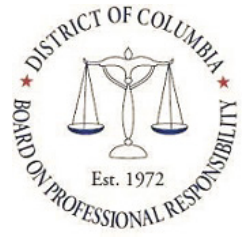


THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY



Issued
May 19, 2025

In the Matter of: :
: :
PATRICK L. WOJAHN, : Board Docket No. 24-BD-069
: Disciplinary Docket No. 2024-D170
Respondent. :
: :
A Temporarily Suspended :
Inactive Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 483705) :

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 guilty plea, in the Circuit Court for Prince George’s County, Maryland to 100 counts of knowing possession of child pornography with the intent to distribute in violation of section 11-207 of the Maryland Criminal Code and forty (40) counts of knowing possession of child pornography in violation of section 11-208 of the Maryland Criminal Code. On November 20, 2023, a Maryland court sentenced Respondent to 150 years, with all but thirty (30) years of incarceration stayed.

Disciplinary Counsel notified the District of Columbia Court of Appeals (the “Court”) of Respondent’s conviction on December 5, 2024, and on December 11, 2024, the Court suspended Respondent and directed the Board to institute a formal

* Consult the ‘Disciplinary Decisions’ tab on the Board on Professional Responsibility’s website (<http://www.dcattorneydiscipline.org>) to view any subsequent decisions in this case.

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), which mandates the disbarment of a District of Columbia Bar member who has been convicted of a crime of moral turpitude. *See Order, In re Wojahn*, D.C. App. No. 24-BG-1113 (D.C. Dec. 11, 2024).

On February 7, 2025, Disciplinary Counsel filed a statement ("ODC Statement") with the Board arguing that Respondent's crimes involve moral turpitude per se. In the alternative, Disciplinary Counsel seeks summary adjudication that the conduct underlying Respondent's offenses involve moral turpitude within the meaning of D.C. Code § 11-2503(a).

On February 27, 2025, Respondent filed a Statement Regarding Proposed Disciplinary Action. He did not respond to Disciplinary Counsel's arguments as to whether his crimes involved moral turpitude per se, or otherwise address that issue. He made several statements in mitigation of sanction, including that "longstanding unaddressed mental health issues" were among "the circumstances that led" to his criminal conduct, and he requested that he not be disbarred.

Because it was not clear whether Respondent intended his Statement as an opposition to Disciplinary Counsel's motion, on April 7, 2025, the Board ordered him to file a statement addressing whether he opposes Disciplinary Counsel's motion for summary adjudication, and if so, identifying the material facts that Respondent contends are genuinely disputed, and proffering any additional facts Respondent intends to present in a contested hearing. In a statement filed on April

22, 2025, Respondent represented that he did not intend to oppose Disciplinary Counsel's motion for summary adjudication.

DISCUSSION

I. The Least Culpable Offender Analysis

D.C. Code § 11-2503(a) requires the disbarment of a D.C. Bar member who has been convicted of a crime of moral turpitude. Once the Court determines that a particular crime involves moral turpitude per se, disbarment is the mandated sanction, without inquiry into the specific criminal conduct in each case. *See In re Colson*, 412 A.2d 1160, 1164 (D.C. 1979) (en banc). Where, as here, the Court has not previously addressed the statute at issue, we must review its elements to determine whether it is a crime of moral turpitude per se. This assessment is based solely on an examination of the statute, not on the respondent's conduct. *See In re Shorter*, 570 A.2d 760, 765 (D.C. 1990) (per curiam) (citing *Colson*, 412 A.2d at 1164-67). That is, we focus "on the type of crime committed rather than on the factual context surrounding the actual commission of the offense." *Colson*, 412 A.2d at 1164. To constitute a crime of moral turpitude per se, "the statute, in all applications, [must] criminalize[] conduct that 'offends the generally accepted moral code of mankind,' 'involve[] baseness, vileness or depravity,' or offend[] universal notions of 'justice, honesty, or morality.'" *In re Rohde*, 191 A.3d 1124, 1131 (D.C. 2018) (quoting *In re Tidwell*, 831 A.2d 953, 957 (D.C. 2003)). We are therefore obliged to consider whether the least culpable offender convicted under the statute necessarily engages in a crime of moral turpitude. *See In re Johnson*, 48 A.3d 170,

172-73 (D.C. 2012) (per curiam) (“[P]art of the calculus in assessing whether a crime is one of moral turpitude *per se* is whether we can say that the least culpable offender under the terms of the statute necessarily engages in conduct involving moral turpitude.” (internal quotations omitted)); *In re Squillacote*, 790 A.2d 514, 517 (D.C. 2002) (per curiam) (“if the most benign conduct punishable under the statute” does not involve moral turpitude, then the crime is not one of moral turpitude *per se*); *see also Shorter*, 570 A.2d at 765.

II. Respondent Was Convicted of Distributing Child Pornography

Respondent pled guilty to 100 counts of knowing possession of child pornography with the intent to distribute in violation of section 11-207 of the Maryland Criminal Code and forty (40) counts of knowing possession of child pornography in violation of section 11-208 of the Maryland Criminal Code.

Maryland Criminal Code § 11-207 provides in relevant part that

(a) A person may not:

(1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;

(2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;

(3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;

(4) knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:

(i) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or

(ii) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or

(5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

A "minor" means any person under eighteen years old. Md. Code Ann., Crim. Law § 1-101(g).

Maryland Criminal Code § 11-208 provides in relevant part that

(b)(1) A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child or a computer-generated image that is indistinguishable from an actual and identifiable child under the age of 16 years:

(i) engaged as a subject of sadomasochistic abuse;

(ii) engaged in sexual conduct; or

(iii) in a state of sexual excitement.

(2) A person may not knowingly or intentionally access and intentionally view a film, videotape, photograph, or other visual representation showing an actual child or a computer-generated image that is indistinguishable from an actual and identifiable child under the age of 16 years:

(i) engaged as a subject of sadomasochistic abuse;

(ii) engaged in sexual conduct; or

(iii) in a state of sexual excitement.

III. Violations of Maryland Criminal Code §§ 11-207 and 11-208 Are Not Crimes of Moral Turpitude Per Se

In *In re Moir*, the Board determined that a conviction under 18 U.S.C. § 2252(a)(2) (prohibiting the knowing distribution or receipt of child pornography), was not a crime of moral turpitude per se because the least culpable offender could be convicted based on the receipt or distribution of images of lawful sexual activity involving someone under eighteen-years-old. Board Dkt. No. 19-BD-068, at 2-3 (BPR Feb 19, 2021). Thus, we examine the Maryland statutes at issue to see if they also apply to images of lawful sexual activity. As discussed below, because sections 11-207 and 11-208 apply to the possession and distribution of images of lawful sexual activity, we conclude that the least culpable offender convicted under these statutes did not commit a crime of moral turpitude per se.

In re S.K., 215 A.3d 300, 306 (Md. 2019) held that section 11-207 applied to a sixteen-year-old defendant who distributed a cell phone video of herself engaged in lawful sexual activity. Thus, under *Moir*, a violation of section 11-207 is not a crime of moral turpitude per se.

We have not located a similar case applying section 11-208, which prohibits possession of images of children under sixteen engaged in sexual conduct. However, Maryland law does not prohibit sexual conduct between fourteen- or fifteen-year-olds and partners who are no more than three years older. *See* Md. Code Ann., Crim.

Law § 3-308(b)(2)-(3). Thus, it appears that the least culpable offender convicted under section 11-208 would be a fourteen- or fifteen-year-old who possessed images of lawful sexual relations with a partner no more than three years older. Like section 11-207, under *Moir*, a violation of section 11-208 is not a crime of moral turpitude *per se*.¹

IV. Summary Adjudication of Moral Turpitude Issues Following Guilty Pleas

Board Rule 10.2 permits the summary adjudication of the moral turpitude issue in cases arising out of a respondent's guilty plea in a criminal case:

If respondent's conviction follows a guilty plea, along with its brief on the issue of moral turpitude *per se*, Disciplinary Counsel may file with the Board a motion seeking summary adjudication that the conduct underlying respondent's offense involves moral turpitude within the meaning of D.C. Code Section 11-2503(a). The Board will not consider Disciplinary Counsel's motion if it concludes that the offense involves moral turpitude *per se*. Disciplinary Counsel's motion must be supported by a statement of material facts that it contends are not genuinely disputed. If respondent opposes summary adjudication, respondent must file an opposition to Disciplinary Counsel's motion that identifies the material facts that respondent contends are genuinely disputed, along with a proffer of any additional facts respondent intends to present in a contested hearing; however, respondent may not contest

¹ We recognize Disciplinary Counsel's argument that it is unlikely that the least culpable offender who was a member of the Bar would be a teenager who possessed images of his or her lawful sexual relations. *See* ODC Statement at 5-6. That argument has some appeal, as we are considering the sanction to be imposed because a member of the Bar has committed a crime. However, the "least culpable offender" analysis requires that we focus on the elements of the crime, without regard to the particulars of the lawyer who committed the crime. The facts relating to the crime, are considered in deciding whether the crime involved moral turpitude on the facts, which we resolve by summary adjudication below.

any of the material facts alleged by the government in any plea agreement in the underlying criminal case.

If, after viewing the record in the light most favorable to respondent, the Board determines that there is no genuine issue as to any material fact, and Disciplinary Counsel has proven by clear and convincing evidence that the conduct underlying respondent's offense involves moral turpitude, the Board shall grant Disciplinary Counsel's motion and recommend to the Court that respondent be disbarred pursuant to D.C. Code Section 11-2503(a). If the Board determines that the question of moral turpitude cannot be decided based on summary adjudication, the Board shall refer the matter to a Hearing Committee pursuant to Board Rule 10.3.

Board Rule 10.2 echoes the Federal Rule of Civil Procedure 56 summary judgment standards in three important ways: First, the evidence must be viewed in the manner most favorable to Respondent. Second, Board Rule 10.2 respects the requirement that the decision to grant summary adjudication must reflect the evidentiary standards of the underlying issue. *See generally Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Here, the relevant standard is "clear and convincing evidence." Third, under Rule 56, summary judgment must be denied if there is any plausible evidence that the party-opponent may be able to rebut the movant's case. *See generally Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970) (finding a plausible issue as to a material fact, whether a police officer was present and able to conspire with an employee of a business to allegedly violate the rights of a sit-in demonstrator, which did not allow for summary judgment).

V. The Facts Admitted in Respondent's Guilty Plea Establish by Clear and Convincing Evidence that His Offense Involved Moral Turpitude on the Facts

Disciplinary Counsel proffered the following statement of undisputed material facts. Respondent does not contest these facts, and does not oppose Disciplinary Counsel's motion for summary adjudication.

1. Respondent used his phone to intentionally obtain, possess, and distribute child pornography online. Attachment D at 14, 18, 20.

2. Respondent intentionally retained 140 videos depicting child pornography. Attachment D at 14, 18, 20.

3. Respondent distributed videos of child sexual abuse material using secured messaging and social medial applications including Kick and Telegram. Attachment D at 19-20.

4. These images depicted juvenile males as young as one to six months old through at least twelve years old with their genitalia exposed in a sexually explicit manner. Attachment D at 19-20, 24-45 (including descriptions of representative images), 104 (sentencing judge's description that "these are children who are being raped and molested and made to do horrific things").

5. On August 2, 2023, a Maryland criminal court accepted Respondent's guilty plea to knowing possession of child pornography with the intent to distribute in violation of §11-207 of the Maryland Criminal Code and knowing possession of child pornography in violation of §11-208 of the Maryland Criminal Code. Attachment B.

6. On November 11, 2023, Respondent testified at his sentencing hearing, and acknowledged he engaged in the conduct as described, and there was no excuse for engaging in conduct that "victimized" children. See Attachment D at 99 (stating he watched and shared videos that "victimized" children); see also, Attachment D at 100 ("[N]one of these things excuses or justifies the acts that I've done. [] I am willing and ready to accept the sanctions that are being presented before the Court today."); and Attachment D at 101 ("This is . . . harm to . . . children . . . dangerous and damaging to the most vulnerable people in our community.").

7. A Maryland criminal court sentenced Respondent to 150 years incarceration, with all but thirty (30) years stayed, followed by five (5) years supervised probation, and ordered him to submit to a psychosexual evaluation and register as a tier-II sex offender for twenty-five (25) years. Attachment D at 119, 122.

ODC Statement at 8-10 (alterations in original).

We have reviewed the record in the light most favorable to Respondent, and have determined that there are no material issues in dispute. The facts admitted by Respondent show that he intentionally retained 140 videos depicting child pornography. He also distributed videos of child sexual abuse material using secured messaging and social medial applications including Kick and Telegram. These images depicted juvenile males as young as one to six months old through at least twelve years old with their genitalia exposed in a sexually explicit manner. This conduct was base, vile and depraved.

Clearly, Respondent was not the least culpable offender, sharing images of lawful sexual relations. He intentionally trafficked in images of child abuse, over and over again. His conduct is far more serious than that in *In re Wolff*, where the respondent “reluctantly” sold five photographs depicting minors engaged in sex acts. 490 A.2d 1118, 1119 (D.C. 1985), *aff’d on reh’g en banc*, 511 A.2d 1047 (D.C. 1986) (en banc). The Court disbarred Wolff for engaging in a crime involving moral turpitude after concluding that his desire for “gratification exceeded his ability to demonstrate a public respect and appreciation of existing societal morals and

values.” *Id.* at 1120 (citation omitted).² The same is doubtless true here, and disbarment is likewise warranted.

CONCLUSION

For the reasons set forth above, we conclude (1) that violations of Maryland Criminal Code §§ 11-207 and 11-208 are not crimes of moral turpitude per se; and (2) that after considering the facts Respondent admitted in his guilty plea in the light most favorable to him, and his statement that he does not oppose Disciplinary Counsel’s motion for summary adjudication, we conclude that Respondent’s admitted criminal conduct involves moral turpitude.

² We recognize that *Wolff* observed that the fact that the respondent accepted \$20 for the pornographic photographs bore on the issue of moral turpitude. *Wolff*, 490 A.2d at 1120. However, we do not understand *Wolff* to hold that the distribution of child pornography is base, vile or depraved only if done for profit. Even if a respondent does not receive any financial benefit from the distribution of child pornography, trafficking in child pornography provides an economic incentive for its production, and is thus proximately related to the sexual abuse of children. *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 249-250 (2002).

We recommend that Respondent be disbarred. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14(g), and their effect on his eligibility for reinstatement, *see* D.C. Bar R. XI, § 16(c), and that Respondent's period of disbarment commence for purposes of reinstatement upon his full compliance with D.C. Bar R. XI, § 14(g).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: *Margaret M. Cassidy*
Margaret M. Cassidy

All members of the Board concur in this Report and Recommendation except for Ms. Rice-Hicks, who did not participate.