

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE¹

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



**Issued
November 2, 2018**

In the Matter of: :
 :
DAN HAENDEL :
 :
Respondent. : D.C. App. No. 18-BG-522
 : Board Docket No. 18-BD-039
 : Disc. Docket No. 2018-D067
A Suspended Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 287326) :

**REPORT AND RECOMMENDATION
OF THE BOARD ON PROFESSIONAL RESPONSIBILITY**

This matter is before the Board on Professional Responsibility (the “Board”) as a result of Respondent’s conviction in the Circuit Court for the City of Staunton, Virginia of Va. Code § 18.2-370 (taking indecent liberties with children) and Va. Code § 18.2-374.3 (use of communications systems to facilitate certain offenses involving children). On June 1, 2018, the District of Columbia Court of Appeals (the “Court”) directed the Board to institute a formal proceeding to determine the nature of Respondent’s offenses and whether the crimes involve moral turpitude within the meaning of D.C. Code § 11-2503(a) (2001). For the reasons that follow, the Board recommends that the Court disbar Respondent pursuant to D.C. Code § 11-2503(a) based on his conviction of a crime involving moral turpitude *per se*.

¹ Consult the ‘Disciplinary Decisions’ tab on the Board on Professional Responsibility’s website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

BACKGROUND

Respondent was admitted to the District of Columbia Bar on December 28, 1979. On December 22, 2014, Respondent entered an *Alford* plea in the Circuit Court for the City of Staunton, Virginia to charges that he violated Va. Code § 18.2-370 (taking indecent liberties with children) and Va. Code § 18.2-374.3 (use of communications systems to facilitate certain offenses involving children).¹ He was found guilty and sentenced five years in prison (with three years suspended) on the § 18.2-370 charge, and fifteen years in prison (with ten years suspended) on the § 18.2-374.3 charge.

Respondent did not report his conviction as required by D.C. Bar R. XI, § 10. Disciplinary Counsel received notice from the Clerk of the United States District Court for the Western District of Virginia, on the direction of the Honorable Jackson L. Kiser, who had presided over a civil action filed by Respondent against certain law enforcement officials involved in his prosecution.² On June 25, 2018, Disciplinary Counsel filed a statement with the Board recommending Respondent's disbarment based on his conviction of crimes involving moral turpitude *per se*. Respondent did not file a response to Disciplinary Counsel's statement, the time for doing so having expired.

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970) "allows a defendant to plead guilty without admitting the commission of the acts underlying the offense and without incurring civil liability." *Jones v. United States*, 401 A.2d 473, 475 n.1 (D.C. 1979).

² In the order directing that Disciplinary Counsel be notified of Respondent's conviction, Judge Kiser dismissed Respondent's action with prejudice as frivolous. *Haendel v. Reed*, 2018 WL 847179 (W.D. Va. Feb. 13, 2018), *appeal filed*, No. 18-7216 (4th Cir. Oct. 1, 2018).

ANALYSIS

D.C. Code § 11-2503(a) requires the disbarment of a member of the District of Columbia Bar convicted of a crime of moral turpitude. Once the Court has determined that a particular crime involves moral turpitude *per se*, disbarment must be imposed. *See In re Colson*, 412 A.2d 1160, 1165 (D.C. 1979) (en banc).

Respondent was convicted of violating Va. Code § 18.2-370 (taking indecent liberties with children). In 1981, the Court determined that the violation of a prior version of this statute was a crime of moral turpitude. *In re Moore*, No. M-73 ('81) (D.C. Nov. 18, 1981) (en banc); *see also In re Sharp*, 674 A.2d 899, 903-04 (D.C. 1996) (appended Board Report) (discussing *In re Moore*). The 1981 version of § 18.2-370 provided in relevant part:

A. Any person [18] years of age or over, who, with lascivious intent, shall knowingly and intentionally:

(1) Expose his or her sexual or genital parts to any child under the age of fourteen years to whom such person is not legally married; or

(2) In any manner fondle or feel, or attempt to fondle or feel, the sexual or genital parts of any such child, or the breast of any such female child; or

(3) Propose that any such child feel or fondle the sexual or genital parts of such person; or

(4) Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subparagraphs of this section;

* * *

shall be guilty of a Class 6 felony.

See In re Moore, Bar Docket No. 248-79, at 1-2 (BPR Feb. 24, 1981). Section 18.2-370 was amended in 2014, but those amendments do not lessen the seriousness of the criminal conduct covered by the statute, or provide any reason to revisit *In re Moore*'s conclusion that a violation of § 18.2-370 was a crime of moral turpitude. We set forth herein a comparison of the version of § 18.2-370 at issue in *In re Moore*, and the version applicable to Respondent.³ The differences are not material for

³ Underlining denotes language found in the version of § 18.2-370 under which Respondent was convicted, but not included in the version at issue in *In re Moore*. ~~Strikethrough~~ denotes language found in the version of § 18.2-370 at issue in *In re Moore*, but not included in the version under which Respondent was convicted:

A. Any person 18 years of age or over, who, with lascivious intent, ~~shall~~ knowingly and intentionally commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child ~~under the age of fourteen years to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person;~~ or

(2) ~~In any manner fondle or feel, or attempt to fondle or feel, the sexual or genital parts of any such child, or the breast of any such female child; or~~

(3) Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding ~~subparagraphs~~ subdivisions of this section-subsection.

purposes of a moral turpitude analysis, as the conduct prohibited by § 18.2-370 in 1981 and now “offends the generally accepted moral code of mankind”; and involves acts “of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man”; and is “contrary to justice, honesty, modesty, or good morals.” *Colson*, 412 A.2d at 1168 (internal quotations and citations omitted). “When an attorney is convicted of multiple offenses, disbarment is imposed if any one of them involves moral turpitude *per se*,” and thus, we need not analyze the other offense of conviction. *See In re Hoover-Hankerson*, 953 A.2d 1025, 1026 (D.C. 2008) (per curiam).

CONCLUSION

For the foregoing reasons, the Board recommends that the Court disbar Respondent pursuant to D.C. Code § 11-2503(a) based on his conviction of a crime involving moral turpitude *per se*. The Board further recommends that Respondent’s attention be drawn to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 
Billie LaVerne Smith

All members of the Board concur in this Report and Recommendation.