BEFORE A HEARING OFFICER

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **CHRISTOPHER SHANK, Bar No. 015293,** RESPONDENT.	No. 99-1946 **HEARING OFFICER'S REPORT AND RECOMMENDATION**

PROCEDURAL HISTORY

Probable Cause Orders were filed on September 19, 1997, April 7, 1998 and October 22, 1998. On August 14, 2000, the Arizona Supreme Court placed the Respondent on Interim Suspension. The State Bar of Arizona filed a one-count Complaint on November 20, 2000. Respondent, at that time pro per, filed his Answer on December 19, 2000.

On December 21, 2000, the Hearing Officer, having reviewed Respondent's Answer and treating it, in part, as a motion for stay of proceedings, ordered the State Bar to respond. The State Bar filed its response on January 10, 2001. Respondent replied in support of his motion to stay proceedings on January 16, 2001. After considering the motion, a hearing was scheduled for June 18, 2001. A settlement conference was held on April 24, 2001; however, the parties were unable to reach a settlement. On June 19, 2001, the Disciplinary Commission granted the parties' request to continue the hearing date for a period of sixty days. A new hearing was then set for August 15, 2001.

On August 2, 2001 the State Bar notified this Hearing Officer that an agreement had been reached and requested that the hearing be vacated. On August 8,

2001, this Hearing Officer filed an Order vacating the hearing and requiring the parties to file an agreement by September 21, 2001. A two-week extension of that deadline was granted on September 26, 2001. The parties filed a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Agreement for Discipline by Consent on October 15, 2001. The Commission heard oral argument on the agreement on March 9, 2002. On April 25, 2002, the Commission filed an Order for Modification of Agreement. The parties did not file an amended agreement; therefore, the Commission filed an Order Upon Recommendation of Rejection of Agreement for Discipline by Consent on July 1, 2002. On October 31, 2002, the Supreme Court remanded this matter to this Hearing Officer for further proceedings. The conditional admissions in the agreement are withdrawn and cannot be used against Respondent.

A status conference was ordered for November 14, 2002. At that status conference, this Hearing Officer was informed for the first time that Respondent's attorney of record would be formally withdrawing from further representation. Based on a written motion filed by Respondent's firm of record, this Hearing Officer granted the motion to withdraw from representation by Order dated January 2, 2003. On January 3, 2003, Michael P. Denea, Esquire, appeared for Respondent. A hearing was held on April 28 and May 5, 2003. John A. Furlong appeared on behalf of the State Bar. Michael P. Denea appeared on behalf of Respondent, who was also present. At the conclusion of the hearing, the parties were ordered to file proposed findings of fact and conclusions of law, along with optional post-hearing memoranda within ten calendar days of the date on which the hearing transcript was filed. The transcript was filed on May 13, 2001. Respondent filed his proposed findings and post-hearing memorandum on May 23, 2002 as ordered. The State Bar did not request an extension, but did not file its proposed findings until May 28, 2002.

The State Bar argues that Respondent should be disbarred. Respondent, through his counsel, has requested a four year suspension retroactive to his interim suspension of August 14, 2000.

FINDINGS OF FACT

1. Respondent was at all times relevant hereto an attorney licensed and admitted to practice in Arizona on or about October 23, 1993. (Answer, para. 1)

2. Respondent was employed as a deputy county attorney with the Maricopa County Attorney's Office from August of 1997 through November 16, 1999. (Uncontested Fact 1, Joint Pretrial Statement, hereafter "UF")

3. While employed in that office, Respondent was assigned to the juvenile division.

Respondent's Criminal Conviction

4. Respondent was arrested on October 7, 1999, and charged with eight counts of sexual exploitation of a minor, each class 2 non-dangerous felonies. (UF 2)

5. Respondent was indicted by supervening indictment by the Maricopa County Grand Jury on October 14, 1999, on four counts of sexual exploitation of a minor, each a class 2 non-dangerous felony, and three counts of sexual conduct with a minor, each a class 6 non-dangerous felony. (UF 3)

6. On June 2, 1999, Respondent plead guilty to two counts: Count I: sexual exploitation of a minor, a class 2 non-dangerous felony, and Count VII: sexual conduct with a minor, a class 6 non-dangerous felony. (UF 4)

7. As to Count I, Respondent's asserted factual basis at the Plea Agreement Hearing was:

> THE COURT: Okay. Mr. Shank, the plea agreement says you're going to plead guilty to Count 1. That alleges that between August 7 of 1996 and August of 1999 you knowingly possessed a visual or print media in which minors are engaged in exploitive exhibition or other sexual conduct, and in particular this conduct occurred when you possessed a

visual image entitled "Boys Suck" all in violation of Arizona Revised Statutes. What is your plea to that charge?

THE DEFENDANT: Guilty.

THE COURT: Tell me about what you did.

THE DEFENDANT: Between the periods described in the indictment, I knowingly possessed a visual depiction which contained a minor, someone I believed to be a minor.

THE COURT: Engaged in what type of activity?

THE DEFENDANT: I can't remember, but it was a nude picture, pornographic in nature.

* * *

MS. THACKERAY: Yes, Your Honor. The picture was stored in his computer, and the nature of the picture was a child of -- a small child engaged in sexual conduct. It wasn't simply a small child, Your Honor. That wouldn't be illegal necessarily.

THE COURT: Is what the Attorney General said what happened, Mr. Shank?

THE DEFENDANT: Yes.

* * *

THE COURT: And you knew the image was in the computer?

THE DEFENDANT: I knew there were images there. I couldn't recall that specific one. I knew there were images containing minors engaged in sexual conduct on my computer, yes.

(Transcript of Plea, pp. 19-22).

8. As to Count VII, the following is only a partial colloquy that took place at the Change of Plea Hearing:

THE COURT: Concerning Count 7 --

MS. THACKERAY: For the record, perhaps I should just say the title of the picture is descriptive of the sexual conduct.

THE COURT: Concerning Count 7, the allegation that you say you're going to plead guilty to is that between May 1 and August 1 of 1999, you intentionally or knowingly engaged in sexual intercourse or oral sexual contact with a minor. This occurred when you engaged in oral sexual conduct with "R", a person under the age of eighteen years of age. This

person, "R", is more fully identified in the transcript of grand jury proceedings, and this incident refers to the last time you met with "R".

* * *

THE COURT: What is your plea to Count 7, Mr. Shank?

THE DEFENDANT: Guilty.

* * *

THE COURT: And could you be more specific? Tell me what you did and when and where you did it.

THE DEFENDANT: I had sexual intercourse with the mentioned individual in my residence at the time described in the papers.

THE COURT: And according to information on Attachment A, this individual was sixteen to seventeen years of age at the time?

THE DEFENDANT: As I found out, yes.

THE COURT: Under the law, you don't need to know age in order for the offense to occur, am I correct?

MS. THACKERAY: Yes, Your Honor, and for the record, "R", if called to testify, would testify, as he has given statements previously, which they have seen, that when he met Mr. Shank, he told him he was seventeen, even though he was only sixteen, and that would have been his testimony were we to proceed to trial. He was near his seventeenth birthday. So that's why he told Mr. Shank he was seventeen, but in fact he was sixteen at the time.

THE COURT: Is that your understanding, Mr. Shank?

THE DEFENDANT: Not exactly, but I can explain it. He never told me his true age; however, he did tell me he lived with a roommate. When I returned his call or tried to call him at the number where I believed he lived with his roommate, I got in touch with a person that appeared to be his mother, and her conduct and some of the statements she made led me to believe that he might be under the age of eighteen. I never bothered to follow that up. I suspected he was under the age of eighteen and should have known he was under the age of eighteen, but I didn't do anything about it.

THE COURT: Okay. And this occurred in Phoenix, Maricopa County, between May 1 and August 1, 1999?

THE DEFENDANT: Yes.

* * *

THE COURT: Well, I'm satisfied that Mr. Shank effectively knew he was under age eighteen, at least circumstantially; is that correct?

THE DEFENDANT: I believe it's knew or should have known, and I should have known he was under eighteen.

(Transcript of Plea, pp. 22-26).

9. At the hearing in this matter, Respondent admitted his contact with the minor referenced in Count VII of the indictment included approximately four or five incidences of sexual intercourse during the course of his relationship with the minor. (TR 223, 224)

10. With respect to Count I of the indictment, Respondent admitted that in downloading child pornography he helped perpetuate that industry and by doing so that he re-victimized the children in those images. (TR 226)

11. Respondent was sentenced on July 28, 2000. As to Count I, he was placed on ten years probation, with sex offender terms, and ordered to pay a $17,000.00 fine. As a condition of probation, Respondent was ordered to serve a year in the county jail and pay probation fees, costs and fines assessed by the Superior Court. (UF 7)

12. As to Count VII, Respondent was placed on lifetime probation with sex offender terms. (UF 8)

13. Neither the crime of sexual exploitation of a minor, as plead in Count I, nor the crime of sexual conduct with a minor, as pled in Count VII, includes an element of dishonesty, fraud, deceit or misrepresentation. (TR 104-106)

Respondent's Misrepresentation

14. On or about May 31, 1998, Respondent had sexual contact with DC, then a juvenile. (TR 164)

15. On or about Saturday, August 16, 1998, Respondent was working special weekend duty as a charging attorney in the juvenile division. (TR 164)

16. Respondent recognized DC's name and became aware that DC would appear on the court calendar that day. (TR 165) Respondent was concerned and did not want to face DC in court. (TR 165-166, 214, 215)

17. Respondent later discussed with an undercover informer on tape the fact that he recognized the juvenile that was going to appear before him in court on his court calendar. Respondent joked about the embarrassment it would have caused the County Attorney's Office if he had walked into court and the minor identified him as being the minor's recent sex partner. (TR 89; 214)

18. Respondent considered disclosing to his supervisor that he knew DC, but chose not to do so because he anticipated being questioned further about the nature and extent of his relationship with DC. (TR 167)

19. Instead, Respondent finished the paperwork and went home for lunch. Approximately one hour before court, Respondent contacted the supervisor on call and informed her that he was ill and could not attend court. (TR 167-168)

20. Had Respondent disclosed the precise nature of his contact with DC to his supervisor, the Maricopa County Attorney's Office would have immediately placed him on leave and started an internal investigation. (TR 52)

21. Because Respondent did not disclose the existence of his relationship with the juvenile, the Respondent was able to continue appearing as a Deputy County Attorney in juvenile court. (TR 53)

22. Respondent's supervisor appeared and covered the court calendar. No cases were dismissed nor was the State's position in any of those cases compromised in any way due to the Respondent's absence. (TR 69; TR 47) However, as a result of his deception, Respondent deprived the State, his client, of the opportunity to determine whether to remove him from his position and/or screen him from any knowledge of or involvement in that case or similar cases.

Respondent's Underlying Criminal Acts

23. As a prosecutor in the Maricopa County Attorney's juvenile division, Respondent had access to records and databases that could assist in locating juveniles' home addresses. (TR 35) However, there is no evidence that Respondent actually used any of those databases to locate minors for sexual pursuit or other personal reasons. (TR 34-35, 119-120)

24. While at the County Attorney's Office, Respondent applied for, but did not obtain, transfer to another opening or position with the County Attorney's Office in its "sex crimes bureau." This position dealt with the investigation and prosecution of crimes involving child pornography and things of that nature. (TR 34)

25. Respondent has admitted to having had sexual relations with at least ten underaged male victims over a period of approximately four years beginning in approximately 1995. In addition, Respondent has admitted to possessing numerous images of underaged males engaged in sexual acts. He has also admitted sending nude pictures of himself and/or his nude penis to individuals who he knew or believed to be underage. (TR 219, 225-227)

26. Respondent's underaged victims were, by and large, from broken homes and were extremely vulnerable. At least one of Respondent's underaged victims was damaged to the point of attempting suicide, at least in part, as a result of Respondent's conduct. (TR 83, 84)

27. Testimony at the hearing established that under Arizona law, having sex with a minor under the age of fifteen is deemed a dangerous crime against children which carries serious criminal penalties. In contrast, if an adult has sex with a child over fifteen, it is a class 6 felony which is the lowest level of felony in the Arizona sentencing scheme. (TR 64)

28. Chat logs taken from Respondent's home computer establish that he

was aware of that distinction as well as the County's Attorney's charging policies with regard to those crimes and specifically targeted boys between the ages of 15 and 17. (TR 62 – 65, 71-72, 74)

Character Evidence

29. Paul Ahler, the Chief Deputy for the Maricopa County Attorney's Office, testified that the County Attorney has delegated to him the function of supervising the staff attorneys in that office. He was aware of two incidents related to Respondent's employment that caused him concern about Respondent's truthfulness and honesty. The two incidents referred to were Respondent's conduct in lying to his supervisor described above and Respondent's dishonesty when filling out an application to perform outside work (moonlighting). In order to obtain Mr. Ahler's approval for that outside work, Respondent stated that he was going to work as a disc jockey for a company. Mr. Ahler approved that request, only to later learn that Respondent was actually working at a bar. Mr. Ahler would have been less likely to approve Respondent's request if he had been told the job would have involved working in a bar. (TR 38 – 40)

30. Respondent's sister testified that she was generally aware of the nature of her brother's crimes and that her brother had spent one year in jail for two counts of sexual misconduct and possession of child pornography. However, she was unaware of the full extent of Respondent's misconduct with underaged boys. (TR 134) She offered no testimony with respect to Respondent's reputation or character. (TR 135)

31. Respondent's part-time employer, Neal Sundeen, testified that he has employed Respondent for the past two and a half years doing research and writing. He said that Respondent did a very good job in preparing motions for summary judgment. Mr. Sundeen also testified that as far as an attorney's work product, he

believes Respondent does an excellent job and is a good writer and good researcher. (TR 137, 138, 139)

32. Mr. Sundeen provided no testimony as to the Respondent's reputation or character, at present or at any time in the past, regarding his lawyering in the community. Mr. Sundeen stated that he does not know anything about Respondent's mental fitness. (TR 142)

33. Timothy Coker testified that he has known Respondent since shortly after Respondent's initial arrest. (TR 145)

34. Mr. Coker presently employs Respondent in the capacity of a law clerk drafting documents and providing research. Mr. Coker states that he has been a good employee. Mr. Coker has met with Respondent's probation officers, is aware of the terms and conditions of his probation and testified that Respondent complies with those terms while at work. (TR 147) Based upon his experience working with the Respondent, Mr. Coker believes that Respondent has been truthful to him. (TR 145, 149, 152) Mr. Coker is prepared to work with Respondent in the event he becomes re-licensed.

35. Mr. Coker had no opinion as to Respondent's veracity prior to his initial arrest or prior to Mr. Coker's hiring of him as an employee. Mr. Coker did not offer any opinion as to Respondent's reputation in the community or Respondent's character traits. Mr. Coker also testified that he was only able to initially pay Respondent eight dollars an hour. He paid Respondent $19,000 last year and $18,000 the year before. (TR 156)

Evidence of Respondent's Mental State

36. Respondent began attempts at treatment and rehabilitation soon after his release on bail. He began attending a 12-step program for sexual addiction and compulsion, and sought the care of a psychologist and a psychiatrist, who diagnosed

him with moderate depression and prescribed medication. (TR 173-175, 177, 216; TR 129)

37. Upon sentencing, Respondent was placed on standard sex offender probation. The special sex offender terms included provisions prohibiting contact with minors, and proscribed other types of potentially problematic or inappropriate behavior. (TR 185-186; Respondent's Exhibit "3")

38. Respondent received one probation violation in October, 2001, and since then has been compliant with the terms of his probation, by reporting regularly and on time, and maintaining regular attendance in treatment and counseling. (TR 187-188; Respondent's Exhibit "10")

39. Respondent is currently in counseling with Dr. Steve Gray, Ed.D. (TR 188)

40. As part of that treatment, Respondent has undergone polygraph testing, completed an MMPI (Minnesota Multi-Phasic Personality Inventory), the MSI-II (Multiphasic Sex Inventory II). Respondent also completed a penile plethysmograph and an ABEL assessment/screen. (TR 188-189; TR 242)

41. Dr. Gray began treating Respondent in December of 2000 after Respondent was referred by his probation officer. (TR 237-238) Since that time, Respondent has reported to Dr. Gray on a weekly basis for a two-hour session of group counseling. (TR 238) Respondent has had excellent attendance and has missed no more than three classes since beginning treatment. (TR 238-239)

42. Dr. Gray diagnosed Respondent with hebophilia, which is an attraction to post-pubescent adolescent males. (TR 189; TR 254-255) That diagnosis is consistent with Respondent conduct in targeting males between the ages of 15 and 17. (TR 96)

43. At the time of hearing, Respondent had finished all of his primary

intervention treatment with Dr. Gray. (TR 221-222) However, Dr. Gray has not yet performed the retesting which his program requires as a precondition to completing the intervention treatment. (Joint Pretrial Statement (Respondent's Issues of Fact) at ¶¶ 14 & 15; TR 221-222)

CONCLUSIONS OF LAW

1. The State Bar has presented clear and convincing evidence of Respondent's misconduct and established grounds for discipline pursuant to Rule 51(a) and Rule 57(a). Both those rules provide for discipline based on conviction of any felony. Under Rule 57(a), discipline is to be imposed "as the facts warrant. . . ."

2. The evidence also established Respondent violated ER 8.4(b). Respondent argues that his crimes, although serious, do not involve moral turpitude and do not reflect on his fitness to practice law. I disagree. The term moral turpitude is not limited to cases involving dishonesty, fraud, deceit, or misrepresentation. (Respondent's Trial Memorandum at 5-6) Although there are no Arizona attorney discipline cases directly on point, discipline cases from other jurisdictions have held that sex crimes against minors do involve moral turpitude. *E.g., In re Christie*, 574 A.2d 845, 854 (Del. 1990); *In re Buker* 615 N.E.2d 436 (Ind. 1993).

3. The evidence in this case established a pattern of criminal conduct lasting over a period of at least four years. As the Supreme Court held in *In re Horwitz*, 180 Ariz. 20, 24, 881 P.2d 352, 356 (1994), lawyers are not required to be saints, but "the public has a right to expect that lawyers will, in general live as law-abiding citizens." As in that case, Respondent's long term pattern of serious criminal misconduct constitutes a violation of ER 8.4(b).

4. The State Bar has proven by clear and convincing evidence that Respondent violated ER 4.1 (Truthfulness in Statements to Others). In his capacity as a deputy county attorney, Respondent represented the State of Arizona. Evidence

presented at hearing established that in the course of representing the State, the Respondent knowingly made false statements of material fact to a third person, his lawyer supervisor, when he lied about a non-existent illness to avoid having to confront one of his minor victims in court. Respondent feared that if he did appear in court, the minor would disclose Respondent's ongoing criminal activity. At the hearing, Respondent admitted that he knew the statement was false when it was made and that he made the statement to avoid detection so that he could keep his job and continue his criminal activity. In so doing, Respondent also violated ER 8.4(a) (violate the Rules of Professional Conduct).

ANALYSIS

Guidance for determining the appropriate sanction is found in the *ABA Standards for Imposing Lawyer Sanctions* ("*Standards*"), the decisions of the Disciplinary Commission and the Supreme Court.

As stated in the theoretical framework of the *Standards*, and as recommended in *In re Cassalia*, 173 Ariz. 373, 843 P.2d 654 (1992), cases which involve multiple charges of misconduct should receive one sanction consistent with the sanction appropriate for the most serious instance of misconduct. Rather than imposing individual sanctions, multiple instances of misconduct should be considered as aggravating factors. Thus, it is appropriate to determine which instance of misconduct is the most serious and then determine the appropriate sanction, and treat the other acts of misconduct as aggravating factors.

All of Respondent's misconduct involves his failure to maintain personal integrity which is dealt with in *Standard* 5.0 (Violations of Duties Owed to the Public). *Standard* 5.1 (Failure to Maintain Personal Integrity) specifically provides:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally

appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is generally appropriate when:
(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the admission of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

Much of the argument in this case has been over whether *Standard* 5.11 or 5.12 is applicable. That is, whether the presumptive sanction is disbarment or suspension. Respondent argues that his crimes, although serious, do not involve intentional interference with the administration of justice, false swearing, misrepresentation or any of the other crimes listed in *Standard* 5.11(a). Respondent is correct as to that point. The commentary to *Standard* 5.11 explicitly states that cases involving sexual assault and child molesting are generally treated as falling under *Standard* 5.12 which provides for suspension as the presumptive sanction. *See Standard* 5.12 Commentary. On the other hand, the presumptive sanction for Respondent's intentional conduct involving dishonesty and misrepresentation is disbarment under *Standard* 5.11. Given that Respondent lied in order to cover up his ongoing criminal activities, I conclude his conduct did and does adversely affect his fitness to practice.

In one sense, this conclusion seems counter-intuitive as Respondent's sexual exploitation of vulnerable minors is, in most ordinary senses, a more serious offense than lying to his supervisor. An argument could be made that given the narrow focus of

disciplinary proceedings, the ER 4.1 violation is the more serious offense in this context. On the facts of this case, it is not necessary to resolve that debate. Given the preponderance of aggravating factors over mitigating factors discussed below, ultimately, it makes no difference which *Standard* is used. Under either analysis, disbarment is the appropriate sanction.

Standard 9.21 identifies ten possible aggravating factors; five of them are present in this case. Respondent's conduct was motivated by his selfish desire for self-gratification and to avoid discovery (9.22(b)). Although Respondent argues that he was acting under a "compulsion," he admits that his condition can be treated and controlled. He simply lacked the motivation to do so until after he was arrested and awaiting trial.

Respondent engaged in an extended pattern of misconduct (9.22(c)) which resulted in multiple offenses over an extended period of time (9.22(d)). He admits to having sexual relations with at least 10 underaged minors over a period of four years. During the same period of time, he collected and maintained a large quantity of child pornography. He knew his conduct was illegal and should have recognized the serious harm he was causing to his vulnerable victims, but intentionally continued and concealed his criminal activity while working in the juvenile division. Indeed, rather than obtain treatment, he attempted to obtain a transfer to the County Attorney's sex crimes unit.

Respondent has refused to acknowledge the wrongful nature of at least some of this conduct (*Standard* 9.22(g)). Although Respondent has acknowledged the wrongful nature of his sexual conduct with minors, he continues to defend his conduct in lying to his supervisor/client, Respondent contends he was faced with a "Hobson's choice of confronting the defendant [*i.e.*, Respondent's minor victim] in court and violating his ethical duties as a prosecutor, or being truthful with his

supervisor, a law enforcement official, and exposing himself to criminal liability." (Respondent's Proposed Findings at 15) Similarly, in his Trial Memorandum, Respondent argues that in lying to his supervisor, he acted "properly and with necessity to avoid a conflict of interest." (Trial Memorandum at 4) Respondent thus continues to ignore the fact that he created this dilemma. He cannot now rely on the consequences of his illegal conduct to justify his subsequent unethical conduct which was intended to conceal his ongoing criminal activity.

The evidence overwhelmingly established that Respondent's underaged victims were both extremely vulnerable and, in at least one case, seriously harmed (*Standard* 9.22(h)). Respondent admits he harmed the minors with whom he had sexual relations and that he re-victimized the children depicted in the child pornography images he downloaded from the internet. In addition, Respondent has pled guilty to two felonies (*Standard* 9.22(k)).

Standard 9.32 discusses possible mitigating factors. Respondent has no prior disciplinary record (*Standard* 9.32(a)) and other (criminal) penalties have been imposed (*Standard* 9.32(k)).

In addition, Respondent has presented evidence that he was and is suffering from a psychological condition, hebophila, which is defined as an attraction to post-pubescent males. Respondent presented testimony from Dr. Gray, his treating psychologist, regarding Respondent's diagnosis and treatment. Dr. Gray was not, however, disclosed as an expert witness and did not testify that Respondent's condition caused his conduct. Equally important, although Dr. Gray testified that Respondent has responded well to treatment, Respondent's own pleadings and testimony establish that he has not yet completed the "additional objective testing" needed to establish that his condition has, in fact, improved and/or is currently under control. *See* Joint Pretrial Statement (Respondent's Issues of Fact) at ¶¶ 14 & 15,

and TR 221-222. Given this critical lack in the record, I cannot conclude that Respondent's psychological condition constitutes a mitigating factor.

An effective system of professional discipline must have internal consistency. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988). Although both parties have provided cases dealing with attorneys who have engaged in sexual misconduct, none are directly on point. In some, the attorneys' misconduct was directed to clients. *E.g., Grievance Administrator v. James Stevenson Childress*, ADB00-GA; 00-876-FA (Michigan 2000) (Respondent disbarred for sexual and obscene misconduct with adult female clients). In others, the Respondent's conduct was deemed a one-time aberration, unlikely to re-occur. *E.g., In re Addonizio*, 95 N.J. 121, 469 A.2d 492 (1984) (Respondent suspended for three months where conviction represented an isolated instance unlikely to reoccur).

Respondent argues for a four-year suspension retroactive to the date of his interim suspension. In addition, due to the nature of his conduct, Respondent proposes that in the event he is reinstated, he be allowed to practice only in association with one or more other attorneys who are familiar with his background and offenses and are willing to supervise his practice. (Respondent's Proposed Findings at 20) It is unclear how that proposal would work in practice. There has been no testimony regarding any substantive defect in Respondent's legal work. Thus, the proposed supervision can only be intended to ensure Respondent does not have access to potential minor victims. Would Respondent be required to disclose to each potential client, as a limitation on the scope of his representation, that if in the course of that representation a prudent attorney would interview a minor, Respondent would be unable to do so without a chaperone? Would the office have to close if Respondent's supervising attorney was on vacation or in court?

This list of practical problems could be extended and no doubt Respondent

could suggest possible solutions to each of the problems. It does, however, serve to highlight the fact that the attorney discipline process is not designed to monitor sex offenders. That is a function for the criminal court and/or the probation department. The focus of these proceedings necessarily must be limited to Respondent's fitness to practice law, rather than the logistics and/or advisability of reintegrating a sex offender into society.

This case does not involve sexual misconduct with clients. It does, however, involve the repeated exploitation of vulnerable minors over an extended period of time and Respondent's intentional misrepresentation which facilitated that exploitation. The existence of that extended pattern of misconduct distinguishes this case from the cases Respondent cites to support his argument for suspension. *See In re Horwitz*, 180 Ariz. at 28, 881 P.2d at 360. The purposes of professional discipline are to protect the public, the legal profession, the justice system, and to deter others from misconduct. *In re Neville*, 147 Ariz. 106, 116, 708 P.2d 1297, 1307 (1985); *In re Swartz*, 141 Ariz. 266, 277, 686 P.2d 1236, 1247 (1984). In addition, it strives to instill public confidence in the bar's integrity. *In re Horwitz*, 180 Ariz. at 29, 881 P.2d at 361.

Given the severity of harm Respondent caused to his vulnerable, underage victims, the number of those victims and the period of time involved, "[a]ny sanction less severe than disbarment would be an inappropriate statement of what the bar and [the Supreme] Court should and would tolerate." *Id.* Regardless of whether analysis begins with *Standard* 5.11 or 5.12, given the nature and extent of Respondent's conduct and the aggravating factors, I conclude disbarment is the appropriate sanction in this case.

RECOMMENDATION

I recommend that Respondent be disbarred and be ordered to pay the costs of

these proceedings. Given that he was placed on interim suspension on August 14, 2000, the five-year period before Respondent can apply for reinstatement should be calculated from that date.

DATED this 2nd day of June, 2003.

Jeffrey Messing/ps
Jeffrey Messing
Hearing Officer 9X

Original filed with the Disciplinary Clerk
this 2nd day of June, 2003.

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