

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1491 Disciplinary Docket No. 3
Petitioner :
 : No. 73 DB 2009
v. :
 : Attorney Registration No. 46956
ROBERT VINCENT MITCHELL, :
Respondent : (Allegheny County)

ORDER

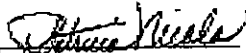
PER CURIAM

AND NOW, this 1st day of August, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 23, 2012, the Petition for Review and response thereto, it is hereby

ORDERED that Robert Vincent Mitchell is suspended from the Bar of this Commonwealth for a period of five years retroactive to October 15, 2009, 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 8/1/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1491 Disciplinary Docket No. 3
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	:	No. 73 DB 2009
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	:	Attorney Registration No. 46956
ROBERT VINCENT MITCHELL	:	
Respondent	:	(Allegheny 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

By Order of October 15, 2009, the Supreme Court placed Robert Vincent Mitchell on temporary suspension and referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1). On December 15, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent based on his conviction of one count of possession of material depicting the sexual exploitation of a minor, a felony. Respondent filed an Answer to Petition on January 19, 2011 and does not contest the facts set forth in the Petition.

A disciplinary hearing was held on August 1, 2011 before a District IV Hearing Committee comprised of Chair Mark Gordon, Esquire, and Members John C. Unkovic, Esquire, and Jill M. Ondos, Esquire. Respondent was represented by Stanton D. Levenson, Esquire. Petitioner proffered no testimony but presented its case through exhibits and cross-examination. Respondent presented exhibits and the testimony of one witness. He testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 25, 2011 and recommended that Respondent be suspended retroactively from November 15, 2009 until December 31, 2011. The Committee further recommended that Respondent be placed on probation for a period of two years from January 1, 2012 until December 31, 2013.

Petitioner filed a Brief on Exceptions on November 15, 2011.

This matter was adjudicated by the Disciplinary Board at the meeting on January 18, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the 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 Robert Vincent Mitchell. He was born in 1960 and was admitted to practice law in the Commonwealth of Pennsylvania in 1986. His current address is 2 West Garden Road, Pittsburgh PA 15227. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in Pennsylvania.

4. On August 12, 2008, Respondent entered a plea of guilty in the United States District Court for the Western District of Pennsylvania to one count of possession of material depicting the sexual exploitation of a minor, by way of having some 600 images of child pornography on his computer.

5. Respondent was sentenced on March 5, 2009 to imprisonment for a term of 30 months; upon release from prison, to serve a period of eight years supervised release subject to various terms and conditions; and payment of a special assessment.

6. Respondent was incarcerated in Federal Correctional facilities in Ashland and Lexington, Kentucky from May 5, 2009 to April 7, 2011.

7. By Order dated October 15, 2009, which Respondent did not oppose, the Supreme Court of Pennsylvania placed him on temporary suspension effective November 15, 2009.

8. Respondent began to regularly view legal, adult pornography over the internet sometime in 2005 and continuing until 2007. At some point during this time, Respondent went from watching legal, adult pornography to viewing and possessing child pornography on his office computer.

9. Respondent attempted to delete the images but Federal Agents were able to recover the material from Respondent's computer.

10. Respondent did not produce, distribute or share these images.

11. Respondent did not have sexual contact with a child.

12. Respondent's conviction did not involve a client in any way.

13. Respondent sought the services of a mental health expert in 2007. He eventually began treatment with Dr. Robert Coufal, Ph.D. and continued this treatment until May of 2009, when he began his incarceration.

14. Respondent met with Dr. Coufal on a weekly basis both individually and in group therapy.

15. In Dr. Coufal's Report dated February 24, 2009, he stated that there was no known history of contact with children or youth and no attempts during his (Respondent's) internet use to attempt any such contact. There was also no attempt to chat with others, no significant signs of cognitive distortions or rationalizations regarding sex offending, and no other disorder that would suggest high risk for reoccurrence or progression to other related forms of sex offending. (Coufal Report p. 8, Respondent's Exh. A)

16. Prior to Respondent's incarceration, he had a psychiatric evaluation at the Cleveland Clinic by George E. Tesar, M.D.

17. Dr. Tesar found Respondent's conduct to be aberrational. "The behavior for which he is being charged is distinctly unusual for him. It could conceivably be explained by the combined effects of continuing stress, mounting depression, poorly controlled seizures, and even the adverse impact of the central nervous system of his other medical illnesses (e.g., obstructive sleep apnea, heart disease). Whatever the cause, his

behavior was idiosyncratic and not indicative of a pattern of behavior that is dangerous, likely to continue or requires monitoring.” (Tesar Report p. 2, Respondent’s Exh. A)

18. During his incarceration, Respondent did not receive any counseling, as there were no programs available for his type of problem.

19. Respondent was released from incarceration on April 7, 2011 to the Renewal Center in Pittsburgh, where he remained until he was released on July 8, 2011.

20. Respondent is currently on supervised release, the term of which is eight years.

21. A condition of the supervised release is that Respondent continues to receive mental health treatment. Respondent sees Dr. Coufal on a weekly basis for a group session followed by individual therapy.

22. In a Report dated July 21, 2011, Dr. Coufal confirmed the resumption of Respondent’s treatment. He states that Respondent appears to be handling the adjustment back to the community well, and Respondent is not justifying or rationalizing past errors and appears to be arranging his life in ways to prevent a return to past misconduct. (Respondent’s Exh. A)

23. Respondent’s sessions with Dr. Coufal are monitored by the Federal Probation Office through monthly reports Dr. Coufal provides to them.

24. Respondent finds the treatment with Dr. Coufal to be very helpful, as it gives Respondent ways to handle stress and to rebuild relationships in his community.

25. Respondent has registered as a convicted sexual offender.

26. Respondent is currently separated from his wife, with whom he has four children.

27. Respondent has epilepsy and takes prescribed medication(s) for that illness.

28. Respondent offered the testimony of one witness and offered into evidence more than 20 character letters. (Respondent's Exh. A) These character letters were prepared in 2008 for submission to Judge David S. Cercone in connection with Respondent's sentencing.

29. Respondent cooperated with Petitioner throughout the disciplinary process.

III. CONCLUSIONS OF LAW

By his actions set forth above, Respondent violated Rule 203(b)(1), Pa.R.D.E., which states that his conviction constitutes an independent basis for discipline.

IV. DISCUSSION

Respondent stands convicted of one count of possession of material depicting the sexual exploitation of a minor, a felony, and therefore a "serious crime" as defined by Rule 214(i). Thus, the appropriate degree of discipline is the sole issue for our consideration. Rule 214(f)(1), Pa. R.D.E. To that end 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).

The underlying facts supporting Respondent's conviction are relatively straightforward. Sometime in 2007 Respondent downloaded and viewed on his office computer approximately six hundred images depicting child pornography, which he then deleted. Thereafter, the FBI, pursuant to a search warrant, seized Respondent's computer and recovered the deleted images therefrom.

Respondent pleaded guilty to one count of possession of child pornography and was sentenced to 30 months in prison followed by eight years of supervised release. With this stern sentence the criminal justice system fulfilled its purpose of punishing Respondent for his misconduct. Our disciplinary system serves a different purpose. Disciplinary sanctions are intended not to punish but 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).

We were unable to find any precedent that dealt with the imposition of discipline on an attorney who, like our Respondent, possessed and viewed child pornography but did not distribute it to others or engage in inappropriate sexual conduct with a minor. In Office of Disciplinary Counsel v. Christie, 639 A.2d 782 (Pa. 1994) an attorney who invited minors to his apartment, served them alcohol, showed them adult pornography, and masturbated in their presence was convicted of several misdemeanor sex offenses and sentenced to five years probation plus community service. During the disciplinary proceedings against him, that respondent proved by clear and convincing evidence that his misconduct was caused by a psychiatric disorder for which he had received intensive treatment. Accordingly, he was entitled to mitigation under Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). Moreover, that respondent was remorseful and presented credible evidence that he had a low risk of recidivist behavior.

Under the circumstances, the Court ordered the respondent suspended for a term of five years retroactive to the date of his temporary suspension.

The same discipline was imposed in Office of Disciplinary Counsel v. Andrew F. Malone, 901 A.2d 468 (Pa. 2006). However, in that case the respondent intended to have a sexual encounter with an adult woman and her two minor children. The respondent was convicted of an attempt to commit involuntary deviate sexual intercourse with minor children and sentenced to a prison term of 12 months less one day to 24 months less one day with immediate parole upon completion of the minimum sentence, credit for time served, followed by five years probation. At his disciplinary hearing that respondent, who had an unblemished record as an attorney, met his burden under Braun, demonstrated sincere remorse for his misconduct and provided full cooperation with the disciplinary authorities. Even so, the respondent received a lengthy term of suspension because of the seriousness of his misconduct and the impact it had on the public's perception of the bar.

In the instant case Respondent committed his crime in the solitude of his office. He neither had contact with any child nor distributed his pornography to others. While Respondent did not seek mitigation under Braun, he presented compelling evidence of his efforts to seek treatment for the underlying psychological problems that ultimately led him to pornography. Shortly after his computer was seized by the FBI in 2007, but before his arrest, Respondent started treating with a psychologist, Dr. Coufal. After he was released from prison, Respondent returned to Dr. Coufal, who sends monthly reports to the Federal Probation Office pursuant to the terms of Respondent's supervised release. In Dr. Coufal's unrebutted opinion, Respondent has a good prognosis, a low risk of recidivism and a high probability of readjusting to society. Dr. Coufal's report of February

24, 2009, also established that Respondent had no history of contact with minors and did not use the internet to attempt to make such contact. Dr. Coufal found no disorder that would suggest that Respondent was at risk for becoming a pedophile.

Similarly, psychiatrist Dr. George E. Tesar, M.D., after evaluating Respondent in prison, concluded that Respondent's conduct was "distinctly unusual for him." He thought that factors such as increasing stress, depression, and poorly controlled epileptic seizures could have been contributory causes of Respondent's aberrant behavior. Dr. Tesar concluded that Respondent's conduct was "idiosyncratic and not indicative of behavior that is dangerous, likely to continue or requires monitoring."

Respondent also submitted letters from numerous character witnesses who established beyond question that Respondent enjoys an excellent reputation for honesty, integrity, and professional competence. We were particularly impressed with the quality and breadth of Respondent's character witnesses who included members of the clergy, educators, lawyers, and Respondent's estranged wife and her family. Respondent also has an unblemished disciplinary record, was sincerely remorseful, and cooperated fully in the disciplinary process.

Petitioner, emphasizing the undeniable horrors of child pornography, seeks Respondent's disbarment. The Hearing Committee and Respondent believe that a two-year suspension followed by a lengthy period of conditional probation is the appropriate discipline for this case. We think that the former goes too far and that the latter does not go far enough.

Even though Respondent's weighty evidence of mitigation is persuasive, we do believe that it is insufficient to overcome the potential harm that will be suffered by the bar if one of its members is not severely disciplined for possessing child pornography.

Accordingly, we recommend that Respondent be suspended from the practice of law for five years and that his suspension be prospective because of his lengthy term of supervised release.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert Vincent Mitchell, be Suspended from the practice of law for a period of five years, to be effective 30 days after entry of the Order by the Supreme Court.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Howell K. Rosenberg, Board Member

Date: March 23, 2012