

By: _____
FILED
JUN 06 2013
Board of Disciplinary Appeals
appointed by the
Supreme Court of Texas

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF §
WILLIAM GEORGE GAMMON, III § CAUSE NO. 50072
STATE BAR CARD NO. 07611300 §

MOTION FOR ENTRY OF JUDGMENT OF DISBARMENT

TO THE HONORABLE BOARD:

COMES NOW, Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), and files this its Motion for Entry of Judgment of Disbarment, showing as follows:

1. On or about March 7, 2012, Petitioner filed its Petition for Compulsory Discipline against Respondent, William George Gammon, III, (hereinafter called "Respondent"), seeking compulsory discipline based upon Respondent's conviction in Case No. 4:10CR00340-001, styled *United States of America v. William George Gammon*, in the United States District Court for the Southern District of Texas, Houston Division, wherein Respondent pled guilty to Count 1 – Possession of Child Pornography and was committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of forty-eight (48) months. Respondent was ordered upon release from imprisonment to be on supervised release for life with special conditions related to sex offender requirements, ordered to pay an assessment of \$100.00 and restitution of \$375,000.00.

2. On July 26th, 2012, an Agreed Interlocutory Order of Suspension was entered by the Board of Disciplinary Appeals which provides in pertinent part, as follows:

It is further ORDERED that this Order is interlocutory and that the Board retains jurisdiction to enter a final judgment when the appeal of the criminal conviction is final.

3. Following the appeal by Respondent of his criminal conviction in Case No. 4:10CR00340-001 on the charge of Possession of Child Pornography, a Mandate was issued by the United States Court of Appeals for the Fifth Circuit on or about May 21, 2013, in a matter styled, No. 11-20902, D.C. Docket No. 4:10-CR-340-1, *United States of America, Plaintiff – Appellee v. William George Gammon, Defendant - Appellant*, which affirmed the judgment issued by the District Court. A true and correct copy of the Mandate issued on or about May 21, 2013, by the United States Court of Appeals for the Fifth Circuit, is attached hereto as Exhibit “A”, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibit A at the time of hearing of this cause.

4. Petitioner represents to the Board that the Judgment entered against Respondent, William George Gammon, III, has now become final. Petitioner seeks the entry of a judgment of disbarment. Attached hereto as Exhibit “B” is a true and correct copy of the form of judgment of which Petitioner seeks the entry herein.

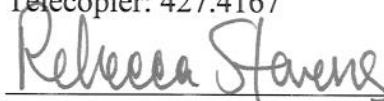
PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays, upon notice to Respondent, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

Rebecca (Beth) Stevens
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 427.4167



Rebecca (Beth) Stevens
Bar Card No. 24065381
ATTORNEYS FOR PETITIONER

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a trial on the merits of the Motion for Entry of Judgment of Disbarment heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 26th day of July 2013.**



Rebecca (Beth) Stevens

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

May 21, 2013

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 11-20902, USA v. William Gammon
USDC No. 4:10-CR-340-1

Enclosed, for the district court only, is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Record/original papers/exhibits are returned:

() Volumes (2) Sealed Envelopes () Boxes

The electronic copy of the record has been recycled.

Sincerely,

LYLE W. CAYCE, Clerk

By: 

Linda B. Miles, Deputy Clerk
504-310-7709

cc: (letter only)
Mr. John Thomas Floyd III
Ms. Renata Ann Gowie
Honorable Lynn N. Hughes
Mrs. Julia Bowen Stern

P.S. to Judge Hughes: A copy of the opinion was sent to your office via email the day it was filed.

Exhibit

A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
April 29, 2013

Lyle W. Cayce
Clerk

No. 11-20902

D.C. Docket No. 4:10-CR-340-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

WILLIAM GEORGE GAMMON,

Defendant - Appellant

Appeal from the United States District Court for the
Southern District of Texas, Houston

Before KING, DAVIS, and ELROD, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is affirmed.

ISSUED AS MANDATE:

A True Copy
Attest

Clerk, U.S. Court of Appeals, Fifth Circuit

By: _____
Deputy

New Orleans, Louisiana

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 29, 2013

Lyle W. Cayce
Clerk

No. 11-20902

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

WILLIAM GEORGE GAMMON,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
No. 4:10-CR-340

Before KING, DAVIS, and ELROD, Circuit Judges.

PER CURIAM:*

Defendant William George Gammon pleaded guilty to one count of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2). Pursuant to 18 U.S.C. § 2259, the district court ordered restitution in the amount of \$125,000 to each of three victims. On appeal, Gammon argues that the district court committed legal error by ordering restitution without finding that he directly or proximately caused the victims' harm or loss. Gammon also argues that the district court abused its discretion by insufficiently explaining

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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the reasons for the restitution amount and failing to state whether it was holding him jointly and severally liable. Because Gammon's arguments are precluded by our recent en banc decision in *In re Amy Unknown*, 701 F.3d 749 (5th Cir. 2012) (en banc), we affirm the district court's restitution order.

I. FACTUAL AND PROCEDURAL BACKGROUND

In November 2008, the Bureau of Immigration and Customs Enforcement Cyber Crimes Center ("ICE") commenced an investigation into "DreamZone CP"—a commercial website that provided access to child pornography for a fee. The investigation revealed information on persons who had subscribed to the child pornography service. ICE agents determined that defendant William George Gammon ("Gammon") had subscribed to the DreamZone CP child pornography service, and received images and videos of child pornography via the website in November 2008 and February 2009. Based on this information, agents executed a search warrant on Gammon's residence. A forensic examination of computer equipment seized from the residence revealed approximately 9,271 images and 101 videos of child pornography.

On May 26, 2010, a grand jury returned an indictment charging Gammon with one count of possessing child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2). Gammon pleaded guilty on May 23, 2011. The presentence investigation report calculated Gammon's total offense level to be 29 with a Criminal History Category of I, resulting in a Guidelines calculation of 87 to 108 months' imprisonment. Three victims—"Misty," "Vicky," and "Jan-Feb," images of whom were found in Gammon's possession—requested restitution in excess of \$3,000,000.

On December 5, 2011, the district court imposed sentence. The court departed downward from the Guidelines and imposed a sentence of 48 months'

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imprisonment and restitution in the amount of \$375,000 (\$125,000 to each of the three victims who requested restitution) based on its estimate of the victims' counseling costs for ten years.¹

Gammon timely appealed the court's restitution order. On July 25, 2012, the government moved to suspend briefing pending this court's en banc decision in *Amy Unknown*, 701 F.3d 749. Although that motion was denied, we subsequently ordered the parties to submit supplemental briefs addressing that decision.

II. STANDARD OF REVIEW

We review the legality of restitution orders de novo. *United States v. Arledge*, 553 F.3d 881, 897 (5th Cir. 2008). If a restitution award is legally permitted, the restitution amount is reviewed for an abuse of discretion. *United States v. Ollison*, 555 F.3d 152, 164 (5th Cir. 2009).

III. DISCUSSION

Gammon raises two issues on appeal. Each implicates and is foreclosed by our decision in *Amy Unknown*, 701 F.3d 749. First, Gammon argues that the district court erred in ordering restitution under 18 U.S.C. § 2259 without first finding that Gammon's conduct was the direct or proximate cause of the victims' claimed losses. Second, Gammon contends that the district court abused its discretion by failing to explain its reasons for imposing the restitution amount, as well as by not stating whether he was jointly and severally liable for the victims' losses. We address each argument below.

A. Direct or Proximate Cause

In *Amy Unknown* we set out a two-step framework for awarding restitution under § 2259. 701 F.3d at 772–73. “First, the district court must determine whether a person seeking restitution is a crime victim under

¹ The restitution order clarified that the district court was awarding \$124,000 to each victim, and \$1,000 in attorneys' fees for each victim.

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§ 2259—that is, ‘the individual harmed as a result of a commission of a crime under this chapter.’” *Id.* at 773 (quoting 18 U.S.C. § 2259(c)). “Second, the district court must ascertain the full amount of the victim’s losses as defined under § 2259(b)(3)(A)-(F), limiting only § 2259(b)(3)(F) by the proximate result language contained in that subsection” *Id.*

Gammon does not dispute that Misty, Vicky, and Jan-Feb are “crime victim[s]” under § 2259(c). 18 U.S.C. § 2259(c). He argues only that, before imposing restitution, the district court was required to find that he was a direct or proximate cause of the victims’ losses. Section 2259(b) provides that “[t]he order of restitution under this section shall direct the defendant to pay the victim . . . the full amount of the victim’s losses as determined by the court.” *Id.* § 2259(b)(1).

[T]he term “full amount of the victim’s losses” includes any costs incurred by the victim for—

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys’ fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

Id. § 2259(b)(3).

We have held that “§ 2259 imposes no generalized proximate cause requirement before a child pornography victim may recover restitution from a defendant possessing images of her abuse.” *Amy Unknown*, 701 F.3d at 774. Accordingly, although the district did not determine that Gammon’s conduct was the direct or proximate cause of the victims’ injury, this was not legal error. The district court only was required to make a finding of proximate cause if the victims’ restitution request did not fall under § 2259(b)(3)(A)-(E), but instead

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exclusively fell under § 2259(b)(3)(F)—“other losses suffered by the victim as a proximate result of the offense.” 18 U.S.C. § 2259(b)(3). But here, the district court ordered restitution for therapy expenses and legal fees, which respectively fall under § 2259(b)(3)(A) and (E).

Gammon’s contention that the district court committed legal error by ordering restitution without first finding that his conduct was a direct or proximate cause of the victims’ losses thus is without merit.

B. Restitution Amount

Gammon’s argument that the district court abused its discretion by failing to explain how it arrived at the restitution amount, and by not stating whether Gammon was jointly and severally liable, borrows heavily from our decision in *United States v. Wright*, 639 F.3d 679 (5th Cir. 2011), *withdrawn and superseded by Amy Unknown*, 701 F.3d 749.

In *Wright*, a defendant convicted of possessing child pornography appealed a district court’s restitution order, arguing “that the restitution order exceed[ed] the amount of [the victim’s] losses that his offense caused.” *Id.* at 681. We held that “the district court’s failure to give a reasoned analysis of how it arrived at its award in a manner that allows for effective appellate review requires that we vacate the order and remand for reconsideration.” *Id.* at 686. We rejected the government’s suggestion that we affirm the case based on a theory of joint and several liability “because it [was] unclear if the district court intended the order to be joint and several.” *Id.* at 685. We further noted that “the district court’s award of restitution for the victim’s counseling costs and not for other losses belies the government’s argument that the district court intended to hold [the defendant] jointly and severally liable . . . for all of [the victim’s] losses.” *Id.*

Nevertheless, on en banc rehearing, we affirmed the district court’s restitution order. *Amy Unknown*, 701 F.3d at 774. We acknowledged that “[t]he district court did not explain why [the defendant] should not be required to pay

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for any of the other losses [the victim] requested.” *Id.* However, because the government did not appeal the sentence and the victim did not seek mandamus relief, we held that the sentence had to be affirmed. *Id.* (citing *Greenlaw v. United States*, 554 U.S. 237, 246 (2008)).

Elsewhere in our decision, we addressed the issue of joint and several liability and observed that “[a]ny concern that individual defendants may bear a greater restitutionary burden than others convicted of possessing the same victim’s images . . . does not implicate the Eighth Amendment or threaten to create an absurd result.” *Id.* at 772. This was because “[r]estitution is not tied to the defendant’s gain; rather ‘so long as the government proved that the victim suffered the actual loss that the defendant has been ordered to pay, the restitution is proportional.’” *Id.* (quoting *Arledge*, 553 F.3d at 899). “Thus, the fact that some defendants will be held jointly and severally liable for the full amount of [a victim’s] losses, while other defendants convicted of possessing [a victim’s] images may not be . . . does not offend the Eighth Amendment.” *Id.*

Gammon contends that the district court abused its discretion by not adequately explaining the restitution award. He does not explicitly argue that the award was too high, merely that the district court was confused “as to the basis and amount of restitution.” We agree with Gammon that the district court should have explained in somewhat more detail the basis for its award. However, the district court awarded restitution based on the estimated cost of ten years’ counseling and the victims’ legal fees. This is comparable to the district court’s restitution award in *United States v. Wright*, No. 09-CR-103 (E.D. La. Dec. 16, 2009), which awarded restitution for the victim’s estimated future counseling costs and expert witness fees, and which we affirmed in *Amy*

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Unknown, 701 F.3d at 774. Accordingly, the district court's explanation was adequate.²

Nor does the district court's failure expressly to state that it was holding Gammon jointly and severally liable for the \$375,000 restitution award require vacatur.³ Having found that a district court's decision to impose joint and several liability on some defendants, but not others, does not violate the Eighth Amendment, we also conclude that doing so does not constitute an abuse of discretion. Although in *Amy Unknown* we instructed that a district court must "ascertain the full amount of the victim's losses . . . , and craft an order guided by the mechanisms described in [18 U.S.C.] § 3664, with a particular focus on its mechanism for joint and several liability," this does not mean that we will remand every case in which a district court fails to state whether a defendant is jointly and severally liable. 701 F.3d at 773. Notably, we affirmed the district court's decision in *Wright*, No. 09-CR-103, despite that court not having expressly held the defendant jointly and severally liable. *See Amy Unknown*, 701 F.3d at 752, 754.

Accordingly, we find *Amy Unknown*'s disposition of *Wright*, No. 09-CR-103, controlling. The district court's explanation of why it was awarding \$375,000 was adequate. Further, the district court did not abuse its discretion by failing to clarify whether Gammon was jointly and severally liable. The district court did not state that Gammon was jointly and severally liable for the victims' total

² Previously, we have held that a district court abuses its discretion where it fails to explain why it is not awarding the full amount of restitution requested. *See Amy Unknown*, 701 F.3d at 774. However, as the government concedes, it has not appealed the district court's restitution order and the victims have not sought mandamus relief, and thus this does not constitute a basis for vacatur. *See id.* (citing *Greenlaw*, 554 U.S. at 246).

³ Gammon appears to believe that, absent clarification, he might be held jointly and severally liable for restitution in excess of \$3 million—the amount the victims originally requested. In light of our decision to affirm the \$375,000 restitution award, Gammon's concerns are unfounded.

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losses, and Gammon's liability therefore is limited to the \$375,000 restitution award.⁴

IV. CONCLUSION

For the aforementioned reasons, the district court's restitution order is AFFIRMED.

⁴ Of course, should a time come when the victims have been fully compensated, Gammon could seek to suspend further restitution payments pursuant to 18 U.S.C. § 3664(k). *See Amy Unknown*, 701 F.3d at 770 (observing that once a victim has recovered "the full amount of her losses from one defendant, she can no longer recover from any other" (internal quotation marks and citation omitted)).

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

IN THE MATTER OF §
WILLIAM GEORGE GAMMON, III § **CAUSE NO. 50072**
STATE BAR CARD NO. 07611300 §

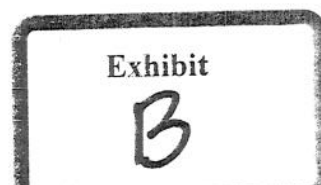
JUDGMENT OF DISBARMENT

On the 26th day of July 2013, the Board of Disciplinary Appeals considered the Motion for Entry of Judgment of Disbarment filed in the above case by Petitioner, Commission for Lawyer Discipline of the State Bar of Texas, against Respondent, William George Gammon, III. The Board finds that:

- (1) It has continuing jurisdiction of this matter pursuant to Texas Rule of Disciplinary Procedure 8.05 ("TRDP").
- (2) The United States Court of Appeals for the Fifth Circuit affirmed Respondent, William George Gammon, III's, criminal conviction and issued its Mandate indicating that the decision was final on or about May 21, 2013.
- (3) Petitioner filed its Motion for Entry of Judgment of Disbarment on or about June 6, 2013, and served same on Respondent in accordance with TRDP 8.05.
- (4) Respondent's conviction for the commission of an Intentional Crime as defined by TRDP 1.06(T), for which he was sentenced in the United States District Court for the Southern District of Texas, Houston Division, has become final and is not subject to appeal.
- (5) Petitioner's Motion for Entry of Judgment of Disbarment should be granted.

Interlocutory Suspension

On the 26th day of July 2012, the Board entered an Agreed Interlocutory Order of Suspension which included the following findings of fact and conclusions of law:



- (1) Respondent, William George Gammon, III, whose State Bar Card number is 07611300, is licensed and authorized by the Supreme Court of Texas to practice law in the State of Texas.
- (2) On or about May 26, 2010, Respondent was charged by Criminal Indictment with Count One – Possession of Child Pornography, in violation of 18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2) in Cause No. H-10-340, styled *United States of America v. William George Gammon*, in the United States District Court for the Southern District of Texas, Houston Division.
- (3) On or about December 14, 2011, a Judgment in a Criminal Case was entered in Case No. 4:10CR00340-001, styled *United States of America v. William George Gammon*, in the United States District Court for the Southern District of Texas, Houston Division, wherein Respondent pled guilty to Count 1 – Possession of Child Pornography and was committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of forty-eight (48) months. Respondent was ordered upon release from imprisonment to be on supervised release for life with special conditions related to sex offender requirements, ordered to pay an assessment of \$100.00 and restitution of \$375,000.00.
- (4) Respondent, William George Gammon, III, is the same person as the William George Gammon who is the subject of the criminal case described above.
- (5) Respondent has appealed the criminal conviction.
- (6) This Board has jurisdiction to hear and determine this matter. Tex. R. Disciplinary P. 7.08(G);
- (7) Respondent, William George Gammon, III, having been convicted of Possession of Child Pornography, has been convicted of an Intentional Crime as defined by TRDP 1.06(T).
- (8) Respondent has also been convicted of a Serious Crime as defined by TRDP 1.06(Z).
- (9) Having been found guilty and convicted of an Intentional and Serious Crime and having appealed such conviction, Respondent, William George Gammon, III, should have his license to practice law in Texas suspended during the appeal of his criminal conviction. TRDP 8.04.
- (10) The Board retains jurisdiction to enter a final judgment in this matter when the criminal appeal is final.

Disbarment

The Board has determined that disbarment of the Respondent is appropriate. It is, therefore, accordingly, ORDERED, ADJUDGED, AND DECREED that Respondent, William George Gammon, III, State Bar No. 07611300, be and he is hereby DISBARRED from the practice of law in the State of Texas, and his license to practice law in this state be and is hereby revoked.

It is further ORDERED, ADJUDGED and DECREED that Respondent, William George Gammon, III, is hereafter permanently prohibited, effective immediately, from practicing law in Texas, holding himself out as an attorney at law, performing any legal service for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further ORDERED that Respondent, William George Gammon, III, not later than thirty (30) days from the date of the entry of this judgment, shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court, if any, in which Respondent has any legal matter pending, if any, of his disbarment, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court. Respondent is also ORDERED to mail copies of all such notifications to the Office of the Chief Disciplinary Counsel, Statewide Compliance Monitor, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

It is further ORDERED that Respondent, William George Gammon, III, shall immediately notify each of his current clients and opposing counsel, if any, in writing, of his disbarment. In addition to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid

in advance, and all other monies and properties which are in his possession but which belong to current or former clients, if any, to those respective clients or former clients within thirty (30) days after the date on which this Judgment is signed by the Board. Respondent is further ORDERED to file with this Board, within the same thirty (30) days, an affidavit stating that all current clients and opposing counsel have been notified of his disbarment and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to clients and former clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of his inability to return to said client any file, paper, money or other property. Respondent is also ORDERED to mail a copy of said affidavit and copies of all notification letters to clients, to the Office of the Chief Disciplinary Counsel, Statewide Compliance Monitor, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

It is further ORDERED that Respondent, William George Gammon, III, if he has not already done so, immediately surrender his Texas law license and permanent State Bar Card to the Office of the Chief Disciplinary Counsel, Statewide Compliance Monitor, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further ORDERED that a certified copy of the Petition for Compulsory Discipline on file herein along with a copy of this Final Judgment of Disbarment be sent to the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

Signed this ____ day of _____ 2013.

Chair Presiding
BOARD OF DISCIPLINARY APPEALS