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## INTRODUCTION

Respondent Aaron Anthony Ridenbaugh (hereinafter "Respondent") hereby submits his objections to the Final Report of the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court which increases the recommended sanction of the Panel. The Panel, after hearing the testimony of seven witnesses and receiving a Stipulation concerning the disciplinary rule violations alleged and certain mitigating factors, recommended that Respondent be suspended from the practice of law for two years with no credit for his interim suspension along with certain conditions. The Board rejected this recommendation and has recommended an indefinite suspension with no credit for time served along with the same conditions recommended by the Panel and an additional condition involving an independent psychiatric report concerning Respondent's mental health fitness.

Because Respondent has presented uncontested evidence of mitigating factors not recognized by the Panel and because prior precedent of this Court demonstrates that the sanction recommended by the Board is disproportionately harsh and severe, Respondent respectfully requests that this Honorable Court impose discipline which is more appropriately warranted by virtue of the surrounding facts and circumstances applicable to this matter.

## STATEMENT OF FACTS

### **A. The Agreed Stipulations**

Relator Disciplinary Counsel (hereinafter "Relator") and Respondent filed extensive Stipulations in advance of the Hearing which took place on October 6, 2008. (App. A)<sup>1</sup>

Respondent permitted Relator to place before the Panel all facts generated by the investigation and criminal disposition arising out of his arrest on May 21, 2007 when the police were summoned to his apartment complex after Respondent had placed an audiotape recorder outside the bedroom window of one of the residents in order to tape record the sexual activity of the resident and his girlfriend. (Ex. 1)<sup>2</sup>

Instead of resisting the admission of irrelevant facts such as what the charges were upon Respondent's arrest and for what he was indicted and rather than simply insist on the admission of facts supporting the charges to which he pled guilty, Respondent stipulated that all of the information be placed before the Panel, including all of the investigative records generated by the various police departments involved in the investigation of Respondent's conduct.

A review of the Stipulated Exhibits comprising the investigation reveals that Respondent immediately cooperated with the authorities in providing truthful responses to all questions posed. While initially Respondent was charged with various misdemeanors associated with the tape recording on May 21, 2007 (Stipulation, para.

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<sup>1</sup> Hereinafter citations to items in the Appendix shall be referred to as "App. \_\_\_\_"

<sup>2</sup> Hereinafter citations to the Hearing Stipulated Exhibits shall be referred to as "Ex. \_\_\_\_"

3),<sup>3</sup> eventually, through his cooperation, additional charges of voyeurism were added to the indictment. (See Stipulation, paras. 4-7)

An examination of Respondent's personal computer, after Respondent's arrest on May 21, 2007, revealed that he had downloaded certain pornographic images of minors and pornographic videos involving minors.<sup>4</sup> Ultimately, Respondent pled guilty to three counts of pandering sexually-oriented matter involving a minor, R.C.

2907.322(A)(5) related to the electronic video files, felonies of the fourth degree, and one count of illegal use of a minor in a nudity-oriented material or performance, R.C. 2907.323(A)(3), a felony of the fifth degree (related to the electronic files of images).

These counts are dated November 9, 2006, as they reflect the beginning time period during which Respondent, for the first time in his life, began downloading this type of material which he continued to download between then and when he was arrested on the voyeurism charges in May, 2007. (Hrg., pp. 211-212)

Respondent pled guilty to the voyeurism charges on October 17, 2007, as well. Ultimately, Respondent admitted to tape recording residents of his apartment complex on three occasions, once on April 21, 2005, once on September 27, 2006 and once on

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<sup>3</sup> Hereinafter citation to paragraphs within the Agreed Stipulations of the parties, attached to the Findings of Fact, Conclusion of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in the matter at bar and App. 1 herein, shall be referred to as "Stipulation, para. \_\_\_."

<sup>4</sup> At the Hearing, Respondent admitted to having three videos and 530 still images of child pornography. He did not pay for any of this material, as it was available free on the internet. (Hrg., p. 251) Hereinafter, citations to pages within the transcript of the formal Hearing shall be referred to as "Hrg., p. \_\_\_."

May 21, 2007. He also admitted to creating a peephole in his closet comprising the basis for the fourth voyeurism count, all misdemeanors of the third degree.<sup>5</sup>

As a consequence of the guilty pleas of October 17, 2007, Respondent was sentenced to a total of 48 months in prison. (Stip., para. 10) His sentencing hearing took place on November 21, 2007. (Ex. 6) (Stip., para. 11)

Respondent was handcuffed and taken into custody at the conclusion of this sentencing hearing. (Hrg. p. 222)

Respondent was released from prison on January 17, 2008. (Stip., para. 12)

Respondent's judicial release was granted upon conditions which included 300 hours of community service, his attendance at and completion of sex therapy, no drinking or drug use, no pornography, no bars and five years probation, among other conditions. (Hrg., p. 227)

As of February 7, 2008, Respondent's license to practice law has been suspended pursuant to Gov. Bar R. V(5)(A)(4). (Stip., para. 2)

Finally, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio issued its Findings of Fact, Conclusions of Law and Recommendations (App. B) subsequent to the Board's December 2008 meeting which is the subject of this Honorable Court's Order to Show Cause filed on January 12, 2009.

## **B. Respondent's Background and Psychological Profile**

Respondent was born on June 14, 1975. (Hrg., p. 200) Respondent is single, having never been married, and presently lives in an apartment in Cuyahoga Falls,

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<sup>5</sup> The peephole was created in late 2006 or early 2007 and allowed him to see into the adjacent apartment between the kitchen and living room areas. (Hrg., pp. 254-255)

Ohio. (Hrg., pp. 199-200) Respondent is engaged to a lawyer who practiced in Canton, Ohio. They became engaged in February 2007 before the arrest which gave rise to his criminal guilty pleas. (Hrg., p. 153)

Respondent grew up until age ten in Honey Brook, Pennsylvania, and then moved to Coshocton, Ohio with his mother and brother upon his mother's divorce. (Hrg., pp. 200-201) It was a complete shock to him when his father left because he had seen educational videos about divorce in school only about a month before this actually happened to his family. (Hrg., pp. 200-201) Respondent and his brother were very close to their dad, who had coached them in Little League and was involved with them in church activities. (Hrg., p. 188) Thereafter, Respondent has maintained a long-distance relationship with his father, seeing him a couple of weeks each summer until age 20 and since then once every year to a year and a half. (Hrg., pp. 201-202)

His family moved to Coshocton, Ohio to live with his grandmother when his mother and father divorced. (Hrg., p. 189) Upon arriving at his grandmother's home, Respondent and his brother had to adjust to their new surroundings. Their mother left immediately for The Cleveland Clinic to undergo a mastectomy. (Hrg., pp. 188-189) Respondent knew his mother was ill, and it was difficult moving and leaving behind the many friends he had developed in Pennsylvania. (Hrg., pp. 202-203) At first Respondent was teased about his attire, because the family had very little money. (Hrg., pp. 189-190)

Later, Respondent's mother, Linda Weber, married David Weber with whom Respondent developed a relationship during their 13 year marriage. (Hrg., p. 191, 203) Unfortunately, that marriage also resulted in divorce, since Mr. Weber began viewing

child pornography on the internet, making pornographic telephone calls and seeing underage prostitutes. Respondent's mother's savings account was drained by Mr. Weber in these pursuits. (Hrg., pp. 190-191) By then, Respondent was in undergraduate school at The Ohio State University. (Hrg., p. 191) Respondent was angry that his mother had been hurt by this individual with whom he had developed a father-son relationship. (Hrg., p. 191)

While in high school, and before his mother's second divorce, Respondent did develop relationships with girls, including a primary one that lasted for about two and a half years between his junior year and the summer after graduation. (Hrg., pp. 203-204) That relationship ended when he matriculated to The Ohio State University. (Hrg., p. 204) He remained in undergraduate school between 1993 and 1998, taking a little extra time because he worked night shifts for a couple of years at UPS. He studied criminology, with a minor in English, and graduated *cum laude* with a 3.5 grade point average. (Hrg., pp. 204-205) Thereafter, Respondent attended law school at The Ohio State University, averaging between a 3.7 and a 3.8 grade point average and a top ten percent ranking in his class. He was elected to the Order of the Coif and was a member of the Dispute Resolution Journal. Academically, Respondent improved at each level of schooling from high school through law school. (Hrg., pp. 205-206)

However, while in college and law school, Respondent did not develop female relationships. Instead, he abused certain recreational drugs, primarily marijuana, which led to social withdrawal. He missed opportunities to develop female relationships because of this behavior. (Hrg., pp. 206-207)

Respondent graduated from law school in 2003 and took and passed the bar exam that summer. (Hrg., pp. 207-208)

Thereafter, he immediately became a law clerk for Federal Bankruptcy Judge Russ Kendig in Canton, Ohio where he completed a two-year term clerkship. (Hrg., p. 208) It is during the period of time that he served as a law clerk at Judge Kendig's court that Respondent developed his expertise in bankruptcy law and also met his fiancé. (Hrg., pp. 209-210)

In 2005, upon completion of his clerkship with Judge Kendig, Respondent began working for the law firm of Gibson & Lowry where he has remained, in the capacity of either associate or law clerk, to the present time.

As it relates to the behavior which underlies the criminal offenses giving rise to the disciplinary violations, beginning with his obtaining of a cable modem in 1998, Respondent developed the habit of downloading and viewing pornography. Before the cable modem, he did have some pornography in his possession, including cassette tapes. In 1998, it became a semi-daily to daily activity to review pornography, but the voyeurism and child pornography had not yet begun. (Hrg., p. 210) In the beginning, the pornography involved viewing women. It wasn't until late 2006 that he began to download the illegal materials. (Hrg., p. 211) For a year to a year and a half before that, he engaged in a gradual trend of downloading pornography involving younger looking females in the movies he was watching online. He then progressed to teenagers, who were underage but clothed, and it wasn't until November or December 2006 that he admittedly crossed over the line into child pornography. (Hrg., pp. 210-210)

Respondent candidly explained at the Hearing that the legal female pornography had not been "doing it for [him] anymore." (Hrg., p. 212)

Although Respondent's relationship with his fiancé was emotionally fulfilling, his relationship had not been consummated up to that point. (Hrg., pp. 212-214)

Beginning in late 2004, Respondent developed the idea to listen to the sexual activity of couples after having discovered a website devoted to this fetish. (Hrg., p. 214) He felt that tape recording sexual activity, rather than videotaping it, was somehow less intrusive, to his admittedly "sick way of thinking." (Hrg., p. 214) He also developed a ritual involving the abuse of his prescription Ritalin for his diagnosed attention deficit disorder and masturbation while viewing pornography. Even though he was spending a prolonged period of time in this activity, he was usually unable to achieve orgasm. (Hrg., p. 215)

**C. Uncontested Testimony of Stephen B. Levine, M.D.**

Dr. Stephen Levine provided extensive testimony at the time of the Hearing in this matter. It has been acknowledged previously by this Honorable Court that Dr. Levine "is a recognized expert in the field of paraphilia," which he describes as:

the clash between individual sexual interest and social rules governing sexual behavior. *Disciplinary Counsel v. Goldblatt* (2008), 118 Ohio St.3d 310, 314, 2008-Ohio-2458, para. 22.<sup>6</sup>

Respondent was referred to Dr. Levine in June 2007 by another psychiatrist who took care of Respondent at an inpatient unit where he had been hospitalized in a suicidal state after his arrest in May 2007. (Hrg., pp. 48-49) Dr. Levine has been a

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<sup>6</sup> Interestingly, Dr. Levine's testimony at this Hearing assists in distinguishing *Goldblatt, supra*, from the instant matter, underscoring why the indefinite suspension issued by this Court to Goldblatt is not warranted in the instant matter.

specialist in clinical sexuality since completing his residency in 1973. He is a four year graduate of Washington and Jefferson College and a graduate of Case Western Reserve Medical School. (Hrg., p. 45) He performed his internship in internal medicine at University Hospitals of Cleveland, thereafter, spending two years with the United States Public Health Service and the National Institutes of Health doing epidemiological research. He returned to Cleveland for a psychiatric residency which he completed in three years and then joined the faculty at Case Western Reserve University where he spent 20 years ascending to the position of Professor of Psychiatry. (Hrg., p. 45)

In 1992, Dr. Levine, along with other colleagues who specialized in sexuality, began a private practice where he has remained and now practices with 12 other people, with half of the group specializing in sexuality and the other half specializing in general psychiatric problems. (Hrg., pp. 45-46)

Dr. Levine is licensed to practice medicine in the State of Ohio and board certified in psychiatry and neurology. Although a tenured professor, he has been a clinical professor since 1992, since he no longer resides at the University. He continues to train medical students, psychiatric residents and medical health professionals from the community. (Hrg., pp. 46-47) He has accumulated many honors in his career and has been prolific in his contribution to the psychiatric literature, as well as having devoted time to review literature submitted by other professionals to be published in journals which are authoritative in issues of psychiatry. (Hrg., pp. 47-48) As his testimony and *curriculum vita* (Ex. 12) demonstrate, Dr. Levine is eminently qualified to treat individuals afflicted with psychiatric disorders involving sexuality, as well as to provide opinions in respect thereto. Relator's counsel did not object to his being

tendered as an expert witness in connection with the issues of clinical sexuality, as well as his involvement in the care and treatment of Respondent. (Hrg., p. 48)

Dr. Levine demonstrated his thorough awareness of Respondent's background and psychological profile as his testimony was developed at the Hearing. Dr. Levine explained that for much of Respondent's adolescent and adult life, he has been a passive man, socially avoidant, quietly depressed who suffered from a very poor opinion of himself with a pervasive sense that he has been trapped by his own procrastination and shyness. (Hrg., p. 51)

Respondent soothed himself by escaping into fantasies aided by alcohol, marijuana and masturbation with pornography. (Hrg., pp. 51-52) Dr. Levine noted that there was a demarcation or a separation between Respondent's vocational or academic competence and his personal incompetence. While growing older in his twenties and thirties, his sense of hopelessness increased during this period. (Hrg., p. 52)

Respondent's background which led up to his arrest involved his parents being unhappily married, a fact of which he hadn't been aware, and his father leaving abruptly which was a shock to him. His mother then had breast cancer which she tried to prevent him from understanding. His mother instilled in him a motivation that he could be anything he wanted to be. (Hrg., p. 53)

To a certain extent, his mother's encouragement along these lines arose from her being a polio victim when she was a child, having a non-functional arm. Even after her breast cancer treatment, she went onto become a single mother of two sons who went to law school. (Hrg., pp. 53-54)

Dr. Levine continued to explain that Respondent remained quiet and a marginal student in high school, although active in band and some sports. His best years up to the present were probably his adolescent years. (Hrg., p. 54)

However, his mother took on a new husband to whom Respondent became attached, but who was abruptly lost due to his child pornography use and unfaithfulness. (Hrg., p. 54)

These experiences led Respondent to doubt himself and to believe that he was not as good as other people. In some sense, he feared for his own ambition, procrastinating perhaps in rebellion to his mother's ambitions for him. (Hrg., pp. 54-55)

Paradoxically, while Respondent shows himself academically to be a very bright person, Dr. Levine concluded that Respondent was never free of holding himself back, and the doubts that ate away at him prevented him from becoming ambitious. (Hrg., p. 55)

Dr. Levine is of the opinion that the following mental health diagnoses, to a reasonable degree of scientific certainty, apply to Respondent:

- 1) Respondent has dysthymia - a chronic, low-grade depression which often has short periods of greater depression or lesser depression. This applied to Respondent since his original father left. (Hrg., p. 56)
- 2) The second diagnosis is substance abuse. He uses coping devices relative to his tensions. (Hrg., p. 56)
- 3) Third, Respondent is also sexually amiss to which the diagnosis of paraphilia applies. (Hrg., pp. 57-59) Literally, paraphilia means "love along the side." (Hrg., pp. 58-59) This term is used to describe a developmental shift where human

beings develop unusual sexual interests or perversions. There are six major forms of paraphilia, including voyeurism, exhibitionism, pedophilia, fetishism, sadism and masochism. (Hrg., p. 59)

Dr. Levine opined that due to Respondent's shyness and being withdrawn, he felt like he was on the outside looking in and his entire life was voyeuristic. (Hrg., p. 57) As he became more hopeless and depressed, he was motivated to excite himself to feel arousal and to escape the world. He then began to qualify as a pedophilic person when he developed an interest in visualizing younger people having sexual activities. (Hrg., p. 57)

Together, Respondent's voyeuristic progression amounts to a mixed character disorder characterized by a passive, socially avoidant person preferring fantasy to reality. (Hrg., p. 57)

4) Finally, Respondent has attention deficit disorder, the most easily treatable of all his psychiatric disorders. (Hrg., pp. 57-58)

In sum:

he has dysthymia, paraphilia, mixed character disorder, chronic substance abuse, marijuana primarily, and alcohol and attention deficit disorder. (Hrg., p. 58)

While indicating that his opinion of these disorders is held to a reasonable degree of psychiatric certainty, Dr. Levine indicated further that the least fixed diagnosis is probably the paraphilia. (Hrg., p. 58) Dr. Levine carefully explained his diagnosis of paraphilia as it applies to Respondent and how Respondent's behavior is described by that diagnosis. (Hrg., pp. 58-63)

Unquestionably, all of the conduct which formed the basis for Respondent's arrest, criminal prosecution, guilty pleas and disciplinary rule violations arose from the psychiatric diagnoses of mental disability testified to by Dr. Levine. (Hrg., p. 80) Indeed, the Panel characterized Dr. Levine's expert testimony as compelling, explaining Respondent's resort to the behavior under scrutiny. (App. 2, para. 17)<sup>7</sup>

Dr. Levine saw Respondent weekly from June 14, 2007 until Respondent went to prison. Thereafter, he saw Respondent every two weeks until June, 2008. Currently, Respondent is seen on average every three to three-and-a-half weeks due to financial constraints, as well as the fact that he is progressing reasonably well. (Hrg., p. 64) Dr. Levine characterizes Respondent as a "very easy to work with, honest patient; therefore what psychiatrists call a 'good patient.'" (Hrg., pp. 64, 65)

Dr. Levine described in great detail the aspect of the felony convictions involving child pornography. The doctor characterized this aspect of paraphilia as Respondent's preoccupation with coming of age sexuality. Dr. Levine is convinced that Respondent was fixated on an image of sexuality at a certain youthful period of time. Something has fixated him, stalling his development and causing him to be preoccupied with kids coming of age and first sexual encounters. He became fixated with his sexual experiences as a youth. He then was unsuccessful in developing heterosexual peer relationships in and after college, thus, fixating on relationships at a younger age. (Hrg., pp. 68-69)

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<sup>7</sup> Dr. Levine provided a specific opinion that the psychiatric diagnoses contributed to cause the misconduct with which he was criminally charged and which underlies the disciplinary matters present in the instant matter. (Hrg., pp. 80)

His preoccupation with children came from hopelessness that Respondent felt. He placed himself in the company of those for whom society has utmost disdain, in effect punishing himself for his own character flaws. (Hrg., p. 70)

Dr. Levine established treatment goals for Respondent which he has met. The paraphiliac behavior had to stop. He had to deal with his character of passivity and social avoidance. He needed to deal with reality and not get lost in fantasy. He had to abstain from marijuana use and any substance abuse. His depression had to be treated. He needed to address his procrastination tendencies. (Hrg., pp. 72-73)

Dr. Levine was very direct and blunt with Respondent in confronting him with that which was required to alter the path he was on. (Hrg., pp. 72-73)

In addition to providing psychotherapy to Respondent, Dr. Levine has also prescribed medicine for him. (Hrg., p. 75) He has prescribed Zoloft, an antidepressant, and an anti-attention deficit disorder drug called Strattera. Respondent has been 100% compliant in connection with his prescribed medication. (Hrg., p. 76)

Given Dr. Levine's extensive treatment history with Respondent, his prognosis is particularly helpful to determine just what protection the public needs. Respondent has ceased the voyeuristic activity and is no longer engaged in substance abuse. (Hrg., pp. 78-79) He has been attending an Alcohol Anonymous (hereinafter "AA") meeting once a week and meeting other conditions of his probation. (Hrg., pp. 79-80) His prognosis is very good. (Hrg., pp. 80-81)

Well, I would like to see Aaron in a long-term [psychiatric] relationship to a person like me, including me. But it doesn't have to be me. And I think that as long as he can continue to feel hopeful and responsible, to behave in reality, and not return to this la-la land of fantasy that he existed in for so many years, I think he actually has a very good prognosis. I think he'll be able to work in his quiet way he worked in law, in the bankruptcy area.

I think he may eventually get married and have a reasonably normal sexual life...

So I would say that he's not going to turn into somebody he wasn't before, but he's going to improve that -- he's going to continue struggling with these characterological features, and I think he can have a far better adaptation. So in general, I have felt optimistic about him. It wasn't simply a thing that I give to people who are my patients; that is, I sell hope, yes. But I also am realistic to know that some people really can't and won't get better under my care.

Aaron, I believe, has engaged in multi-modal therapy. He's done that in a responsible way. He has a sense of hope for himself. And, therefore, I think I can consciously say that the prognosis is pretty good. But I can't predict the future. You know, I can't predict his economic situation... But he has made significant progress.

I think the major point I want to make to all of you is that, I believe that from June of 2007 until now, Aaron has made considerable progress. And that is the source of my optimism about his prognosis. (Hrg., pp. 80-82)

Dr. Levine went on to opine that Respondent has experienced a sustained period of successful treatment in regard to his mental disabilities and that he can return to the competent and ethical practice of law. (Hrg., p. 82) Dr. Levine pointed out that Respondent did not unethically practice law before. Any lack of ethics had to do with his personal involvement with things not commensurate with his high position of being an attorney. (Hrg., pp. 82-83)

Further, Dr. Levine opines that Respondent does not pose a real substantial danger of re-offending, as long as the conditions previously discussed are met. (Hrg., p. 83)

Importantly, in responding to the Panel's questions, Dr. Levine forcefully explained Respondent's ability to separate his social life from his professional life, and that indeed Respondent has and does. (Hrg., pp. 100-101) Further, in responding to questions from a Panel member, Dr. Levine indicated that even in the face of personal

setbacks, it is his expectation that Respondent will more likely commit suicide than return to child pornography. (Hrg., p. 102)

**D. Other Facts Pertinent to Mitigation Factors**

In addition to developing Respondent's psychological profile and its relationship to the criminal offenses underlying this disciplinary proceeding, through the testimony of Respondent, Dr. Levine and Respondent's mother, Linda Weber, other aspects of mitigation were developed through the testimony of the other witnesses.

John Juergensen, a lawyer since 1999 who met Respondent in the summer of 2004, testified about his knowledge of Respondent's character and behavior before and after his criminal convictions. (Hrg., pp. 119-129) Mr. Juergensen is married and is the father of a 13 year old daughter and a 7 year old son. (Hrg., pp. 119-120) He met Respondent while both Mr. Juergensen and Respondent's fiancé were members of the same law firm. (Hrg., pp. 120-121) After meeting Respondent in the summer of 2004, they began playing golf together on a weekly basis. (Hrg., pp. 121-122)

Mr. Juergensen learned of Respondent's arrest after it was reported in the local newspaper in May 2007. He called Respondent to discuss it and went to visit him. (Hrg., pp. 122-123) He learned about the voyeuristic activity, as well as the child pornography when speaking with Respondent. (Hrg., pp. 123-124) Instead of avoiding responsibility, Respondent took responsibility right from the beginning. (Hrg., p. 125) He never tried to excuse his behavior or indicate that these difficulties were not his own fault. (Hrg., p.125)

Mr. Juergensen wrote a letter to Judge Haas concerning Respondent's character and reputation before the incident. (Ex. A)<sup>8</sup> Mr. Juergensen indicated that this was an isolated set of circumstances not evincing a character flaw permeating Respondent's entire being. Mr. Juergensen verified that Respondent was getting help for the problems that resulted in his criminal conviction. (Hrg., p. 127)

Mr. Juergensen indicated that Respondent is a responsible, ethical person whose behavior in regard to the matters with which he was criminally charged does not permeate the other parts of his character. Mr. Juergensen is aware of nothing that would prevent Respondent from returning to the competent, ethical, professional practice of law. (Hrg., p. 128)

Megan Robertson, MSW, LISW, CCDC-I, social worker and Clinical Associate of OLAP (Ohio Lawyers Assistance Program) testified at the Hearing regarding Respondent's adherence to his OLAP contract. She became involved in assessing Respondent on June 4, 2007 between 9:30 a.m. and 5:00 p.m. in Columbus, Ohio. (Hrg., pp. 134-135) She verified that Respondent was hospitalized after this meeting and upon his discharge was provided recommendations from OLAP concerning his recovery. (Hrg., pp. 138-139) Ms. Robertson verified that Respondent performed all recommendations (Hrg., p. 140) and has made great strides in his recovery, mental and health-wise. (Hrg., p. 140)

[H]e has been 100 percent with the OLAP contract. And when we talk on the phone, it's not just a simple, you know, this is Aaron just checking in. When we have conversations, it's gaining insight into how he's coping with all the different things that he's learned about himself in treatment, and how far he's coming along in treatment. And the one thing we say when we work with our clients is that we really want you to psychologically be

<sup>8</sup> Hereinafter, citations to Respondent's Hearing Exhibits, admitted into evidence at the formal hearing, shall be referred to as "Ex. \_\_\_\_."

well. And that's one thing that's become evident with Aaron over the last year plus, that he's really gained a lot of insight into his problem, and that he is working whole-heartedly on his recovery in many areas, so that he can be healthy, and be well. (Hrg., p. 141)

Ms. Robertson has discussed with Respondent his progress with community service -- working for Goodwill, the sex offender therapy and his drug and alcohol group therapy, verifying that he has actively participated in all of these activities. (Hrg., pp. 142-144)

Ms. Robertson has been supplied with written reports from Dr. Levine and also documentation concerning Respondent's attendance at AA meetings and sex therapy. (Hrg., pp. 146-148) She has no criticism whatsoever concerning his OLAP participation. (Hrg., p. 148)

Respondent's employer, Michael Moran, also testified at the Hearing. (Hrg., pp. 168-185) Mr. Moran is a partner in the law firm of Gibson & Lowry and has been licensed to practice law since 1978. (Hrg., pp. 168-169) The firm concentrates in bankruptcy and commercial litigation. (Hrg., p. 169) Mr. Moran verified that Respondent has worked at Gibson & Lowry since 2005 and that he received his assignments from himself and another partner, Ken Gibson. (Hrg., pp. 170-171) He has worked closely with Respondent and indicates that his work is generally very good and sometimes extremely good, but also competent. (Hrg., p. 171) He has been satisfied with Respondent's production. (Hrg., p. 171)

Within a day of Respondent's arrest, Mr. Moran became aware by virtue of a phone call he received from a clerk at the United States Bankruptcy Court inquiring as to whether a person reported in the newspaper was his employee. Mr. Moran then reviewed the newspaper article and spoke with Respondent confirming that which had

been read. (Hrg., p. 173) After becoming aware that there were allegations concerning computer usage, Mr. Moran verified that none of the firm's computers were used in connection with the criminal activity with which Respondent was charged. (Hrg., pp. 173-174) The firm's investigation showed that the nature of charges were not related to the firm or to clients represented by the firm. (Hrg., pp. 174-175) Mr. Moran's firm took the position that Respondent should not be discharged because the conduct did not involve the firm or its clients. As such, Respondent has remained employed by the firm to the present. (Hrg., pp. 174-175)

Respondent has remained employed because he continues to perform, his work being sound and good. (Hrg., p. 175) Indeed, Mr. Moran advised Judge Haas concerning Respondent's employment and the quality of his work for Gibson & Lowry. (Ex. B)

Between the time of the letter Mr. Moran wrote to Judge Haas in November, 2007 and the time of the Hearing, nothing has changed in regard to the quality of Respondent's work. Mr. Moran assured the Panel that Respondent does not interact independently with clients. He is not permitted to communicate telephonically or otherwise with a client. All clients were notified of matters on which Respondent was working and of the fact of his disqualification from the practice of law during the interim suspension which began back in February 2008. (Hrg., pp. 177-178) Mr. Moran's opinion is that Respondent practiced law competently before his suspension and that he can return to the same level or a higher level, since he has probably learned something from these events. (Hrg., pp. 178-179)

Respondent's fiancé also testified at the Hearing. (Hrg., pp. 148-167) She graduated from The Ohio State University Law School and became licensed to practice law in 1996. She began her legal career with a nonprofit agency, working there for five years before obtaining a clerkship with Judge Kendig in the federal bankruptcy court. She then joined her law firm where she is now a director and shareholder. (Hrg., pp. 149-150)

Respondent's fiancé verified that she met Respondent when she began clerking for Judge Kendig in August 2003. (Hrg., p. 151) She was attracted to his analytical and logical reasoning skills. She related to his background in terms of not having a constant father figure and being close to their mothers. She was also attracted to his whit. (Hrg., pp. 151-152)

While at the court together, they were friends, started dating, but backed off because of their working relationship. They resumed their relationship after her term clerkship ended. (Hrg., pp. 152-153) Their relationship grew to boyfriend-girlfriend, culminating in their engagement in February 2007. (Hrg., p. 153)

She discovered Respondent's arrest when his mother called her the morning after it had occurred. She was horrified, humiliated and felt betrayed after being informed by Respondent why he had been arrested. (Hrg., pp. 153-154) She was unable to see him for about three weeks, but ultimately decided to stay with him and stick by him through the process he was about to undergo. (Hrg., p. 154) She observed him being despondent and suicidal. (Hrg., pp. 154-155) She knew within the first week that his crimes went beyond voyeurism and involved videos and pictures on his computer. (Hrg., pp. 155-156) She found out that the underage children were girls.

(Hrg., p. 156) She was horrified at this news and was concerned that this propensity of his might even lead to worse behavior. Notwithstanding these feelings, she decided not to run, but instead to remain supportive of Respondent. (Hrg., pp. 156-157)

At Respondent's sentencing Hearing, his fiancé also submitted a letter to Judge Haas so that he could understand Respondent from her perspective. (Hrg., pp. 158-159) (Ex. C) She did this despite the fact that this was a humiliating and distressful time for her, as well, practicing as she did in the small, legal community of Canton, Ohio. (Hrg., p. 159)<sup>9</sup>

Respondent's fiancé explained to the Panel how stressed Respondent was by being taken into custody and being placed in the prison system given the nature of his offenses. (Hrg., p. 161) She continued to have contact with Respondent while he was in prison and observed that this was a stressful time for him. He shared with her at least one violent occurrence that was stressful for him causing him to fear for his own personal safety. (Hrg., pp. 161-162)

Importantly, some positives have arisen from these experiences:

I see more responsibility taken on his part for certain aspects of his life. I don't see as stressful of an Aaron as I did before. There were times in the past where he would share with me that he had dark thoughts that would start to spiral out of control. And when I would ask him what those related to, he would say that he was imagining some scenario that happened that might force me away from him. And when I would try to probe about that, it was somewhat vague. I now feel it probably related to the shame and guilt he felt from his behavior. But he wasn't able to share that with me.

He doesn't have those feelings that he expresses to me anymore. He is proactive more with things, whereas before I might, you know, feel that I

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<sup>9</sup> Given the fact that Respondent's fiancé is a practicing attorney with colleagues, friends and acquaintances having access to this Honorable Court's decision, she discussed her desire that any written opinion omit the details of her private life, recognizing she has no control over this Honorable Court's decision. (Hrg., p. 160)

needed to remind him to do this or that of his personal business. I see that he now takes care of that more, and is more responsible in that aspect. (Hrg., pp. 163-164)

Finally, Respondent's fiancé knows of no reason why Respondent cannot return to the competent and ethical practice of law. (Hrg., pp. 165-166)

Linda Weber, Respondent's mother, also testified during the course of the Hearing. (Hrg., pp. 185-199) She is the mother of two boys, Aaron, the Respondent herein, and Travis Ridenbaugh who resides in Atlanta and is her youngest. (Hrg., p. 186) She lives in Coshocton County, outside of the county seat of Coshocton, by herself and with her dog. (Hrg., p. 186) She has lived in that location for the past 23 years and is presently the Juvenile Probate Magistrate in Coshocton County. (Hrg., p. 186) She began law school at age 42 in 1992 and graduated in 1995, taking and passing the bar exam that year.

A substantial portion of Ms. Weber's testimony was to provide insight and corroboration into Respondent's psychological profile and background. (Hrg., pp. 187-193) She has observed Respondent through the time of his arrest to the present, and has observed his behavior in response to the criminal sentence imposed. (Hrg., pp. 194-196) During Respondent's sentencing hearing, she also provided a letter to Judge Haas indicating the pain and remorse Respondent has felt for what he has caused both his fiance and his mother by his behavior. (Ex. D) She verified his love of the law and how much he cares about his clients. (Hrg., pp. 196-197)

She also explained how Respondent maintained his relationship with her, assisting her around the home given her physical constraints, since his release from prison. (Hrg., p. 197)

Finally, she indicated that Respondent has exhibited a positive change due to the events that resulted in his arrest, imprisonment and judicial release conditions. (Hrg., pp. 197-198)

Respondent, in his testimony, also provided information which is pertinent to mitigation factors applicable to this matter. He explained that he has completed 300 hours of community service. He has attended sex therapy at Summit Psychological. There has been no drinking or drug use. He does not use pornography or go to bars. He has received five years probation. (Hrg., p. 227)

For his community service, he completed 300 hours working at Goodwill. He worked eight hours each Saturday and four hours every other Sunday, leaving the other Sundays available for him to help his mother at her home. (Hrg., p. 228) He met many nice people with whom he plans to remain in contact. (Hrg., p. 228) He did what was necessary at this Goodwill facility, including many cleaning duties involving mopping and sweeping. He put prices on goods and placed the goods on the shelves. He collected donations and helped people bring goods to their automobiles. He took out the trash. (Hrg., pp. 228-229)

He has continued to attend AA meetings once a week. He has engaged in both drug and sex therapy. He has attended an alcohol and drug group during a 24 week program, and he continues to attend a sex group to which he has been going since March and with which he will be participating for another year to a year-and-a-half. (Hrg., pp. 236-237)

He has changed significantly since May, 2007. All of the behavior that underlaid his criminal conviction has stopped. He does not view pornography on the internet,

legal or otherwise. He has neither downloaded nor viewed any child pornography. He does not engage in substance abuse. (Hrg., pp. 245-246) His reaction to dealing with stress has changed significantly. He reaches out to his support network when a stressful event occurs. (Hrg., p. 247) His self-esteem is much improved. He is no longer leading a dual life. He is better for it now that he has had to confront the hidden life in which he was engaged. This has lead to an improvement in his self-esteem. (Hrg., pp. 252-253)

He has gained great insight into his past behavior and his current situation. In response to a question from one of the Panel members, he explained that the voyeurism and child pornography occurred because:

It was a combination of the other stuff wasn't doing it, and the fact that I had reached a certain state of, I guess, hopelessness, and that I was never going to have a normal, heterosexual relationship with a woman.

\* \* \*

But now I met the woman -- and I did want to spend the rest of my life with her. And I knew that I was in love with her, and I still wasn't able to have that. So there was sort of, I guess, in my mind, a giving up at that point. And, well, I better find a way to make this other stuff work, because I'm obviously never going to be able to have sexual satisfaction the way that other people do. (Hrg., pp. 257-258)

He went on to explain:

You know, I mean, I really -- and this is awareness gained through working with Dr. Levine. And, you know, a lot of the stuff he testified to, I mean, he's very frank, and we're open, and we've, you know, we've talked about a lot of that stuff in our sessions, as far as, you know, what he thinks is my issues. But I really think a low self esteem was the starting point. Exactly how that related to my father leaving is something that the doctor and I are still exploring. And, you know, I think there's a certain fear of rejection, and things like that. But he's convinced that's the genesis of it. We're still working together to fully flush (sic) [flesh] that out, in my mind. But it just -- it was a snowballing over the years. The lack of self esteem which led to a social withdrawal, which led to depression. That was sort of

the scaffolding upon which this was built. I mean, the cause of my behavior was poor decision making. I mean, that's -- you know, I made bad decisions and, you know, did some terrible things. But sort of those psychological factors, I guess, are sort of the scaffold upon which those bad decisions, you know, were made, or the context. (Hrg., pp. 259-260)

Unquestionably, Respondent has sincere remorse over the results of his conduct. He has remorse for the victims. He knows it must have been awful to find the recorders outside of the bedroom windows. He also is remorseful for his friends and family. He is remorseful for what he has brought onto the profession, as well. (Hrg., pp. 250-251) He also is aware of and remorseful for the fact that viewing the child pornography no doubt played a role in creating a market for it. He acknowledges that viewing this material could very well have been a motivation for people to produce this material abusive to children. (Hrg., pp. 251-252) In fact, he acknowledged that after reviewing some of this material, he felt so terrible about it that he contemplated killing himself. (Hrg., p. 252)

Judge Haas acknowledged Respondent's sincere remorse during the sentencing hearing on November 21, 2007 when he indicated that "I have no doubt of your sincerity with regard to the remorse that you have expressed." (Ex. 6, p. 8)

Finally, besides all of the criminal consequences of his conduct acknowledged by the Panel (App. 2, para. 20) Respondent is a potential Tier 2 offender in regard to potential registration requirements under the law. (Hrg., pp. 261-262)

Respondent is convinced that he can do a lot of good for people if he remains a lawyer. (Hrg., p. 264) He wants to continue practicing law and he enjoys helping people. (Hrg., pp. 248-249) All of this underlying criminal conduct was fairly segregated from his law practice, as acknowledged by the Panel Chair. (Hrg., p. 270)

Significantly, the Panel Chair's reaction to the testimony was that Respondent could competently practice law, but that the job of the Panel would be to determine the appropriate sanctions for the offenses themselves as opposed to protecting the public from his returning to the practice of law. (Hrg., p. 270) This comment by the Panel Chair is the crux of Respondent's objection to the recommendation of the Board.

The Panel and Board agreed that based upon the parties' Stipulations that DR 1-102(A)(3) (engaging in conduct that involves moral turpitude) and DR 1-102(A)(6) (engaging in conduct that adversely reflects on a lawyer's fitness to practice law) were violated for conduct presumably prior to February 1, 2007 and that ORPC 8.4(b) (committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness) and ORPC 8.4(h) (engaging in conduct that adversely reflects on the lawyer's fitness to practice law) were violations presumably applicable to conduct after February 1, 2007.

While the Panel appeared to recognize the relationship between Respondent's psychological background, criminal behavior involving voyeuristic activities and child pornography and the psychiatric diagnoses of Dr. Levine (App. 2, paras. 6, 7, 8, 9, 16 and 17), it failed to explicitly find the mitigation factor of mental disability.

Further, the Panel failed to acknowledge any remorse whatsoever on the part of Respondent. Apparently, at least one of the Panel members was not convinced that remorse has anything to do with the issue which will be before this Court. (Hrg., p. 284) The Panel did acknowledge that the conduct ("the mess that was his private life") resulting in the criminal convictions did not at all affect his performance as a lawyer.

(App. 2, para. 19) The Panel acknowledged Relator's Agreement that this case is about something other than neglect or competency. (App. 2, para. 19)

The Panel likewise acknowledged Respondent's statement that these events have led him to come to grips with his emotional life doing "something to turn his world around." (App. 2, para. 18) Respondent's own conduct has shown his rehabilitation from that behavior which resulted in his criminal convictions.

In this respect, he has voluntarily involved himself with OLAP, psychiatric hospitalization and received psychotherapy with Dr. Levine. He continues to attend group sex therapy and AA. (App. 2, para. 18)

The Panel acknowledged the mitigating factors of no prior disciplinary record; Respondent's complete cooperation in the disciplinary process, as well as the judicial process preceding the disciplinary process; Respondent's attempt to rectify his misconduct by seeking and receiving treatment for his psychological and psychiatric disorders; and Respondent's receiving of other very significant sanctions which will continue for years if not his lifetime due to the guilty pleas to the criminal offenses. (App. 2, para 15)

While the Panel also indicated that aggravating factors applicable to Respondent's conduct included his selfish motive (succumbing to his sexual fetishes), his conduct involved multiple offenses over a period of years and was directed at vulnerable victims, (App. 2, para. 14) it failed to go one step further and acknowledge that each of those aggravating factors were part and parcel of the uncontested

psychological diagnoses testified to by Dr. Levine and applicable to Respondent. The element of willfulness<sup>10</sup> is totally lacking, given the psychiatric testimony of Dr. Levine.

Given its balancing of aggravating and mitigating circumstances, the Panel recommended that Respondent be suspended from the practice of law for two years, with no credit for his interim suspension. (App. 2, para. 21) As a condition of his reinstatement, the Panel further recommended that Respondent (A) comply with terms of his probation as directed by the Court of Common Pleas, Stark County, Ohio; (B) comply with his OLAP contract; (C) continue to see and obtain psychiatric therapy and counseling; and (D) refrain from violating Gov. Bar R. V(8)(G) with respect to the employment of suspended attorneys. (App. 2, para. 21)

At the Hearing, Respondent requested, through counsel, that the Panel consider a two-year suspension, with one year stayed and credit for time served. (Hrg., pp. 282-283) Relator, through counsel, recommended that the Panel issue a two-year suspension from the practice of law, with no credit for the time he has served for his felony suspension and with further conditions that he continue with his OLAP contract and comply with Dr. Levine's therapy. (Hrg., pp. 268-269)

Despite the recommendation of the Panel and the mitigation evidence which far outweighed the aggravation evidence, the Board chose to increase the sanction to an indefinite suspension with no credit for time served, adopting the same conditions for reinstatement as recommended by the Panel with the additional requirement of a psychiatric report. Its rationale involved "the nature of his crimes and the need to protect the public." (App. 2, Board Recommendation)

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<sup>10</sup> It is the "willful" breach of Discipline Rules that shall be punished. Gov. Bar R. IV, Section 1.

It is to this recommendation that Respondent objects, given all of the facts and circumstances surrounding this matter.

### ARGUMENT

**Proposition of Law I: The Board erroneously rejected the Panel's recommended sanction with conditions, increasing it to an indefinite suspension without adequate justification in the record.**

As this Court routinely states when determining appropriate sanctions to impose for attorney misconduct, "we consider the duties violated, the actual or potential injury caused, the attorney's mental state, the existence of aggravating or mitigating circumstances, and sanctions imposed in similar cases." *Disciplinary Counsel v. Goldblatt*, (2008), 118 Ohio St.3d 310, 311, 2008-Ohio-2458, para. 10. See also *Columbus Bar Association v. Linnen* (2006), 111 Ohio St.3d 507, 512, 2006-Ohio-5480, para. 25. Here, the duties violated all relate to Respondent's preoccupation with observing, either through hearing or visually, sexual activities of others to somehow address his low self-esteem and hopelessness. This sexual activity bore no relationship to his representation of clients and performance as a lawyer.

There is no question that the crimes Respondent committed had a direct effect on the couples whose intimate relations he recorded, the privacy of his neighbor that he violated by creating the peephole and the child exploitation he supported by obtaining the images and videos from the internet. Each and every one of these actual injuries to the victims was addressed by Judge Haas in the disposition of the criminal matter brought against Respondent in the Stark County Court of Common Pleas.

The sentence imposed upon Respondent by Judge Haas was rendered upon a thorough recognition that the nature of Respondent's activities invaded the privacy of the victims. (Ex. 6, p. 9) Judge Haas also recognized that while Respondent was not transmitting or trying to sell or engage in producing any of the child pornography, Respondent was an enabler by being involved in its acquisition. (Ex. 6, p. 10) As such, Judge Haas fashioned a sentence to punish Respondent for his conduct's impact on the lives of the victims. (Ex. 6, p. 10) Judge Haas' sentence was designed to be long enough so that upon early judicial release, it would remain hanging over Respondent's head. (Ex. 6, pp. 10-11) Judge Haas thought it was necessary that Respondent actually experience time in prison so that he would be motivated to change his life. (Ex. 6, p. 11)

Respondent's mental state has been well described by Dr. Levine through his testimony, as well as the candid and forthcoming testimony of Respondent himself. Respondent's sexual needs resulting in his criminal convictions have been and continue to be addressed through his ongoing psychotherapy and treatment, with Zoloft and Strattera. His continued involvement in the program of Alcoholics Anonymous and the sex group therapy demonstrates the likelihood of no further offending.

While Respondent does not disagree with the Findings of the Panel relative to aggravating factors, it must be pointed out that each of those aggravating factors arose due to the mental disability under which Respondent has functioned since his childhood. As far as mitigation, the Panel only recognized some of the mitigating factors, and as will be addressed specifically, *infra*, failed to accord the proper weight of the psychiatric testimony when arriving at the sanction. This, together with failing to recognize

Respondent's remorse, has certainly resulted in both the Panel and the Board's overly severe recommended sanction. Indeed, the Board's rationale of protecting the public duplicated Judge Haas' sentence.

As it relates to sanctions imposed in similar cases, there are truly none in Ohio jurisprudence. Two cases were brought to the attention of the Panel by Relator, *Goldblatt, supra*, and *Linnen, supra*. Each of those cases resulted in indefinite suspensions. Both of those cases involved far less compelling mitigating factors which, while appropriate sanctions under the circumstances presented in those cases, do not provide persuasive application to the instant matter.

In this regard, *Linnen, supra*, involved an attorney who indecently exposed himself to at least 30 different women while photographing their reactions. In several instances, he would actually touch the women to whom he had exposed himself, and he admitted that he perhaps masturbated in front of the first couple of his victims. *Linnen, supra*, 111 Ohio St.3d at 508, 2006-Ohio-5480, para. 3

While initially charged with several felonies and numerous misdemeanors, he ultimately accepted a plea bargain, pleading guilty to 53 misdemeanor offenses; two first degree misdemeanor counts of sexual imposition; one first degree misdemeanor count of aggravated trespass; 11 third degree counts of sexual imposition and 39 fourth degree misdemeanor counts of public indecency. He received an 18 month work release sentence and was fined \$3,000. His work release sentence was suspended after 12 months when the work release facility closed. Thereafter, he was placed on probation for five years. *Linnen, supra*, 111 Ohio St.3d at 508, 2006-Ohio-5480, paras.

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Weighing the aggravating and mitigating factors in *Linnen, supra*, the Panel and Board therein determined that Respondent's motivation to commit the crimes was really dishonesty and selfishness and that he had committed a pattern of misconduct and multiple offenses. The Board also noted Respondent's failure to acknowledge the wrongful nature of his conduct and its effect on vulnerable victims. The Panel also considered and rejected the mitigating factor of a medical disability offered through the testimony of Mr. Linnen's treating psychologist. This Court agreed with the Panel and the Board's rejection of this mitigating factor, given the suspect nature of the psychologist's testimony and the details of Mr. Linnen's claimed mental disability and contrition.

None of the reasons this Court expressed in rejecting the mitigation factors advanced by Mr. Linnen apply to the instant matter. Instead, the testimony presented by Respondent herein in connection with his medical disability is compelling.

In this regard, Dr. Levine is a well-respected, eminently qualified psychiatrist whose testimony unequivocally demonstrates the serious underlying psychological diagnoses applicable to Respondent. Dr. Levine carefully explained the details of Respondent's background which support the diagnoses which he stated to a reasonable degree of psychiatric certainty, including dysthymia, paraphilia, mixed character disorder and attention deficit disorder. Dr. Levine's expert testimony was likewise compelling as it related to the opinions he expressed in support of each and every one of the factors set forth under Sec. 10(B)(2)(G)(i-iv) of the BCGD Proc. Reg.<sup>11</sup>

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<sup>11</sup> Hereinafter, citation to the Rules and Regulations Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio shall be referred to as BCGD Proc. Reg.

The mitigation factor of chemical dependency or mental disability will be addressed in more detail *infra*, Argument, Proposition of Law II.

Likewise, and contrary to the evidence in *Linnen, supra*, Respondent's remorse is unquestionable and was recognized early on by Judge Haas during the sentencing hearing of November 21, 2007. The testimony of Respondent's friend, fiancé and mother also corroborates Respondent's sincere remorse. Thus, the precedential value of *Linnen* in regard to the sanction to be imposed upon Respondent herein is questionable, given the vast difference in mitigation factors applicable.

Additionally, *Goldblatt, supra*, is distinguishable as well. Mr. Goldblatt attempted to arrange a sexual encounter with a minor through telephone conversations he undoubtedly had through an undercover FBI agent. *Goldblatt, supra*, 118 Ohio St.3d at 311, 208-Ohio--2458, para. 6. Goldblatt was found guilty of compelling prostitution, a felony of the third degree, and possessing criminal tools, a felony of the fifth degree. He was sentenced to five years of community controlled sanctions, including being prohibited from possessing pictures of naked children and being subjected to periodic inspections of his personal computer. He was classified as a sex offender, subject to applicable registration and other restrictions. *Goldblatt, supra*, at p. 311, para. 7. His criminal conduct was found to have violated DR 1-102(A)(3) and DR 1-102(A)(6), the same disciplinary rules implicated in the instant matter.

As this Court determined, Mr. Goldblatt, while allegedly recognizing the despicable nature of his behavior, rationalized it to the hearing Panel, downplaying his

crimes. (Hrg., p. 270) While Goldblatt made the telephone calls from his office,<sup>12</sup> for the purpose of meeting the undercover agent, since the agent had promised to procure a young girl for the sex act, he maintained at the hearing that he only wanted to discuss the possibility of meeting such a young girl. *Goldblatt, supra*, at p. 312, paras. 12-13. Thus, Goldblatt mischaracterized his intentions to the hearing Panel despite the conclusions to be drawn unmistakably from the recorded telephone conversations proving his intent.

In addition, this Court noted that Goldblatt lied about the circumstances which preceded his convictions to Dr. Levine, the same Dr. Levine involved in the instant matter. Goldblatt had told Dr. Levine that he tried to set up an encounter with a teenager, when in fact, he had actually attempted to procure an encounter with a 9 year old. *Goldblatt, supra*, at p. 312, para. 16.

Goldblatt also violated his probation when his personal computer showed images of nude children, and amazingly he then went on to claim he had no knowledge or explanation as to how those images came to be on his computer. The Common Pleas Court found, despite his testimony, that he violated the terms of the community-control sanction. Goldblatt maintained his innocence as it related to this throughout the disciplinary proceeding. *Goldblatt, supra*, at p. 313, para. 17.

Additionally, Goldblatt offered the testimony of Dr. Levine to support the diagnosis of a mental disability. Dr. Levine had met with Goldblatt for four hours, focusing "less on diagnosis and more on the progress Respondent had made since his

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<sup>12</sup> *Goldblatt, supra*, at p. 312, para. 12. Relator's counsel incorrectly argued to the Panel that there was nothing in this Court's decision indicating that the telephone calls had been made from his office. (Hrg., p. 374)

arrest." *Goldblatt, supra*, at p. 314, para. 22. Despite this testimony, this Honorable Court doubted Goldblatt's fitness to practice law. *Goldblatt, supra*, at p. 314, para. 26.

As in *Linnen*, *Goldblatt* presents aggravating and mitigating circumstances far different than those presented in the instant matter. As Dr. Levine himself testified to, during the hearing in the instant matter, Goldblatt's situation was different from Respondent's herein.

The major difference is Mr. Goldblatt was involved in telephone chatting for years, which eventually led him to attempt to procure an under-aged girl for sexual purposes. That led to his arrest.

He [Ridenbaugh] has never tried to involve himself with a child. -- I'm sorry. Aaron has never tried to involve himself with a child. He's never chatted on a phone to make surreptitious, or non-surreptitious sexual arrangements. And so I think that's the major, the major difference; that, of course, their individual developmental dynamics are all unique. (Hrg., pp. 83-84)

In responding to a Panel member's questioning concerning the differences between *Goldblatt* and the Respondent, Dr. Levine indicated:

You've heard how I've described his [Ridenbaugh's] character. I think in order to answer your question, I have to describe Goldblatt's character. He was quite the opposite type of person than Mr. Ridenbaugh. He was -- he is a kind of narcissistic guy with an inherent sense of superiority, that he was smarter than other attorneys, he was smarter than the psychiatrist, he knew what was best for him, he knew what was wrong with him. "I know, I know, I know," was the common phrase of Mr. Goldblatt. Mr. Goldblatt is an arrogant man. And in his arrogance, he either minimized what he had done to me, as in telling me -- I only saw him briefly for a formal evaluation -- or he went by it so quickly that it never registered that he was interested, or trying to procure a nine-year-old child, not an adolescent child.

And so I'd say that the differences are not only what I described earlier, about chatting and trying to procure an actual person. But the character structure of these two men are as opposite as I can imagine. One of low self esteem and a personal sense of inferiority, versus a personal, sort of narcissistic assumption of his inherent superiority because of his IQ, or because of whatever -- whatever. He thought he was very, very bright. I

mean, I could experience this in the first hour when he made some kind of remarks about what I understood, and he knew what I was thinking. That's a quote. He told me, I know what you're thinking. And I asked him, well, what am I thinking? And he told me, and I said, well, that's not what I'm thinking. That kind of conversation would never occur with this man. He [Ridenbaugh] would never tell me what I'm thinking...

I think it's easier for me to say that he poses less threat than Goldblatt did. He's easier to work with. I wasn't Goldblatt's therapist. I was just his evaluator. But I could see that he's [Ridenbaugh's] easier. He [Goldblatt] would be much more difficult to work with. (Hrg., pp. 103-105)

As such, neither *Goldblatt, supra*, nor *Linnen, supra*, provide applicable precedent for this Court to arrive at a conclusion that an indefinite suspension is an appropriate sanction given the nature of the offenses underlying Respondent's disciplinary rule violations. While there are certainly legitimate concerns to protect the public, deter other lawyers from similar wrongdoing and preserve the public's trust in the legal profession by virtue of an appropriate sanction, none of those concerns requires that an indefinite suspension be issued here.

That which caused Respondent to engage in the voyeuristic and pornography viewing offenses for which he was criminally convicted are not so much functions of voluntary willful behavior, as much as expressions of profound psychological problems to which Respondent succumbed.

When all of the mitigating factors are taken into account,<sup>13</sup> Respondent's suggestion of a two-year suspension, with one year stayed and credit for time served is not out of line with the unique facts and circumstances applicable to this case.

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<sup>13</sup> Including remorse and mental disability as discussed under Proposition of Law II, infra.

**Proposition of Law II: The Panel erroneously failed to find, as mitigation, Respondent's sincere remorse and mental illness which contributed both to the underlying felonies and consequently the disciplinary violations charged, thereby resulting in a harsher sanction than which is justified by the surrounding facts and circumstances.**

While the Panel acknowledged the "compelling expert testimony" of Dr. Levine, it failed to explicitly find that Respondent had a mental disability sufficient to rise to the level of a mitigating factor.<sup>14</sup>

Under BCGD Proc. Reg. 10(B)(2)(G) mental disability may be considered in favor of recommending a less severe sanction:

- (2) Mitigation. The following shall not control the Board's discretion, but may be considered in favor of recommending a less severe sanction.
- (G) Chemical dependency or mental disability when there has been all of the following:
  - (i) A diagnosis of a chemical dependency or mental disability by a qualified healthcare professional or alcohol/substance abuse counselor;
  - (ii) A determination that the chemical dependency or mental disability contributed to cause the misconduct;
  - (iii)... (not applicable)
  - (iv) A prognosis from a qualified healthcare professional or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical, professional practice under specified conditions.

Each of these elements supporting the diagnosis of a mental disability as a mitigating factor was met through the testimony of Dr. Levine. Dr. Levine thoroughly testified to his diagnoses of dysthymia (chronic, low-grade depression); substance abuse; paraphilia (his voyeuristic/pedophilic interests); mixed character disorder; and attention deficit disorder, which diagnoses he holds to a reasonable degree of psychiatric certainty. (Hrg., pp. 56-58) He verified that Respondent's criminal activity

<sup>14</sup> Respondent acknowledges the Panel's Finding that "Respondent has made every attempt to rectify his misconduct by seeking and continuing treatment for the psychological and psychiatric disorders discussed below." (App. 2, para. 15(c))

which underlies the disciplinary matters was the product of these psychiatric conditions. (Hrg., p. 80) Further, he acknowledged that Respondent has experienced a sustained period of successful treatment regarding his mental disabilities. (Hrg., p. 82) After stating his prognosis concerning Respondent's mental conditions ((Hrg., pp. 80-82), he opined about Respondent's ability to ethically and competently practice law. (Hrg., pp. 82-83)

When Dr. Levine's testimony is considered, along with the factual predicate for such testimony, including that of Respondent himself, his fiancé and his mother, it is clear that the mitigation factor of mental disability should have been accorded more weight by the Panel and consequently the Board in connection with the sanction recommended.

Also, perhaps born out of the skepticism expressed by one of the Panel members as to remorse being an appropriate mitigation factor at all in cases like this one (Hrg., p. 284), no mention of remorse was made by the Panel in its report. Indeed, as demonstrated above by resort to the transcript, including the testimony of Respondent's friend, fiancé, mother, Respondent and Judge Haas during the sentencing hearing, such fact should have been accorded weight as a mitigating factor by the Panel and Board.

It is noteworthy that neither of these two significant mitigating factors was sufficiently explained by the Panel in its report so that the Board itself was not armed with this information. This could explain the Board's insistence on increasing the sanction, rather than either agreeing with the Panel's assessment or lessening the sanction along the lines suggested by Respondent's counsel during the hearing.

This Court has held that in cases where mental illness has contributed to the misconduct and Respondent has expressed sincere remorse, such could serve to modify the proposed sanction. See Toledo Bar Association v. Lowden (2005), 105 Ohio St.3d 377, 380, 2005-Ohio-2162, para. 19 (Conditional stay of two-year suspension recommended by the Board reducing the sanction recommended by the Panel supported by mitigating factors of mental health treatment of mental illness contributing to the misconduct and sincere remorse.); Allen County Bar Association v. Linnon (2004), 104 Ohio St.3d 189, 193, 2004-Ohio-6386, para. 25 (This Court ordered a two-year suspension with one year conditionally stayed instead of an indefinite suspension in light of the psychiatric evidence presented as a mitigating factor.)

Moreover, this Court has recognized that mitigating factors, including no prior disciplinary record, cooperation in disciplinary proceedings, acknowledgement of wrongdoing and expressed remorse, can outweigh the aggravating effect of multiple offenses and patterns of misconduct. See Disciplinary Counsel v. McCauley (2007), 114 Ohio St.3d 461, 465, 2007-Ohio-4259, para. 23 (Despite the fact that the attorney repeatedly withdrew funds from his client's trust account and improperly used the money for his personal and business expenses, usually justifying disbarment, an indefinite suspension was ordered in light of the mitigating factors of no prior disciplinary record, ultimate cooperation in disciplinary proceedings, acknowledgement of wrongdoing and expressed remorse outweighing the aggravating effect of multiple offenses and a pattern of misconduct. Complete cooperation in the disciplinary process, acknowledgement of wrongdoing and the expression of concomitant remorse are relevant mitigating factors to determine an appropriate sanction.); Dayton Bar Assn.

*v. Ellison* (2008), 118 Ohio St.3d 128, 130, 2008-Ohio-1908, paras. 15-16 (Mitigating factors of cooperation, acknowledgement of wrongdoing and remorse are applicable to the determination of an appropriate sanction in a case involving a neglect of entrusted legal matters and conduct involving fraud, deceit, dishonesty and misrepresentation resulting in a stayed one-year suspension.)

Finally, the abundance of mitigating evidence itself can justify a lesser sanction. See *Office of Disciplinary Counsel v. Markijohn* (2003), 99 Ohio St.3d 489, 490, 2003-Ohio-4129, para. 8 (In a case involving misrepresentation usually resulting in suspension, this Court took into account the abundance of mitigating evidence to affirm the Panel's recommendation of a six-month suspension entirely stayed.)

Accordingly, the above-mentioned precedent, together with the surrounding facts and circumstances supporting the abundance of mitigating factors far outweighing the aggravating factors, supports a sanction by this Court of a two-year suspension, with one year stayed with credit for time served.

**Proposition of Law III:**      **The Board and Panel erroneously failed to provide Respondent credit for the interim suspension imposed, pursuant to Gov. Bar R. V(5)(A)(4), since there was no evidence of there being a danger of re-offending.**

Although requested by Respondent's counsel, neither the Panel nor the Board agreed to provide Respondent with credit for time served in connection with the sanction recommended. Relator also urged the Panel to not provide Respondent with credit for time served during his interim suspension.

Respondent has been suspended from the practice of law due to his felony convictions since February 7, 2008. This actual suspension from the practice of law, it

is respectfully submitted, should serve as a basis for credit in connection with any sanction issued by this Honorable Court. This Honorable Court confronted the appropriateness of credit for time served in *Goldblatt, supra*. Although this Court denied interim-suspension credit, since Respondent therein had not raised that issue in his written objections, but only during oral argument, this Court did discuss the issue through its quotation of Maryland precedent. This Court in *Goldblatt, supra*, alluded to criteria which allows for credit for interim suspensions involving sexual conduct with minors. Discussing the appropriateness of indefinite suspensions in circumstances involving active sexual misconduct with minors, the Court noted that:

Moreover, lawyers convicted of felonies stemming from such conduct cannot expect to receive credit for an interim suspension imposed pursuant to Gov. Bar R. V(A)(4). Such credit is given only when the attorney poses no danger of re-offending. See *Disciplinary Counsel v. Margolis*, (2007), 114 Ohio St.3d 165, 2007-Ohio-3607, 870 N.E.2d 1158, para. 26 (no credit for an interim suspension unless the lawyer shows that the felony conviction manifested a "one time, never-to-be-repeated mistake").

*Goldblatt, supra*, 118 Ohio St.3d at 313, 2008-Ohio-2458, para. 18. *Margolis, supra*, also reviewed numerous precedent associated with this Court's granting of credit for time served under interim suspensions for felony convictions. See *Margolis, supra*, 114 Ohio St.3d at 169-170, 2007-Ohio-3607, paras. 26-27.

It appears, from a review of *Goldblatt, Margolis* and the precedent mentioned in *Margolis*, that the character of the conduct being one time, never-to-be-repeated, and a careful consideration of the danger of re-offending can be dispositive of such inquiry.

In the record from the hearing in this matter, Dr. Levine provided testimony that Respondent does not pose a real, substantial danger of re-offending. (Hrg., p. 83) John Juergensen also testified to the isolated nature of the criminal conduct which does

not evince character flaws permeating his entire being. (Hrg., p. 127). Respondent's interaction with OLAP through Megan Robertson demonstrates his commitment to his rehabilitation and progress in his sexual maturation.

Respondent's own testimony demonstrates his recognition of psychological issues emanating from his childhood, his self-awareness, his commitment to maturing and his determination to move forward with his life, recognizing that in some sense "his arrest was a good thing. It forced him to come to grips with his emotional life and do something to turn his world around." (App. 2, para. 18)

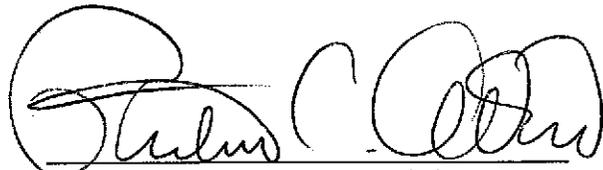
As noted by this Honorable Court in *Margolis, supra*, for misconduct of such magnitude to be given credit for an interim suspension, there must be compelling evidence of contrition, at the very least. Respondent urges this Honorable Court to recognize that there is indeed compelling evidence of contrition and other mitigating factors which include the absence of a prior disciplinary record, full and free disclosure to the Disciplinary Board, including a cooperative attitude toward the proceedings, as well as toward the underlying criminal proceedings, his character and reputation prior to these events, the imposition of other penalties and sanctions associated with his criminal prosecution, his mental disability and the rehabilitation in which he has participated after his arrest. All of these mitigating factors serve to justify his being provided credit for time served. See *Disciplinary Counsel v. Blaszak* (2004), 104 Ohio St.3d 330, 2004-Ohio-6593 (The court found a two-year suspension with credit for the two years served during the interim suspension was warranted given the abundance of mitigating circumstances even though the attorney pled guilty to selling his testimony in a federal court criminal prosecution.).

The unique way in which his mental disability intertwines with the underlying felony convictions and disciplinary rule violations militate against any fear that his being provided an interim suspension would in any way lessen public confidence in the legal profession or deterrence to other attorneys. Simply put, his conduct has been wholly a function of the unique psychological development applicable to him which he has consistently and positively addressed between the time of his arrest and the present.

### CONCLUSION

Respondent Aaron Anthony Ridenbaugh respectfully requests that the Supreme Court of Ohio modify the Board of Commissioners' recommendation herein and order a two-year suspension, with one year stayed. In addition, Respondent respectfully requests that credit for time served by Respondent in connection with his interim suspension also be provided.

Respectfully submitted,



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Attorneys for Respondent

LAW OFFICE OF

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(216) 674-0550 • Fax: (216) 674-0104

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# APPENDIX

BEFORE THE BOARD OF COMMISSIONERS  
ON GRIEVANCES AND DISCIPLINE  
OF THE SUPREME COURT OF OHIO

**FILED**

SEP 25 2008

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

**Aaron Ridenbaugh**  
Atty. Reg. No.: 0076823  
26700 CR 406  
Fresno, Ohio 43824

**AGREED  
STIPULATIONS  
BOARD NO. 08-025**

**DISCIPLINARY COUNSEL**  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411

**AGREED STIPULATIONS**

Relator, Disciplinary Counsel, and respondent, Aaron Ridenbaugh, do hereby stipulate to the admission of the following facts and exhibits.

**STIPULATED FACTS**

1. Respondent, Aaron Ridenbaugh, was admitted to the practice of law in the State of Ohio on November 10, 2003. Respondent is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. Respondent's license to practice law was suspended on February 7, 2008 pursuant to Gov. Bar Rule V(5)(A)(4).
3. On May 21, 2007 Respondent was arrested and charged with one count each of: voyeurism R.C. 2907.08, a misdemeanor of the third degree; criminal trespass, R.C. 2911.21, a misdemeanor of the fourth degree; and possession of criminal tools, R.C. 2923.24(A), a misdemeanor of the first degree.

4. Respondent pled not guilty to the charges in the Massillon Municipal Court and was released on ten-percent cash as surety bond of \$1,750.00.
5. On June 27, 2007 Respondent's case was bound over to the Stark County Court of Common Pleas for possible felony indictment.
6. On July 24, 2007, Respondent was indicted on the following charges: three counts of interception of wire, oral or electronic communications, R.C. 2933.52(A)(1), felonies of the fourth degree; and four counts of voyeurism, R.C. 2907.08(A), misdemeanors of the third degree.
7. Of those charges, one count of interception of wire, oral or electronic communications and one count of voyeurism occurred on April 21, 2005. One count of interception of wire, oral or electronic communications and one count of voyeurism occurred on September 27, 2006. The remaining count of interception of wire, oral or electronic communications and two counts of voyeurism occurred on May 21, 2007.
8. On August 17, 2007 Respondent was arraigned on the felony charges and pled not guilty.

9. On October 16, 2007 a bill of information charged Respondent with the following:  
three counts of pandering sexually-oriented matter involving a minor, R.C. 2907.322(A)(5), felonies of the fourth degree; and one count of illegal use of a minor in a nudity-oriented material or performance, R.C. 2907.323(A)(3), a felony of the fifth degree. All of the counts occurred on November 9, 2006.
10. Respondent pled guilty to all of the charges on October 17, 2007.
11. On November 21, 2007 Respondent was sentenced to a total of 48 months in prison on the charges with sentencing as follows:  
Sixteen months on each count of interception of wire, oral or electronic communications to run consecutively;  
Twenty days on each count of voyeurism to run concurrently;  
Sixteen months on each count of pandering sexually-oriented matter involving a minor to run concurrently; and  
Twelve months on the count of illegal use of a minor in a nudity-oriented material or performance to run concurrently.
12. Respondent was released on or about January 17, 200<sup>8</sup>~~7~~.
13. Respondent is currently on probation.
14. Respondent was evaluated by OLAP on June 4, 2007 and signed an OLAP contract.

15. Respondent has been in treatment with Steven B. Levine, M.D. since June 2007.

### **STIPULATED VIOLATIONS**

For misconduct occurring after February 1, 2007, respondent's conduct constitutes violations of Rule 8.4(b), (It is professional misconduct for a lawyer to commit an illegal act that reflects adversely on the lawyer's honesty and trustworthiness); and Rule 8.4(h), (It is professional misconduct for a lawyer to engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).

For misconduct occurring before February 1, 2007, respondent's conduct constitutes violations of DR 1-102(A)(3), (A lawyer shall not engage in conduct involving moral turpitude); and DR 1-102(A)(6), (A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law).

### **STIPULATED EXHIBITS**

1. Jackson Township police reports
2. Indictment of July 24, 2007 (Case no. 2007CR1068)
3. Bill of Information of October 16, 2007 (Case no. 2007CR1748)
4. Transcript of plea hearing, October 17, 2007
5. Stark County Court of Common Pleas Journal Entry Sentencing Form, November 21, 2007.
6. Transcript of sentencing hearing, November 21, 2007
7. Stark County Court of Common Pleas Criminal Hearing Disposition Sheet, January 16, 2008.

8. Judgment Entry, Judicial Release, January 23, 2008
9. Order of the Supreme Court of Ohio of February 7, 2008 suspending respondent from the practice of law
10. September 16, 2008 & November 16, 2007 letters of Megan Robertson, MSW, LSW,
11. June 25, 2008 & November 5, 2007 report of Steven B. Levine, MD
12. Sixteen page curriculum vita of Steven B. Levine, MD

### **STIPULATED MITIGATING AND AGGRAVATING FACTORS**

Relator and Respondent stipulate to the following mitigating factors pursuant to BCGD Proc. Reg. § 10 (B)(2):

- (a) absence of a prior disciplinary record;
- (b) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.
- (c) imposition of other penalties or sanctions.

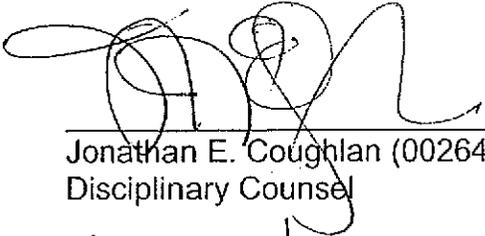
There are no stipulated aggravating factors.

### **SANCTION**

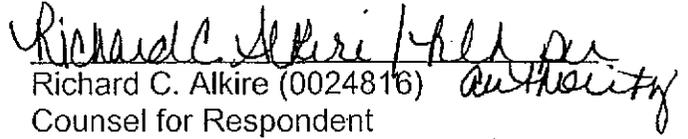
Relator and Respondent are unable to stipulate to an appropriate sanction. Instead the parties leave the determination as to appropriate sanction to the wisdom and discretion of the panel.

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 25th day of September, 2008.



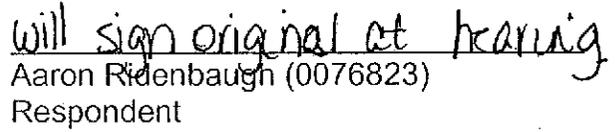
Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



Richard C. Alkire (0024816) *authority*  
Counsel for Respondent



Heather L. Hissom (0068151)  
Assistant Disciplinary Counsel



*will sign original at hearing*  
Aaron Ridenbaugh (0076823)  
Respondent

**BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO**

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 08-025</b>
<b>Aaron Anthony Ridenbaugh</b>	:	<b>Findings of Fact,</b>
<b>Attorney Reg. No. 0076823</b>	:	<b>Conclusion of Law and</b>
<b>Respondent</b>	:	<b>Recommendation of the</b>
<b>Disciplinary Counsel</b>	:	<b>Board of Commissioners on</b>
<b>Relator</b>	:	<b>Grievances and Discipline of</b>
	:	<b>the Supreme Court of Ohio</b>
	:	
	:	

**INTRODUCTION**

¶1. This matter was heard on October 6, 2008, before a panel of the Board of Commissioners on Grievances and Discipline consisting of Shirley Christian, McKenzie Davis and Stephen C. Rodeheffer, Chair. None of the panel members resides in the district from which the Complaint originated or served on the probable cause panel that certified this complaint.

¶2. Appearing on behalf of the Relator, Office of Disciplinary Counsel, was Heather Hissom. The Respondent appeared represented by Attorney Richard C. Alkire.

¶3. The pleadings in this case consisted of a Complaint filed against Respondent on March 31, 2008, and Respondent's Answer filed May 27, 2008. The parties stipulated to the basic, underlying facts regarding the Respondent's conduct, and violation of the Code of Professional Responsibility and the Ohio Rules of Professional Conduct. Respondent and Relator stipulated to the following disciplinary violations:

- a. ORPC 8.4(b) – Committing an illegal act that reflects adversely on the lawyer’s honesty or trustworthiness;
- b. ORPC 8.4(h) – Engaging in conduct that adversely reflects on the lawyer’s fitness to practice law;
- c. DR 1-102(A)(3) – Engaging in conduct that involves moral turpitude;
- d. DR 1-102(A)(6) – Engaging in conduct that adversely reflects on the lawyer’s fitness to practice law.

¶4. The parties did not agree upon a sanction for these violations.

### FACTS

¶5. The Respondent, Anthony Ridenbaugh, was licensed to practice law on November 10, 2003. Upon his admission to the bar he was hired as a law clerk by Judge Russ Kendig, Bankruptcy Judge for the U.S. Bankruptcy Court, Northern District of Ohio. At the conclusion of his two year term Respondent was hired by the law firm of Gibson and Lowry of Cuyahoga Falls, Ohio, as an associate.

¶6. According to the psychiatric and other expert testimony, Respondent apparently weathered a somewhat troubled childhood that was marked by abandonment by his father and step-father, financial difficulty, and a mother who suffered through multiple health issues. Apparently these events, plus a personality characterized by low self esteem, pushed Respondent into a variety of self-destructive behavioral patterns highlighted by substance abuse and extensive viewing of pornography.

¶7. Sometime in 2004 Respondent began engaging in the voyeuristic activities that led to his ultimate arrest in April of 2007. According to him, he was wandering through his apartment complex a few years ago and heard a couple engaging in sexual intercourse. He then hatched the idea of secretly placing a digital tape recorder outside the apartment window in a location where

the voices of the persons engaged in sex could be taped. He would then retrieve the recording and upload it into his computer for future use. He engaged in this activity for quite a long time with a number of residents at his complex until April 21, 2007, when a resident saw him outside the window attempting to place the recorder. When he realized he had been discovered, Respondent left the complex only to return later to waiting law enforcement officials whom the victim had called to the scene. Upon being questioned Respondent fully confessed to his conduct and was arrested.

¶8. A later search of his apartment revealed that Respondent was not only guilty of the voyeurism for which he had been arrested, but he also had in his possession child pornography consisting of three videos and hundreds of still photos showing minors in various stages of nudity or engaged in sexual acts. The police then discovered that Respondent had manufactured a peep hole that allowed him to view the female resident in an adjoining apartment.

¶9. Initially Respondent was indicted on three counts of intercepting wire, oral or electronic communications in violation of R.C. §2933.32(A)(1) (4<sup>th</sup> degree felonies) and four counts of voyeurism in violation of R.C. §2907.08(A) (1<sup>st</sup> degree misdemeanors). Eventually Respondent entered a guilty plea to a bill of information charging him with three counts of pandering sexually oriented matter involving a minor in violation of R.C. §2907.322(A)(5) (4<sup>th</sup> degree felonies) and one count of the illegal use of a minor in sexually oriented material or performance in violation of R.C. §2907.323(A)(3) (5<sup>th</sup> degree felony). After a presentence investigation was completed, Respondent was sentenced on November 21, 2007 to a 48 month prison term, 60 days of which he served before being granted a judicial release on January 17, 2008.

¶10. On February 7, 2008, the Supreme Court of Ohio issued an interim suspension based on the Respondent's felony conviction. Since the interim suspension he has been clerking for the same law firm with which he was employed at the time of his arrest.

### DISCIPLINARY RULE VIOLATIONS

¶11. Based upon the testimony, stipulations and exhibits, the Panel finds by clear and convincing evidence that Respondent violated the stipulated provisions of the Code of Professional Responsibility and Rules of Professional Conduct listed in Paragraph 3, *above*.

### SANCTION

¶12. The parties stipulated to the following mitigating factors:

- a. No prior disciplinary action;
- b. Full and free disclosure to the disciplinary board and cooperative attitude toward the proceedings;
- c. The imposition of other sanctions or penalties.

There were no stipulations with respect to aggravating factors.

¶13. The Relator recommended a two year actual suspension with no credit for the interim suspension. Respondent's counsel requested a two year suspension with six months stayed with credit for the interim suspension.

¶14. The Panel makes the following factual determinations with respect to aggravating factors that were present in this case.

- a. There was clearly a selfish motive behind Respondent's conduct. He succumbed to his sexual fetishes without regard to the privacy and well being of his victims.
- b. Respondent's conduct involved multiple offenses that took place over a period of years.

- c. Respondent's conduct was directed at vulnerable victims, particularly with respect to his viewing child pornographic material.

¶15. The Panel finds the following mitigating factors:

- a. Although only a young lawyer having practiced less than five years before his interim suspension, Respondent does in fact have no disciplinary record.
- b. Respondent has fully cooperated not only in the disciplinary process, but also the judicial process as well.
- c. Respondent has made every attempt to rectify his misconduct by seeking and continuing treatment for the psychological and psychiatric disorders discussed below.
- d. There have unquestionably been other, significant sanctions that have been imposed on Respondent, many of which will continue for years, if not a lifetime.

¶16. The offenses committed by Respondent were despicable acts. In the case of the voyeurism Respondent's fetishes led him to intrude into the most intimate aspects of the lives of unsuspecting individuals, many of whom felt compelled to relocate after Respondent's activity was unveiled. And in the case of the child pornography, Respondent's viewing of minors for sexual gratification provides direct financial and other support for an insidious subculture that victimizes the most defenseless of our society.

¶17. On the other hand, Respondent presented compelling expert testimony that explained Respondent's resort to this behavior. By nature a shy individual who has struggled with his self esteem all of his life, Respondent looked to substance abuse and pornography for escape. This man's personal failings were aggravated by his being involved in a relationship with a woman who, while professing an emotional attachment for the Respondent, found it impossible to sever her emotional attachment to a demanding mother. As Dr. Steven Levine reported to the Panel, Mr. Ridenbaugh eventually developed a sense of hopelessness for his private life and simply gave in to what were irresistible, immature impulses.

¶18. The Panel was impressed by Respondent's own statement that in the end his arrest was a good thing. It forced him to come to grips with his emotional life and do something to turn his world around. He immediately contacted OLAP regarding his psychological and substance abuse problems and eventually entered into a contract with that organization. He sought psychiatric hospitalization and eventually psychotherapy with Dr. Steven Levine; treatment that has continued uninterrupted for over a year and a half. He also attends group sex therapy and AA.

¶19. Interestingly, the testimony revealed that, notwithstanding the mess that was his private life, Respondent performed well as a lawyer. Indeed, the law firm that employed him decided to retain him as an associate even in the face of extensive, humiliating publicity and indicated they would retain him as a law clerk through the period of his suspension. Even Relator's counsel admitted that this case was not about neglect or competency, "but was about something other than that." (T.270)

¶20. The determination of an appropriate sanction ultimately must answer the query of how much more punishment our disciplinary system is required to impose beyond what the judicial system has meted out, when the protection of the public is not an issue? Not only has Mr. Ridenbaugh been arrested and incarcerated, he will bear the brand of "felon" for the rest of his life and may possibly have to register as a sex offender for twenty years.<sup>1</sup> These facts accompanied by the public humiliation that has come from his ordeal, his having to serve 300 hours of community service cleaning a Goodwill facility, and the restrictions imposed by his probation have caused the Panel to conclude that the judicial system has fairly exacted its pound of flesh and that additional, significant punishment by our disciplinary system is not required.

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<sup>1</sup> Whether Respondent will have to register as a sex offender was still a matter that had not yet been determined as of the date of the disciplinary hearing.

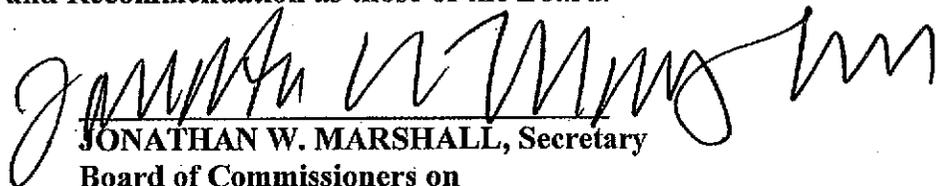
¶21. It is the Panel's recommendation that Aaron Anthony Ridenbaugh be suspended from the practice of law for two years with no credit for his interim suspension. During this period Mr. Ridenbaugh will do the following:

- a. Comply with the terms of his probation as directed by the Court of Common Pleas, Stark County, Ohio;
- b. Comply with his OLAP contract;
- c. Continue to seek and obtain psychiatric therapy and counseling;
- d. Refrain from violating Gov Bar R.V (8)(G) with respect to the employment of suspended attorneys.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 4, 2008. The Board adopted the Findings of Fact and Conclusions of Law of the panel. However, the Board recommends, given the nature of his crimes and the need to protect the public, that Respondent, Aaron Anthony Ridenbaugh, be indefinitely suspended with no credit for time served under the same terms as those recommended by the panel and further that an independent psychiatric report of his mental health fitness be provided prior to reinstatement in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**



**JONATHAN W. MARSHALL, Secretary**  
**Board of Commissioners on**  
**Grievances and Discipline of**  
**the Supreme Court of Ohio**

BEFORE THE BOARD OF COMMISSIONERS  
ON GRIEVANCES AND DISCIPLINE  
OF THE SUPREME COURT OF OHIO

FILED

SEP 25 2008

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

**Aaron Ridenbaugh**  
Atty. Reg. No.: 0076823  
26700 CR 406  
Fresno, Ohio 43824

**AGREED  
STIPULATIONS  
BOARD NO. 08-025**

**DISCIPLINARY COUNSEL**  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411

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3. On May 21, 2007 Respondent was arrested and charged with one count each of: voyeurism R.C. 2907.08, a misdemeanor of the third degree; criminal trespass, R.C. 2911.21, a misdemeanor of the fourth degree; and possession of criminal tools, R.C. 2923.24(A), a misdemeanor of the first degree.

4. Respondent pled not guilty to the charges in the Massillon Municipal Court and was released on ten-percent cash as surety bond of \$1,750.00.
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Sixteen months on each count of pandering sexually-oriented matter involving a  
minor to run concurrently; and  
Twelve months on the count of illegal use of a minor in a nudity-oriented material or  
performance to run concurrently.
12. Respondent was released on or about January 17, 2007.
13. Respondent is currently on probation.
14. Respondent was evaluated by OLAP on June 4, 2007 and signed an OLAP contract.

15. Respondent has been in treatment with Steven B. Levine, M.D. since June 2007.

### **STIPULATED VIOLATIONS**

For misconduct occurring after February 1, 2007, respondent's conduct constitutes violations of Rule 8.4(b), (It is professional misconduct for a lawyer to commit an illegal act that reflects adversely on the lawyer's honesty and trustworthiness); and Rule 8.4(h), (It is professional misconduct for a lawyer to engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).

For misconduct occurring before February 1, 2007, respondent's conduct constitutes violations of DR 1-102(A)(3), (A lawyer shall not engage in conduct involving moral turpitude); and DR 1-102(A)(6), (A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law).

### **STIPULATED EXHIBITS**

1. Jackson Township police reports
2. Indictment of July 24, 2007 (Case no. 2007CR1068)
3. Bill of Information of October 16, 2007 (Case no. 2007CR1748)
4. Transcript of plea hearing, October 17, 2007
5. Stark County Court of Common Pleas Journal Entry Sentencing Form, November 21, 2007.
6. Transcript of sentencing hearing, November 21, 2007
7. Stark County Court of Common Pleas Criminal Hearing Disposition Sheet, January 16, 2008.

8. Judgment Entry, Judicial Release, January 23, 2008
9. Order of the Supreme Court of Ohio of February 7, 2008 suspending respondent from the practice of law
10. September 16, 2008 & November 16, 2007 letters of Megan Robertson, MSW, LSW,
11. June 25, 2008 & November 5, 2007 report of Steven B. Levine, MD
12. Sixteen page curriculum vita of Steven B. Levine, MD

### **STIPULATED MITIGATING AND AGGRAVATING FACTORS**

Relator and Respondent stipulate to the following mitigating factors pursuant to BCGD Proc. Reg. § 10 (B)(2):

- (a) absence of a prior disciplinary record;
- (b) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.
- (c) imposition of other penalties or sanctions.

There are no stipulated aggravating factors.

### **SANCTION**

Relator and Respondent are unable to stipulate to an appropriate sanction. Instead the parties leave the determination as to appropriate sanction to the wisdom and discretion of the panel.

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 25th day of September, 2008.



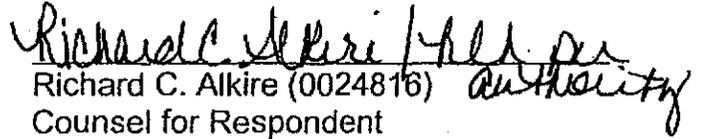
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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



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Heather L. Hissom (0068151)  
Assistant Disciplinary Counsel



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Richard C. Alkire (0024816) *authority*  
Counsel for Respondent

*will sign original at hearing*  
Aaron Ridenbaugh (0076823)  
Respondent

**CERTIFICATE OF SERVICE**

A copy of the foregoing **RESPONDENT'S OBJECTIONS TO THE FINAL REPORT OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE** has been mailed by ordinary U.S. mail this 19<sup>th</sup> day of February, 2008 to the following:

Jonathan E. Coughlan  
Disciplinary Counsel

Disciplinary Counsel

and

Heather L. Hissom  
Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, OH 43215-7411



Richard C. Alkire (#0024816)

Attorney for Respondent