



IN THE
Indiana Supreme Court

Supreme Court Case No. 22S-DI-279

In the Matter of
Robert McMahon,
Respondent.

Decided: March 8, 2023

Attorney Discipline Action

Hearing Officer Joel M. Schumm

Per Curiam Opinion

Justices Slaughter, Goff, and Molter concur.
Chief Justice Rush and Justice Massa dissent.

Per curiam.

We find that Respondent, Robert McMahon, committed attorney misconduct by possessing child pornography. For this misconduct, we conclude that Respondent should be suspended for at least two years without automatic reinstatement.

The matter is now before us on the report of the hearing officer appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's verified disciplinary complaint. Respondent's 2016 admission to this state's bar subjects him to this Court's disciplinary jurisdiction. *See* Ind. Const. art. 7, § 4.

Procedural Background and Facts

The Commission filed a "Disciplinary Complaint" against Respondent on September 2, 2022. Respondent was served with the complaint but has not appeared, responded, or otherwise participated in these proceedings. Accordingly, the Commission filed a "Motion for Judgment on the Complaint," and the hearing officer took the facts alleged in the disciplinary complaint as true.

No petition for review of the hearing officer's report has been filed. When neither party challenges the findings of the hearing officer, "we accept and adopt those findings but reserve final judgment as to misconduct and sanction." *Matter of Levy*, 726 N.E.2d 1257, 1258 (Ind. 2000).

In March 2022, Respondent was charged by grand jury indictment in the Northern District of Indiana with possession of child pornography involving a minor under the age of twelve. Respondent pled guilty as charged and was sentenced to twenty-four months of imprisonment, to be followed by three years of supervised release.

Respondent has been under an order of interim suspension since October 6, 2022, as a result of his conviction. *Matter of McMahon*, 194 N.E.3d 1124 (Ind. 2022).

Discussion and Discipline

We concur in the hearing officer's findings of fact and conclude that Respondent violated Indiana Professional Conduct Rule 8.4(b) by committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer.

Respondent's crime was insidious. Although we do not have a fully-developed evidentiary record before us because Respondent pled guilty in federal court and defaulted on these disciplinary proceedings, Respondent's conviction for possession of pornographic materials involving a child under twelve years of age nonetheless reflects a panoply of harms inflicted on an extremely vulnerable victim. "[T]hose . . . who view and/or make available to others child pornography harm the individual children depicted in several ways: (1) by perpetuating the abuse initiated by the creator of the material; (2) by invading the child's privacy; and (3) by providing an economic motive for producers of child pornography." *Brown v. State*, 912 N.E.2d 881, 895 (Ind. Ct. App. 2009) (citing *United States v. Norris*, 159 F.3d 926 (5th Cir. 1998)). "[T]he materials produced are a permanent record of the children's participation[.]" *New York v. Ferber*, 458 U.S. 747, 759 (1982). Especially in the age of digital media, the harms child pornography victims suffer will often haunt them for the rest of their lives.

An attorney who would commit such a depraved act cannot be entrusted with the responsibilities that accompany a license to practice law and, at a minimum, should be required to demonstrate his professional fitness before ever again practicing law in this state. The question before us, quite frankly, is whether Respondent should be afforded that opportunity.

The Commission sought, and the hearing officer recommended, imposition of a minimum two-year suspension without automatic reinstatement. This is consistent with the discipline imposed in *Matter of Conn*, 715 N.E.2d 379 (Ind. 1999), following that attorney's federal child exploitation conviction for having accessed and downloaded child pornography, and with discipline imposed in cases arising from other

sexual offenses involving children. *See, e.g., Matter of Haigh*, 894 N.E.2d 550 (Ind. 2008); *Matter of Buker*, 615 N.E.2d 436 (Ind. 1993); *Matter of Kern*, 551 N.E.2d 454 (Ind. 1990).

In light of this precedent, the hearing officer's recommendation, and the Commission's prayer for relief, we agree that Respondent should be suspended for at least two years without automatic reinstatement. Should Respondent seek reinstatement after that minimum period of suspension has elapsed, his petition will be granted only if he is able to prove his fitness to resume the practice of law by clear and convincing evidence, a burden that will be particularly steep given the severity of Respondent's misconduct. *See Matter of Gutman*, 599 N.E.2d 604, 608 (Ind. 1992) ("The more serious the misconduct, the greater its negative impact on future rehabilitation and eventual reinstatement, the greater Petitioner's burden of proof to overcome the implication of unfitness which is conjured by the misconduct").

Conclusion

For Respondent's professional misconduct, the Court suspends Respondent from the practice of law for a period of not less than two years, without automatic reinstatement, effective immediately. At the conclusion of the minimum period of suspension, Respondent may petition this Court for reinstatement to the practice of law in this state, provided Respondent pays the costs of this proceeding, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(18).

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged with the Court's appreciation.

Slaughter, Goff, and Molter, JJ., concur.

Rush, C.J., and Massa, J., dissent regarding the sanction imposed, believing disbarment is warranted.

NO APPEARANCE FOR THE RESPONDENT

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