



STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No. 16-C-14253-LMA
	)	
JAMES EDWARD KROETCH,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 95434.	)	ENROLLMENT
_____	)	

**Introduction**

This matter is before the court on an order of referral filed by the Review Department of the State Bar Court on September 13, 2017, for a hearing and decision recommending the discipline to be imposed as respondent James Edward Kroetch (Respondent) was convicted of a misdemeanor violation of Penal Code section 311.11, subdivision (a) (possession of child pornography), a crime involving moral turpitude. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.340 et seq.)

As set forth below, the crime of which Respondent was convicted involved moral turpitude. In light of this, along with the serious aggravation involved, including multiple acts of wrongdoing, indifference toward rectification/atonement, lack of candor, and the high level of vulnerability of the victims, the court will recommend that Respondent be disbarred.

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### Significant Procedural History

On March 21, 2013, Respondent was arrested for possession and distribution of child pornography by the Pleasant Hill Police Department. On September 22, 2014, Respondent was arrested by the Federal Bureau of Investigation for possession of child pornography.<sup>1</sup>

On August 7, 2014, Respondent was charged in a felony criminal complaint in Contra Costa County Superior Court with one count of violating Penal Code section 311.11, subdivision (a) (possession of child pornography). On January 5, 2016, Respondent pled no contest to a misdemeanor count of violating Penal Code section 311.11, subdivision (a). Respondent was sentenced to three years of probation, required to register as a sex offender pursuant to Penal Code section 290, and ordered to pay restitution in the sum of \$150.

On July 18, 2017, the Office of Chief Trial Counsel of the State Bar of California (State Bar) transmitted, to the State Bar Court Review Department, a certified copy of Respondent's 2016 conviction.<sup>2</sup> Thereafter, the review department filed its September 13, 2017 order referring Respondent's 2016 conviction to the hearing department for a hearing and decision recommending the discipline to be imposed.<sup>3</sup>

On September 14, 2017, this court filed and served on Respondent a Notice of Hearing on Conviction (NOH). (Rules Proc. of State Bar, rule 5.345(A).) On November 13, 2017, Respondent filed his Answer to the NOH.

On January 18 and 26, 2018, the present matter proceeded to trial. On January 18, 2016, Respondent stipulated to the facts contained in the State Bar's pre-trial statement filed on

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<sup>1</sup> No evidence was presented regarding any federal charges filed against Respondent.

<sup>2</sup> On July 24, 2017, the State Bar transmitted evidence of the finality of Respondent's conviction. On August 23, 2017, the State Bar amended the transmittal in response to the review department's August 10, 2017 order.

<sup>3</sup> The review department found in its order that Respondent's conviction involved moral turpitude.

January 5, 2018. The State Bar was represented by Senior Trial Counsel Maria J. Oropeza. Respondent represented himself. The court took the present proceeding under submission for decision on January 26, 2018.<sup>4</sup>

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 16, 1980, and has been a member of the State Bar of California since that time.

### **Facts**

Respondent is conclusively presumed, by the record of his 2016 conviction, to have committed all the acts necessary to constitute the crime of which he was convicted (i.e., possession of child pornography in violation of Penal Code section 311.11, subdivision (a)). (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

### **Respondent's 2016 Conviction**

In February 2013, Respondent came to the attention of the Silicon Valley Internet Crimes Against Children Task Force (SVICAC) with the Pleasant Hill Police Department while the unit was conducting automated internet sweeps of the area. The SVICAC utilizes a law enforcement software program, E-Phex, to automate the browsing and downloading of suspected child pornography files from a list of internet addresses. The SVICAC began monitoring Respondent's IP address on February 9, 2013, and continued through March 20, 2013. Between February 10, 2013, and February 22, 2013, the E-Phex programs obtained a list of files reported

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<sup>4</sup> On February 1, 2018, Respondent filed a declaration regarding his testimony at trial. The State Bar filed a motion to strike the declaration on February 2, 2018. The court finds no good cause to permit Respondent's declaration. (Rules Proc. of State Bar, rule 5.111(A).) Accordingly, the State Bar's motion to strike is granted.

as being shared on the network from Respondent's computer. The SVICAC recognized many of those files as known child pornography files.

The list of files were reviewed by SVICAC investigators and they determined that the content of each file contained child pornography within the meaning of Penal Code section 311.4. Based on the content of the files, Officer Steve Guidi obtained a search warrant from Judge Fenstermacher on March 1, 2013, for the internet service provider Comcast Cable. On March 6, 2013, Officer Guidi received a response to the search warrant from Comcast Cable that indicated that the IP address that the SVICAC was monitoring belonged to Respondent. Officer Guidi continued to monitor the IP address for activity involving downloading of child pornography. On March 20, 2013, E-Phex downloaded several child pornography files from Respondent's IP address.

On March 21, 2013, a search warrant was served on Respondent at his residence. A search of his residence was conducted and multiple computers and drives were seized. During the execution of the search warrant the peace officers did a preliminary review of at least two computers and found images of child pornography. Respondent was arrested without incident at his residence. SVICAC had the computers, external drives, thumb drives, etc., examined by Silicon Valley Regional Computer Forensics Laboratory. Upon examining the computers, external drives, and thumb drives, the laboratory determined that the hard drives, and other forensic evidence obtained at Respondent's residence, contained over 9,000 images of child pornography. In addition, over 3,000 videos of child pornography were in Respondent's possession.

The laboratory also determined that Respondent had modified several images wherein Respondent inserted himself into photos depicting sexual acts with children. Most of the images involved children very young in age ranging in ages from 1 to 12. The laboratory also

determined that Respondent was using peer-to-peer networks to share and disseminate child pornography with other users.

## **Conclusions**

### **Moral Turpitude**

Respondent was in possession of thousands of depictions of child pornography which he shared online. He pled guilty to knowingly possessing and controlling child pornography in violation of Penal Code section 311.11, subdivision (a). The review department found in its order that Respondent's conviction involved moral turpitude. This finding is in accord with the Supreme Court's ruling in *In re Grant* (2014) 58 Cal.4th 469 that a violation of this statute involves moral turpitude per se. Therefore, Respondent's conviction involved moral turpitude.

### **Aggravation**<sup>5</sup>

The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds four aggravating circumstances.

#### **Multiple Acts (Std. 1.5(b).)**

Respondent possessed thousands of images and videos of child pornography, which he collected and shared with others over a period of several years. These multiple acts of misconduct merit significant weight in aggravation.

#### **High Level of Victim Vulnerability (Std. 1.5(n).)**

"Child pornography harms and debases the most defenseless of our citizens." (*United States v. Williams* (2008) 553 U.S. 285, 307.) The thousands of images and videos that Respondent possessed contained depictions of countless children, the most vulnerable in our society. The vulnerability of his victims is a significant aggravating factor.

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<sup>5</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

### **Indifference Toward Rectification/Atonement (Std. 1.5(k).)**

In his answer to the NOH, Respondent equivocated in discussing his child pornography conviction. He stated that he admitted his crime, but that his actions were only “digital” and he never left his room in committing this crime. He further stated: “For a period of my life my sexuality involved acts in my room that violated the moral standards of my community. My sexuality was wrong. I will not justify my actions. My actions were wrong.” He then argued that his actions never affected his ability to practice law, stating “my improper acts never interfered with my legal analysis and my legal practice. No one knew of my secret life.” In his opposition to a motion to default, filed on October 27, 2017, Respondent asserted that his behavior has been “perfect” since March 21, 2013, the day of his arrest. He did not expound on his behavior before that date. He did, however, state that his plea was a result of a bargain with the district attorney for his assistance in another criminal matter.

On December 28, 2017, Respondent filed a pre-trial statement where he reiterated that his crime did not impact his ability to practice law. He stated: “There is no evidence that the act of [Respondent], performed entirely within the confines of his personal residence, was even known to the outside world until the eavesdrop on [Respondent].” Respondent then stated that his actions were the result of his “sexual orientation.” He equated his actions to homosexual sex and abortion in an attempt to argue why he should not be disciplined.<sup>6</sup> He tried to lessen his misconduct by describing it as “possession of some pictures in his own personal residence.” He reiterated these arguments in motions to dismiss filed on January 18, 2018.<sup>7</sup>

Respondent filed a written closing argument on January 26, 2018. The crux of that argument was that he was not a pedophile and was a good attorney. He inaccurately argued that

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<sup>6</sup> Respondent repeated this argument at trial.

<sup>7</sup> These motions were denied on January 18, 2018.

the State Bar did not prove moral turpitude. The court rejects his arguments made during these proceedings.

Respondent demonstrated indifference towards rectification of or atonement for the consequences of his misconduct. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

During these proceedings, Respondent has displayed no insight into understanding his misconduct. He downplayed the seriousness of his crime, describing his actions as a “sexual orientation” and limited only to his room. Respondent did not demonstrate any remorse for his actions or the victims. He denied ever seeing child pornography. Respondent’s inability to recognize the wrongfulness of his misconduct warrants significant consideration in aggravation.

**Lack of Candor to the State Bar (Std. 1.5(I).)**

At trial, Respondent claimed for the first time that the child pornography found in his home belonged to his brother. He testified that he had never seen child pornography. Respondent stated that his brother had moved out the day before Respondent was arrested and that his brother had since died.

The court finds that Respondent’s testimony was not credible. Respondent’s argument changed throughout these proceedings from an argument about his “sexual orientation” to denying that he had ever seen child pornography and placing the blame on his dead brother. Respondent never presented any evidence that his brother actually lived with him or that he told anyone, at any point before trial, that his brother was to blame. The officers that testified at trial

were credible and their testimony was consistent.<sup>8</sup> Respondent displayed a lack of candor during these proceedings. As such, the court finds that his dishonesty is a considerable aggravating factor.

### **Mitigation**

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds one mitigating circumstance.

#### **No Prior Record (Std. 1. 6(a).)**

At the time of his arrest, Respondent had practiced law for over 32 years without discipline.<sup>9</sup> Significant mitigating weight is assigned to this factor.<sup>10</sup>

### **Discussion**

The State Bar recommended that Respondent be disbarred from the practice of law. Respondent, on the other hand, argued that he should not be disbarred or, at the very least, that he be allowed to continue to practice with the restriction that he be prohibited from being around children.

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest

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<sup>8</sup> The officers testified that they viewed depictions of child pornography where Respondent's face was superimposed over the faces of adult males in the images. They also testified that they viewed a video of Respondent masturbating while he was watching child pornography.

<sup>9</sup> It is unclear exactly when Respondent began to collect child pornography. Officer testimony at trial established that one video was downloaded as early as 2004. Regardless, Respondent practiced a substantial amount of time without discipline.

<sup>10</sup> Respondent argued that he should receive mitigating credit because he "took responsibility" for his crime, never violated probation, and is not a danger to society. He asserted that he is a good and honest attorney. The court finds that none of these reasons are proof by clear and convincing evidence that Respondent should receive any other credit in mitigation besides credit for his lengthy tenure of discipline-free practice.



possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. Standard 1.7(b) provides that “if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction that what is otherwise specified in a given Standard.” A greater sanction is appropriate where (1) there is serious harm to the client, the public, the legal system, or the profession and (2) the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities. (Std. 1.7(b).)

In this case, the standards call for disbarment or actual suspension. Standard 2.15(c) states, “Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude.” The Supreme Court concluded that a violation of Penal Code section 311.11, subdivision (a) (possession of child pornography) involves moral turpitude per se (*In re Grant, supra*, 58 Cal.4th 469), and the review department’s referral order in this matter noted as such. Grant pled guilty to a felony violation of Penal Code section 311.11, subdivision (a), the same code section that Respondent violated. The court held that a violation of Penal Code section 311.11, subdivision (a) necessarily involves moral turpitude for purposes of attorney discipline because that crime is “extremely repugnant to accepted moral

standards.” (*In re Grant, supra*, 58 Cal.4th at p. 477 [quoting *In re Lesansky* (2001) 25 Cal.4th 11, 17].) Because Respondent’s conviction in this matter was for a misdemeanor and not a felony, he could not be summarily disbarred under Business and Professions Code section 6102, subdivision (c).

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

In a conviction referral proceeding, “discipline is imposed according to the gravity of the crime and the circumstances of the case.” (*In the Matter of Katz, supra*, 1 Cal. State Bar Ct. Rptr. at p. 510.) An attorney’s commission of a crime involving moral turpitude is always a matter of serious consequence. The sanction imposed, however, is determined in each case depending on the nature of the crime and the circumstances presented by the record. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 103.)<sup>11</sup>

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<sup>11</sup> In *Grant*, the Supreme Court disbarred the attorney because his felony conviction constituted moral turpitude per se. The court did not rely on the specific facts and circumstances of the crime in determining discipline. (*In re Grant, supra*, 58 Cal.4th at pp. 480-481.) Therefore, this court cannot decide the appropriate level of discipline for Respondent based on the facts and circumstances of *Grant*. However, the court notes that Respondent’s behavior in this matter is much more serious than the evidence presented in *Grant*. Both Grant and Respondent used peer-to-peer file sharing programs. Respondent had thousands more depictions of child pornography than Grant. The child pornography possessed by Respondent included an animated video used for grooming children to perform sex acts and child pornography where faces in them were modified to replace them with Respondent’s face. Respondent had child pornography with depictions of children younger than the ones described in *Grant*. Respondent’s child pornography was collected over several years and included several videos known to law enforcement as infamous in the area of child pornography. Both the review

Turning to the standards, specifically standard 2.15(c), suspension or disbarment is appropriate. Taking into consideration the aggravating circumstances in this matter in balance with the mitigating circumstances, the court finds that a sanction beyond the minimum required under standard 2.15(c) is necessary. (Std. 1.7(b).) Respondent's misconduct resulted in serious harm to the public and his statements throughout these proceedings make it is obvious that he lacks understanding of his wrongdoing. Therefore, the court determines that disbarment is the appropriate sanction in this matter.

Therefore, having considered the nature and extent of the misconduct, the standards and case law, and the aggravating and mitigating circumstances, the court finds that Respondent's disbarment is necessary to adequately protect the public and preserve the integrity of the legal profession.

### **Recommendations**

#### **Disbarment**

It is recommended that respondent James Edward Kroetch, State Bar Number 95434, be disbarred from the practice of law in California and Respondent's name be stricken from the roll of attorneys.

#### **California Rules of Court, Rule 9.20**

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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department and the hearing department found that Grant's mitigation outweighed his aggravation. His lack of candor was aggravating and the following mitigating factors were found: ongoing recovery for extreme emotional and mental health difficulties, no prior record of discipline, and good character evidence from 10 witnesses. Here, Respondent's aggravation factors outweigh his sole factor in mitigation.

### **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **Order of Involuntary Inactive Enrollment**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: March 5, 2018

  
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LUCY ARMENDARIZ  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on March 5, 2018, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JAMES EDWARD KROETCH  
PO BOX 362  
ORINDA, CA 94563

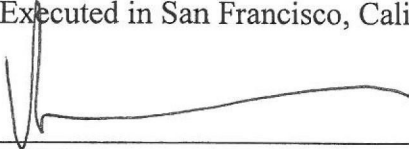
Courtesy copy sent to:  
JAMES EDWARD KROETCH  
100 TRAVERS DRIVE  
MARTINEZ, CA 94553

JAMES EDWARD KROETCH  
1 NORTHWOOD DRIVE, SUITE 1  
ORINDA, CA 94563

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Maria J. Oropeza, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 5, 2018.

  
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Vincent Au  
Court Specialist  
State Bar Court