a causal link between depression and criminal actions.

Respondent also presented the expert report of Steven Samuel, Ph.D., a licensed psychologist, who did not attend the hearing. Review of Dr. Samuel's report shows that he concluded that Respondent's criminal behavior "was not directly related to [Respondent's history of] depression but that his depression nevertheless represented a dynamic factor that was present proximal to the time of his criminal behavior and which contributed to the behavior." (Report of Dr. Samuel, p. 8) This opinion does not rise to the level required for mitigation as set forth in Braun, which requires clear evidence that the disability is a causative factor. His statement that Respondent's criminal behavior "was

not directly related to [Respondent's history of] depression" seemingly precludes a finding of clear evidence of a causative factor.

Respondent seeks a public censure with probation, or in the alternative, a stayed suspension for one or two years with probation. Respondent's position relies primarily on his therapy, sexual issues and depression, as well as his lack of misconduct since 2002. Petitioner seeks disbarment, relying on the undisputed fact that Petitioner committed known criminal offenses dependent upon gross debasement of children in pornography and the invasion of privacy and victimization of women in his law office. The Hearing Committee recommended disbarment.

Having reviewed the parties' recommendations as well as the Committee's Report and Recommendation, the Board concludes that disbarment is the appropriate discipline.

There are several cases regarding criminal conviction for sexual offenses involving minors that provide guidance on the appropriate level of discipline. In Office of Disciplinary Counsel v. Christie, 639 A.2d 782 (Pa. 1994), the respondent entered a plea of guilty to 13 misdemeanor sex offenses involving two minors. Mr. Christie offered substantial evidence that he was suffering from a psychiatric disorder at the time of his misconduct. The Court reviewed the evidence and found that he met the Braun standard, and thus a five-year suspension was appropriate in light of the mitigation.

Similarly, in the matter of Office of Disciplinary Counsel v. Malone, No. 131 DB 2004 (Pa. 2006), the respondent entered a plea of *nolo contendere* to the offense of criminal attempt to commit involuntary deviate sexual intercourse. The underlying acts involved the use of internet chat rooms to discuss and set up meetings with teen and pre-teen females. Respondent reported his criminal conviction and presented compelling

evidence from two psychologists that he suffered from a personality disorder that caused his misconduct meeting the Braun standard. Respondent was suspended for five years, retroactive to the temporary suspension.

In the recent matter of Office of Disciplinary Counsel v. Robert V. Mitchell, No. 73 DB 2009 (Pa. Aug. 2, 2012), the respondent was convicted of one count of possession of material depicting the sexual exploitation of a minor, a felony. Mr. Mitchell possessed some 600 child pornography images but did not have contact with minors. Mr. Mitchell did not present evidence to establish Braun, but did present other mitigating evidence in the form of compelling character testimony, remorse, and cooperation with Office of Disciplinary Counsel. The Court imposed a suspension of five years, retroactive to the date of Respondent's temporary suspension.

Obviously, the Christie and Malone cases, where the respondents met the burden under Braun, are inapposite to the Respondent's present circumstance. Although we find the instant case to be most similar to the Mitchell matter, since, like Mr. Mitchell, Respondent did not establish Braun mitigation, here instead of mitigating factors Respondent presents aggravating factors. Respondent's case is more egregious due to his additional crime of invading the privacy of his law office colleagues and his intentionally ignoring his duty to report his conviction to the Board for a period of nine years. In addition, Respondent never reported his conviction - it was brought to the attention of Petitioner by the complaint of an unidentified person. Respondent's failure to cooperate cannot be overlooked. Further, unlike in Mr. Mitchell's case, Respondent's character testimony was not compelling, in that several witnesses were not aware of Respondent's criminal acts until just weeks before the disciplinary hearing, and several did not know the full extent of

those acts. No witnesses were presented who knew Respondent before or at the time of his criminal actions and could speak to Respondent's history and rehabilitation.

Disbarment is an extreme sanction which must be reserved for the most egregious matters. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). In light of the circumstances of Respondent's multiple criminal acts and his subsequent refusal to report his conviction to the Board, we recommend that Respondent be disbarred from the practice of law.


V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Patrick Joseph Donahue, be Disbarred from the practice of law.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By:  _____
Gerald Lawrence, Board Vice-Chair

Date: June 27, 2013

Board Members Momjian and Hastie did not participate in the adjudication.