

IN THE SUPREME COURT OF OHIO

Aaron A. Ridenbaugh :
Attorney Reg. No. (0076823) :
US Bankruptcy Court :
201 Cleveland Ave., S.W. :
Canton, Ohio 44702 :

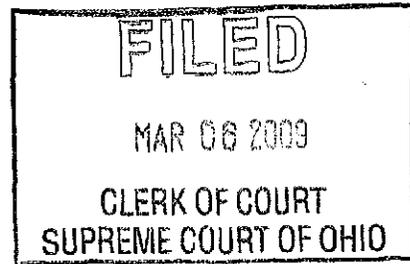
CASE NO. 2008-2493

Respondent, :

**RELATOR'S ANSWER TO
RESPONDENT'S OBJECTIONS
TO THE BOARD OF
COMMISSIONERS'
REPORT AND
RECOMMENDATIONS**

Disciplinary Counsel :
250 Civic Center Drive, Suite 325 :
Columbus, Ohio 43215-7411 :

Relator. :



**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS
TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS**

Jonathan E. Coughlan (0026424)
Disciplinary Counsel
Relator

250 Civic Center Drive, Suite 325
Columbus, OH 43215
614.461.0256

Richard C. Alkire (0024816)
Counsel for Respondent

Attorney at Law
250 Spectrum Office Building
6060 Rockside Woods Blvd.
Independence, OH 44131-7300
216.674.0550

Heather L. Hissom (0068151)
Assistant Disciplinary Counsel
Counsel for Relator

Aaron A. Ridenbaugh (0076823)
Respondent

TABLE OF CONTENTS

	PAGE
Table of Authorities	iii, iv
Introduction	1
Facts	3
Answer To Objections	
I. The record supports the board's recommended sanction	6
II. Respondent's mental disability was considered by the panel but does not outweigh his misconduct. Respondent did not establish remorse as a mitigating factor	11
III. Respondent should not receive credit for his interim suspension imposed pursuant to Gov. Bar R V(5)(A)(4)	15
Conclusion	18
Certificate of Service	19

TABLE OF AUTHORITIES

DESCRIPTION

CASES

PAGE(S)

<i>Columbus Bar Assn. v. Linnen</i> 111 Ohio St.3d 507, 2006-Ohio-5480, 857 N.E.2d 539	8, 14
<i>Disciplinary Counsel v. Bein,</i> 105 Ohio St.3d 62, 2004-Ohio-7012 , 82 N.E.2d 358	7
<i>Disciplinary Counsel v. Blaszek (2004)</i> 104 Ohio St.3d 220, 819 N.E. 2d 689, 2004-Ohio-6593	16,17
<i>Disciplinary Counsel v. Goldblatt</i> 118 Ohio St.3d 210, 888 N.E.2d 1091, 2008-Ohio-2458	7, 15, 16, 17
<i>Disciplinary Counsel v. Hunter (2005),</i> 106 Ohio St.3d 418, 835 N.E.2d 707, 2005-Ohio-5411	12,13
<i>Disciplinary Counsel v. Margolis</i> 113 Ohio St.3d 165, 870 N.E.2d 1158, 2007-Ohio-3607	15
<i>Disciplinary Counsel v. McCauley</i> 114 Ohio St.3d 461, 2007-Ohio-4259, 873 N.E.2d 269	10
<i>Disciplinary Counsel v. Stern</i> 106 Ohio St.3d 266, 2005-Ohio-4804, 834 N.E.2d 351	7
<i>Toledo Bar Assn. v. Colburn,</i> 99 Ohio St.3d 57, 2003-Ohio-2472, 788 N.E.2d 1069	7

DISCIPLINARY RULES

DR 1-102(A)(3)	1
DR 1-102(A)(6)	2
Rule 8.4(b)	2

Rule 8.4(h)	2
Gov. Bar R. V(5)(A)(4)	6,15,16
Gov. Bar R. V(7)	11
Gov. Bar R. V(10)	2
BCGD Proc. Reg. 10(B)(1)	3
BCGD Proc. Reg. 10(B)(2)(G)	11
BCGD Proc. Reg. 10(B)(2)(G)(i-iv)	11

IN
THE SUPREME COURT OF OHIO

Disciplinary Counsel, Relator	:	
	:	CASE NO. 2008-2493
Aaron Ridenbaugh Respondent	:	RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS
	:	
	:	

INTRODUCTION

Now comes relator, Disciplinary Counsel, and hereby submits this answer to respondent, Aaron Ridenbaugh's, objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (the "board").

Based upon clear and convincing evidence presented at the hearing in this matter the board found that respondent violated two Disciplinary Rules of the Code of Professional Responsibility for respondent's conduct prior to February 1, 2007 and two Rules of the Rules of Professional Conduct for respondent's conduct after February 1, 2007. Report at 11. All four of the violations were stipulated by relator and respondent based upon respondent's criminal conduct. Those four violations are:

- DR 1-102(A)(3) (a lawyer shall not engage in conduct involving moral turpitude);

- DR 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law);
- 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).

At the hearing, relator stated that an indefinite suspension would be appropriate based on respondent's conduct; however, in the alternative, relator recommended a two year suspension with no credit for respondent's interim suspension and with conditions to reinstatement. Respondent recommended a two year sanction with one year suspended and credit for his interim suspension.

The board recommended that respondent's license to practice law be indefinitely suspended with no credit for his interim suspension that resulted from his felony conviction. In addition to the requirements set forth in Gov. Bar R. V(10), respondent must meet several other conditions for reinstatement. These conditions include complying with the terms of his probation, complying with his OLAP contract, continuing with his therapy and providing an independent psychiatric report of his mental fitness. Id. at 21, 22.

The board found the following aggravating factors:

- respondent acted with a selfish motive;

- respondent's conduct involved multiple offenses that took place over a period of years;
- respondent's conduct impacted vulnerable victims, particularly children.

BCGD Proc. Reg. 10 (B)(1). Report at 14.

The board's report was certified to this court on December 30, 2008. A show cause order was issued on January 12, 2009. After obtaining a stipulated extension of time, respondent's objections were filed on February 20, 2009. Oral argument is scheduled for April 8, 2009.

For the reasons set forth herein, this court should overrule respondent's objections and adopt the Findings of Fact, Conclusions of Law and Recommendation of the board.

STATEMENT OF FACTS

Respondent, Aaron Ridenbaugh, was arrested on May 21, 2007 at his apartment complex after the police were called to the complex by a resident. The resident saw respondent outside of his bedroom window, looking in. The resident came out of his apartment and chased respondent but was not able to catch him. A tape recorder was found affixed to the bedroom window frame of the resident's apartment. Respondent was later stopped by the police and taken into custody, where he was positively identified by the resident. (Tr. 28, Exb. 1)¹.

Respondent had placed the tape recorder outside that particular apartment. Respondent was attempting to record the couple who lived there having sex.

¹ Stipulated Exhibits are referred to as "Exb." References to the hearing transcript are designated as "Tr." followed by the page number.

Respondent chose that particular window because he had previously heard that particular couple having sex and he had previously recorded them. (Tr. 29).

At the time of his arrest, respondent had previously recorded other couples in his apartment complex having sex. In fact, respondent had been recording couples in the complex since 2004. (Tr. 30). Respondent used the tapes for his own personal, sexual gratification. (Tr. 214-215, Exb. 11).

In addition to recording the couples in his apartment complex, in 2006, respondent drilled a "peep hole" in the closet in his apartment. Through the "peep hole", respondent could look into the living room/kitchen area of the apartment next door. Respondent drilled the "peep hole" to be able to view the couple next door having sex. (Tr. 214, 215, 255).

At the same time that respondent was engaged in the foregoing criminal activities, he was also abusing drugs. Respondent was diagnosed with "poly substance dependence including cocaine, marijuana, alcohol and amphetamines." (Tr. 35, Exb. 10). Respondent was also abusing prescription drugs that had been prescribed to him for the treatment of ADHD, specifically Ritalin and Concerta. (Tr. 36-38).

Immediately following his arrest, respondent was admitted to St. Thomas hospital in Akron for inpatient treatment due to suicidal ideation. (Tr. 230). On June 14, 2007, respondent was directly referred to Dr. Stephen Levine, a psychiatrist with an extensive practice focusing solely on patients with sexual disorders. Respondent has been in treatment with Dr. Levine ever since.

Dr. Levine diagnosed respondent with dysthemia, a low level depression; paraphelia, a sexual disorder; mixed character disorder; chronic marijuana and alcohol

abuse and attention deficit disorder. (Tr. 56-57, Exb. 11). In addition to attending individual therapy, Dr. Levine prescribed respondent a low level antidepressant (Zoloft) and medication for respondent's ADD.

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. (Stip. 6, Exb. 2).²

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. (Stip. 7, Exb. 2). All of the charges resulted from recording devices respondent affixed to window frames in respondent's apartment complex. (Exb. 1).

On October 16, 2007, as a result of the forensic examination of respondent's computer, a bill of information charged Respondent with the following additional counts: 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. The forensic examination revealed that respondent's computer held 530 images of child pornography and three (3) videos of a sexual nature involving minors. (Exb. 1).

² Stipulated Facts are referred to as "Stip."

Respondent testified that his proclivity to procure pornography depicting younger and younger participants came about because "regular," adult pornography "just wasn't doing it for me anymore." (Tr. 212).

Respondent pled guilty to all of the charges on October 17, 2007. (Stip. 10, Exb. 4). On November 21, 2007 Respondent was sentenced to a total of 48 months in prison on the charges. (Stip. 11, Exb. 5, 6). Respondent was immediately taken into custody, placed in the Stark County jail and transferred to the custody of the Ohio Department of Rehabilitation and Correction.

Respondent was released on a motion for judicial release which was granted on January 16, 2008. (Exb. 7, 8). Respondent spent a total of 56 days incarcerated after his sentencing. Respondent was then placed on community control for five (5) years with several conditions. (Exb. 8).

Respondent's license to practice law was suspended pursuant to Gov. Bar R. V(5)(A)(4) on February 7, 2008 and has remained suspended since.

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

Answer to Objection 1

The record supports the board's recommended sanction.

Respondent's argument centers on the fact that the criminal conduct did not occur or take place at work and did not directly impact upon a client. Respondent argues that because a client was not involved, this Court should not indefinitely suspend respondent's license. Respondent also argues that he has been punished enough by the criminal system and that the "board's rationale of protecting the public duplicated

Judge Haas' sentence." These arguments do not support a reduction in the sanction recommended by the board.

The ABA Standards for Imposing Lawyer Sanctions, section 5.12, recommends actual suspension from the practice of law for crimes of this magnitude. The length of that suspension will depend on the courts' weighing of all factors, including mitigation and aggravation. In this case, the board gave respondent credit for mitigation. The board also considered the aggravating factors and reached the conclusion that an indefinite suspension was the appropriate sanction. Report at 20.

This Court has often suspended or disbarred attorneys for criminal conduct that did not directly affect a client or stem from the respondent's practice of law. See, e.g. *Disciplinary Counsel v. Stern*, 106 Ohio St.3d 266, 2005-Ohio-4804, 834 N.E.2d 351, (attorney disbarred for convictions for possession with intent to distribute heroin, malicious damaging of building by fire, bank fraud and money laundering); *Disciplinary Counsel v. Bein*, 105 Ohio St.3d 62, 2004-Ohio-7012, 82 N.E.2d 358 (attorney disbarred for money laundering and interstate transport of stolen property); *Toledo Bar Assn. v. Colburn*, 99 Ohio St.3d 57, 2003-Ohio-2472, 788 N.E.2d 1069 (attorney suspended for one year for fleeing a police officer and vehicular assault).

This court indefinitely suspended the attorney in *Disciplinary Counsel v. Goldblatt* for his attempts to procure a pre-adolescent girl for a sexual encounter. 118 Ohio St.3d 210, 2008-Ohio-2458, 888 N.E.2d 1091,. Goldblatt made multiple telephone calls over a two month span to a man that he believed could arrange a sexual encounter with a minor female. After a trial, Goldblatt was found guilty of two felonies: compelling prostitution and possessing criminal tools. He was sentenced to community control

sanctions. Goldblatt was found to have violated community control when a random inspection of his computer hard-drive uncovered 11 images of nude minors. This court found that based on the conduct and duties violated, an indefinite suspension was appropriate.

Respondent in this case engaged in the voyeuristic behavior for years and his criminal charges spanned three years of criminal activity. Respondent also downloaded hundreds of pornographic pictures involving children that he used for sexual gratification. An examination of the criminal conduct involved is enough to justify a sanction of indefinite suspension.

This court also found indefinite suspension the appropriate sanction for the attorney in *Columbus Bar Assn. v. Linnen*, 111 Ohio St.3d 507, 2006-Ohio-5480, 857 N.E.2d 539. Linnen exposed himself to 30 different women in the central Ohio area, photographing their reactions. Linnen's conduct occurred from February 2002 until he was caught in November 2003. Weighing all factors, including mitigation and aggravation, this court found that the mitigation presented did not outweigh the severity of Linnen's conduct.

Respondent believes that the board's increase in sanction from the recommendation of the panel is unsupported by the board report. However, the board makes it clear that their consideration in increasing the sanction is "the nature of his crimes and the need to protect the public." The report states that respondent committed "despicable acts;" that he intruded into "the most intimate aspects of the lives of unsuspecting individuals" and in direct reference to the child pornography found that

respondent provided “direct financial and other support for an insidious subculture that victimizes the most defenseless of our society.” Report at 16.

Dr. Levine, respondent’s therapist since 2007, testified that he did not believe that respondent could have stopped this behavior on his own. He believed that it took something “dramatic,” like being arrested, to cause respondent to evaluate his conduct. (Tr. at 90).

Dr. Levine describes the respondent as “a passive man, quietly depressed, socially avoidant, who suffers from a very poor opinion of himself and has a pervasive sense that he’s trapped by his own procrastination and shyness. To me, that statement is the most important thing about him.” (Tr. 51). Dr. Levine explained to the panel that respondent lived in a “fantasy world,” using the voyeurism and pornography as a way to escape the reality of his world. (Tr. 57).

However, Dr. Levine also made the distinction in his testimony that he was not diagnosing respondent as having major depression. He was diagnosing respondent with a “low-grade sort of chronic sense of pessimism, and low self-esteem and sadness about his own limitations as a person. He’s not paralyzed that he can’t go to work.” (Tr. 112). Dr. Levine made clear in his testimony that respondent was able to separate the “fantasy” from his work reality. (Tr. 55).

Respondent himself testified that he began to download the child pornography because “the regular stuff just wasn’t doing it for me anymore.” (Tr. at 212). Respondent began viewing movies with younger and younger looking women. He began watching movies where adult women were portrayed as teenagers. When that

material no longer satisfied him, respondent moved into movies and photographs featuring actual teenagers and children. (Tr. at 211).

Respondent states this growing need for more and more “exciting” material stemmed from his unfulfilling relationship with his girlfriend, now fiancée. Respondent looked for gratification in not just the voyeuristic behaviors but ever younger pornographic images. (Tr. at 211-213).

The board considered mitigating and aggravating factors. There were several mitigating factors found, including that the respondent had been given a stiff penalty by the criminal system and may need to register as a sex offender. However, the board also found several aggravating factors, including that the conduct took place over years and the vulnerability of the victims.

Respondent directs this Court’s attention to several cases where this Court found that mitigation evidence outweighed the usual sanction for the attorney’s behavior. However, none of the cases cited by respondent involve an attorney convicted of a crime, let alone multiple felonies. One of the cases cited by respondent, *Disciplinary Counsel v. McCauley*, 114 Ohio St.3d 461, 2007-Ohio-4259, 873 N.E.2d 269, involved an attorney who repeatedly stole client funds from his IOLTA account. This Court still accepted the recommended sanction of indefinite suspension, taking into consideration the mitigating evidence presented.

The board’s decision to increase the sanction to indefinite suspension is supported by the record and should not be modified.

Answer to Objection 2

Respondent's mental disability was considered by the panel but does not outweigh his misconduct. Respondent did not establish remorse as a mitigating factor.

In order to establish mitigation based upon a mental disability, a respondent must prove the factors enumerated in BCGD Proc. Reg. 10(B)(2)(G)(i-iv).³ Only three of the factors are relevant. Those factors are:

- i) a diagnosis of mental disability by a qualified health care provider;
- ii) a determination that the mental disability contributed to cause the conduct;
- iii) a prognosis from a qualified health care professional that the attorney will be able to return to competent, ethical professional practice.

As set forth in the board report, one of the four mitigating factors found was that the “[r]espondent has made every attempt to rectify his misconduct by seeking and continuing treatment for the psychological and psychiatric disorders discussed below.” Report at 5. The board acknowledged that Dr. Levine’s testimony was “compelling” and explained how respondent came to engage in his criminal conduct. Id. According to the board, “[r]espondent eventually developed a sense of hopelessness for his private life and simply gave in to what were irresistible, immature impulses.” Id.

Although the board did not specifically state that respondent’s mental disability was a mitigating factor, it did find that respondent’s psychological problems contributed to respondent’s conduct. Report at 15. The board specifically found that respondent’s

³ Respondent refers to his “mental illness” but cites BCGD Proc. Reg. 10(B)(2)(G) which references mitigation evidence of “mental disability.” For clarification, “mental illness” as used in Gov. Bar R. V(7) has the same meaning as division (A) of R.C. 5122.01. Relator has not alleged that respondent is mentally ill.

willing participation in a long-term treatment plan for his psychological problems was a mitigating factor. Report at 15, 17. The board gave due consideration to respondent's mental health but did not find the evidence compelling enough to outweigh the necessity of an indefinite suspension.

As acknowledged by the board, this case is not about respondent's ability to practice law. Report at 19. It is about respondent's criminal conduct and the corresponding rule violations.

Dr. Levine specifically clarified that respondent was diagnosed with dysthymia, "not major depressive disorder." (Tr. at 112). He diagnosed respondent with a "low-grade sort of chronic sense of pessimism, and low self esteem and sadness about his own limitations as a person. He's not paralyzed that he can't go to work." (Tr. at 112). For some period of time, respondent was able to continue to work and carry on his limited social life without anyone knowing about his criminal activity. (Tr. at 82).

In *Disciplinary Counsel v. Hunter*, Sandra Hunter embezzled nearly \$300,000 from two separate estates while suffering from depression. *Hunter*, 106 Ohio St.3d 418, 2005-Ohio-5411, 835 N.E.2d 707. This Court did not give undue weight to Hunter's argument regarding her mental disability. Hunter's treating psychiatrist testified that Hunter's ability to think clearly was impaired but that she was still able to recognize reality. In fact, although this Court found that Hunter established mitigation of mental disability it did not sway the Court from ordering permanent disbarment. This court found that Hunter's misconduct outweighed the consideration to be given the mitigation evidence.

As the *Hunter* decision shows, mitigation in the form of mental disability should be considered when this Court determines an appropriate sanction. Nonetheless, an attorney can present convincing evidence of a mental disability and still be indefinitely suspended or disbarred for misconduct leading to ethical violations. This, like *Hunter*, is such a case.

Further, respondent argues that he did not receive enough “credit” from the board for his remorse. This is likely because respondent failed to effectively express any remorse. In fact, respondent was directly asked about remorse by his attorney:

Q. Remorse is an issue that panels are interested in, the Court's interested in. Have you any?

A. I have a lot of remorse, for so many—I mean, obviously, for the victims. I mean, that just got to be awful to find that recorder. Or, again, just even if you didn't specifically find something, knowing someone in your apartment complex did that. You know, I feel bad for—and I have friends and family. You know, you heard from other people that just couldn't believe it. And I'm sure I have—there's a number of people from law school, I had lots of friends, I've been too ashamed to get in touch with. I'm sure they were all just floored and flabbergasted.

(Tr. 250-251)

Additionally, when asked about viewing child pornography and how he felt about that, respondent stated:

And I feel awful about that as well. I would like to say—I mean, just generally viewing that material creates a market for it. I never did subscribe to a site. I mean, this was stuff that was out there, I was able to find for free.

(Tr. 251-252).

In general, the evidence shows that respondent minimized his misconduct. If anything, respondent is mostly embarrassed at having been caught and exposed. In fact, directly after being asked about remorse, respondent stated that his self-esteem is

much improved because he is no longer leading a dual life. (Tr. at 252). Respondent stated, "This wasn't something that anybody, anybody in my life knew about. And it was always very shaming, and my lack of success with women very shaming. And it was something that was in the dark. And I'm better for it now. It would have been nice if it would have come to light in a less public fashion sure." (Tr. 252).

Similarly, in *Linnen*, this Court viewed Linnen's remorse as being self-serving. 111 Ohio St.3d 507, 2006-Ohio-5480, 857 N.E.2d 539. This Court concluded it was all about Linnen's own, personal embarrassment at having his conduct known or feeling sorry that his friends and family were embarrassed for him. This Court found that that type of remorse was not genuine and did not amount to mitigation. Although respondent in this matter did not express his embarrassment to the same extent as Linnen, respondent's own testimony showed that he is embarrassed that he was publicly humiliated and that he has lost some friends over what happened. At the hearing, respondent's answers merely gave "lip-service" to the victims in his apartment complex, some of whom were so traumatized by what happened that they moved. (Exb. 6).

Respondent did not effectively establish mitigation evidence of remorse. The panel heard all of the evidence, including respondent's own testimony, regarding respondent's mental disability and gave it appropriate weight. This court should uphold the findings of fact and conclusions of law of the board.

Answer to Objection 3

Respondent should not receive credit for his interim suspension imposed pursuant to Gov. Bar R V(5)(A)(4).

Respondent's license to practice law was suspended on February 7, 2008 pursuant to Gov. Bar R.V(5)(A)(4). (Stip. 2, Exb. 9). Respondent argues that he should be given credit for this interim suspension in any sanction imposed by this Court.

Respondent's argument relies upon this Court's discussion of credit for an interim suspension in both *Disciplinary Counsel v. Goldblatt*⁴ and *Disciplinary Counsel v. Margolis*⁵. Both cases state this Court's principal that in order to be granted credit for an interim suspension, an attorney must show that "the criminal conduct was a one-time, never-to-be-repeated mistake." *Margolis*, 113 Ohio St.3d at 169. Respondent cannot show that his criminal behavior was a one-time error. His criminal conduct occurred repeatedly over a three-year period. Respondent's voyeurism began in 2004 and continued until his arrest in May 2007. (Tr. 30). The board considered the length of the misconduct an aggravating factor. Report at 14.

The most damaging testimony on this issue comes from the respondent himself who testified that even after his arrest he downloaded another pornographic movie. Respondent testified that after his arrest, while the charges were pending, he downloaded a pornographic movie to his work computer after business hours.

Respondent states that the movie was "illegal" but at the time he was not under any court-ordered restrictions against downloading pornography. (Tr. at 218). After being arrested and charged with multiple offenses and beginning therapy with Dr.

⁴ 118 Ohio St.3d 210, 2008-Ohio-2458, 888 N.E.2d 109

⁵ 113 Ohio St.3d 165, 2007-Ohio-3607, 870 N.E.2d 1158

Levine, respondent still downloaded one more movie. Afterwards, on the advice of his fiancée, he added blocking software to his work computer to prevent himself from being able to continue to download pornography. (Tr. at 219).

The *Goldblatt* court held that “lawyers convicted of felonies stemming from such conduct cannot expect to receive credit for an interim suspension imposed pursuant to Gov. Bar R. V(5)(A)(4).” The conduct referred to was Goldblatt’s attempt to secure a young girl for a sexual encounter. Goldblatt’s conduct, as discussed above, occurred over the course of two months, June and July 2004. Respondent engaged in auditory voyeurism for over one year with criminal charges arising from acts occurring in April 2005, October 2006 and May 2007. Additionally, respondent downloaded and viewed child pornography beginning in November 2006.

Respondent relies upon the testimony of his character witnesses to support his argument that he will not re-offend. In contrast to his arguments, respondent’s mother, fiancé and friend are not in a position to make a reliable assessment of his likelihood of re-offending.

Dr. Levine testified that respondent will not likely re-offend if the conditions that he recommended are met by respondent. These include being engaged in long-term therapy. (Tr. 80-82). More importantly, Dr. Levine testified that he cannot predict the future to say what respondent will do.

Respondent points this Court to *Disciplinary Counsel v. Blaszek*, as a case wherein an attorney was granted credit for an interim suspension. *Blaszek*, 104 Ohio St.3d 330, 2004-Ohio-6593, 819 N.E. 2d 689. The *Blazek* court granted credit for an interim suspension as a result of the overwhelming mitigation evidence presented. The

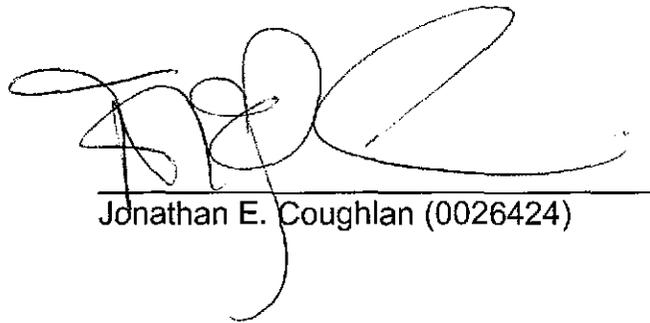
Court specifically cited to more than 90 letters attesting to Blaszek's good character, his community involvement, charitable works, involvement in professional associations and committees along with Blaszek's sincere remorse. *Blaszek*, 104 Ohio St.3d at 332. This level of overwhelming mitigation evidence is absent from this case.

Respondent has not been able to prove that his actions were a one-time lapse in judgment or that he will not re-offend. Further, in cases such as *Goldblatt*, this Court has said that the nature of the criminal conduct weighs against credit for an interim suspension. The board carefully considered respondent's request for credit for his interim suspension and after weighing the evidence appropriately rejected that request. Accordingly, this court should not grant respondent credit for his interim suspension.

CONCLUSION

The board properly considered all mitigating and aggravating factors when determining the proper sanction for respondent's misconduct. The board weighed those factors against the misconduct in recommending that respondent's license to practice law be indefinitely suspended. This Court should uphold the recommended sanction of indefinite suspension without credit for respondent's interim suspension.

Respectfully submitted,



Jonathan E. Coughlan (0026424)



Heather L. Hissom (0068151)
Assistant Disciplinary Counsel
Counsel of Record
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Answer To Respondent's Objections To the Board of Commissioners' Report and Recommendations was served via Federal Express, upon respondent's counsel, Richard C. Alkire, Attorney at Law, 250 Spectrum Office Building, 6060 Rockside Woods Blvd., Independence, OH 44131-7300, and via hand delivery upon Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline, 41 S. High Street, Suite 2320, Columbus, Ohio 43215 this 6th day of March, 2009.



Heather L. Hissom
Counsel for Relator