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APR 19 2019

BOARD OF OVERSEERS OF THE BAR

State of Maine

SUPREME JUDICIAL COURT

Docket No. BAR-18-02

BOARD OF OVERSEERS OF THE BAR)
 Plaintiff)
)
 v.)
)
 MATTHEW J. MILLER, Esq.)
 of Windham, ME)
 Me. Bar #004097)
 Defendant)

ORDER and DECISION
M. Bar R. 13(g)

This attorney disciplinary matter was initiated with the Court by the filing of a disciplinary Information on February 16, 2018 pursuant to M. Bar R. 23, requesting former Attorney Miller's immediate interim suspension as the result of his conviction of a federal felony crime which reflected adversely on his fitness as a lawyer.

Upon appropriate notice, the Court conducted a disciplinary proceeding on April 17, 2019. The Board of Overseers of the Bar was represented by Assistant Bar Counsel Kelley, and Mr. Miller appeared *pro se* telephonically.

In this proceeding, the parties had submitted an agreed-upon proposed Order for the Court's review and appropriate action. That proposed stipulated Order set forth the relevant underlying facts and admitted misconduct committed by Mr. Miller.

After reviewing the proposed Order, and after hearing from Mr. Miller and from Assistant Bar Counsel Kelley, the Court issues and adopts the following Order:

FINDINGS

1. Mr. Miller was at all times relevant hereto an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules and to the Maine Rules of Professional Conduct.
2. He was admitted to the Maine Bar in 2007 and most recently was employed by the federal government at the Social Security Administration.
3. This grievance matter was initiated by Mr. Miller's self-report of his conviction of federal felony offenses.
4. At the time of the significant events, Mr. Miller was employed by the Social Security Administration and had no private clients.
5. Mr. Miller agrees that he had engaged in misconduct and violated specific portions of the Maine Rules of Professional Conduct for which he should be disciplined by a period of disbarment from practice subject to the Court's approval under M. Bar R. 25(a).
6. Mr. Miller admits that on July 5, 2017 he was convicted by his plea of guilty to a charge of Accessing With Intent to View Child Pornography in violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and (b)(2), which is a federal felony offense.
7. The Criminal Complaint specifically alleged that Mr. Miller "used a computer and the internet to access digital image files that depicted sexually explicit conduct and were produced using minors engaging in sexually explicit conduct."

8. Beginning on an unknown date, Mr. Miller used the internet and “peer-to-peer” file sharing networks to search for and download child pornography to his computer.
9. Through his searches, Mr. Miller utilized a computer program which made his IP address visible to others, and made the child pornography which he downloaded available to others over the peer-to-peer network. Miller states that he was unaware that the default settings on the program provided for file “sharing,” and thereby allowed others to access the pornography he had downloaded.
10. Miller’s computer was equipped with a “shredder” program, and as a result, downloaded files were deleted by the computer after viewing, removing the evidence of his ongoing criminal conduct.
11. On or about December 19, 2017 Mr. Miller was sentenced by U. S. District Court Judge George Z. Singal to a prison term of 36 months, followed by 10 years of supervised release and a \$5,100.00 total financial assessment.
12. Mr. Miller admits that his conduct underlying those criminal convictions constituted violations of M. R. Prof. Conduct 8.4(b), (c), and (d), being criminal conduct that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, involving dishonesty, as well as being conduct that is prejudicial to the administration of justice.

VIOLATIONS OF THE MAINE RULES OF PROFESSIONAL CONDUCT

Based on the facts set forth above, the Board has alleged and Mr. Miller now admits that he engaged in violations of the applicable Maine Rules of Professional Conduct, specifically, Rules 8.4(b), (c), and (d).

SANCTIONS

The Court looks to Maine Bar Rule 21(c) for direction on the proper factors to consider and analyze in the issuance of an appropriate disciplinary sanction. That rule states as follows:

(c) Factors to be Considered in Imposing Sanctions. In imposing a sanction after a finding of lawyer misconduct, the Single Justice, the Court, or the Grievance Commission panel shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

In this matter, Mr. Miller agrees that his misconduct violated important duties that he owed to the legal system, and to the profession. There is no dispute that he engaged in serious criminal misconduct which reflected adversely on his honesty and fitness as a lawyer. His conduct was intentional, and was done with

full knowledge of its illegality and the consequences thereof. Mr. Miller's intentional viewing of child pornography, and his sharing of that pornography, even if unintended, enabled further proliferation of that pornography and further victimization of the child victims.

Pursuant to the ABA Standards for Imposing Lawyer Sanctions, Section 5.1, "Failure to Maintain Personal Integrity", and Section 5.11, disbarment is "generally appropriate" when a lawyer engages in, "intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice." Mr. Miller's admitted behavior and the criminal convictions which resulted from it, establish that he engaged in such conduct.

The existence of aggravating and mitigating factors must be reviewed and considered by the court. Section 9.22 of the ABA Standards for Imposing Lawyer Sanctions list numerous factors which may be considered in aggravation and justify an increase in the degree of discipline to be imposed. Among those aggravating factors, several are present in Mr. Miller's case: Mr. Miller's motive in committing his offenses was "dishonest" and "selfish"; his actions constituted a pattern of misconduct over time; there were multiple offenses; and the child victims depicted in the pornography were vulnerable to the offenses committed against them. Mr. Miller was an attorney with substantial experience in the practice of law, and his misconduct was illegal, resulting in criminal convictions.

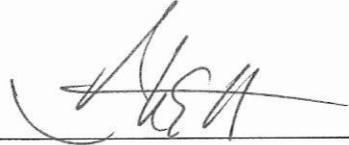
In mitigation, Mr. Miller has no prior disciplinary record, and he has been cooperative and remorseful throughout the processing of this matter.

Nonetheless, the aggravating factors clearly outweigh the mitigating factors in this matter, and therefore, disbarment is the appropriate sanction in this matter.

Bearing all of these factors in mind, the Court agrees with, and accepts the parties' agreed upon proposed sanction, as follows:

Mr. Miller is hereby ordered disbarred from the practice of law in Maine for a period of three years, commencing effective on March 1, 2018, the date of the Court's Order of Immediate Suspension pursuant to M. Bar R. 23. Mr. Miller has no current clients of any nature or any matters with opposing counsel to so notify of his suspension from practice. Nevertheless, the Court hereby also orders that Mr. Miller shall file an affidavit with Bar Counsel within 30 days of the date of this Order confirming the absence of any current clients. See M. Bar R. 31(h).

Date: April 17, 2019



Thomas E. Humphrey, Associate Justice
Maine Supreme Judicial Court

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