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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON**

STATE OF OREGON,)	
)	Case No. 22CR16790
Plaintiff,)	
)	DA No. 409140
v.)	
)	
JOHN MICHAEL MANN,)	DEFENDANT’S SENTENCING
)	MEMORANDUM
Defendant.)	
)	
)	

1. INTRODUCTION

The Defendant, JOHN MICHAEL MANN, by and through his attorney, Lawrence L. Taylor, hereby respectfully submits this Sentencing Memorandum in the above-captioned matters. Defendant seeks a downward dispositional departure to probation in this case. Defendant asserts that a probationary sentence is appropriate for three reasons: an appropriate treatment program is likely to be more effective than a prison term in reducing the risk of recidivism; a treatment program is recommended, available, and accessible immediately; and such a sentence would serve community safety interests by promoting reformation of the Defendant.

2. FACTUAL SUMMARY

On April 8, 2022, the Defendant was indicted on ten counts of Encouraging Child Sexual Abuse in the First Degree for acts alleged to have occurred between June 11, 2020 and August 7,

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1 2020. A search warrant had been executed on March 6, 2022. He was arrested on those charges
2 on April 11, 2022, arraigned on April 12, 2022, and conditionally released on May 9, 2022. He
3 entered pleas of guilty to all charges on March 3, 2023.

4 The Defendant has been a licensed attorney in the State of Oregon since September 23,
5 1993. He began working in the Office of Administrative Hearings in 2003, and was appointed
6 Chief Administrative Law Judge by Governor Brown in 2017. He worked in that capacity until
7 he was suspended as a result of the charges in this case. He was active in the Administrative
8 Law Section of the Oregon State Bar, and was scheduled to become chair of that section (*not* the
9 Bar) this year. He anticipates resignation or disbarment as a result of the charges herein.

10 On March 8, 2022 (two days after execution of the search warrant and over a month
11 before filing of charges), the Defendant voluntarily entered a sexual offense-specific treatment
12 program conducted by Cynthia S. Steinhauser, Ph.D. According to Dr. Steinhauser's reports
13 dated November 27, 2022 and February 22, 2023, copies of which have been provided to the
14 Court for *in camera* review, the Defendant has attended group therapy sessions twice a week
15 without absence since that date. Dr. Steinhauser reports that the Defendant is in the "action
16 stage" of change, indicating a favorable prognosis, "especially if his treatment is not interrupted
17 by a term of incarceration." The Defendant anticipates that Dr. Steinhauser will appear at the
18 sentencing hearing to offer information and professional insight to the Court.

19 On May 20, 2022, the Defendant underwent a psychosexual evaluation conducted by
20 Keith I. Linn, Psy.D. Dr. Linn issued a report on this evaluation on February 9, 2023, a copy of
21 which has also been submitted for *in camera* inspection. Dr. Linn concluded that the Defendant
22 "presents a low number of factors associated with future sexual arrests or convictions." He
23 found that the Defendant "appears amenable to offense specific treatment and community
24 supervision."

25 On August 3, 2022, the Defendant submitted to a sexual full disclosure polygraph
26 examination conducted by licensed polygraph examiner Lucinda J. Gardner. The examiner

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1 concluded that the Defendant's physiological responses were "consistent with the usual
2 indications of truthfulness" when he denied having committed or concealed any physical sexual
3 contact with a minor or other sexual crime. A copy of the full disclosure polygraph examination
4 has been submitted to the Court.

5 3. DEPARTURE SENTENCES

6 Oregon law provides that sentences for felony crimes be imposed according to the
7 sentencing guidelines established by the Oregon Criminal Justice Commission. ORS 137.669.
8 A sentencing judge may impose a sentence which departs from the presumptive sentence under
9 the guidelines only if the Court finds substantial and compelling reasons to do so. ORS
10 137.671(1); OAR 213-008-0001. This sentencing discretion includes the authority to impose a
11 *dispositional departure from a presumptive term of incarceration to a period of probation.* OAR
12 213-003-0001(7).

13 In imposing a dispositional departure sentence, the Court must state the substantial and
14 compelling reasons which justify such a sentence on the record. ORS 137.671(2); OAR 213-
15 008-0001. The Court may apply the same departure factor or factors to multiple crimes
16 sentenced at the same hearing, as in the instant case, so long as those factors properly apply to
17 each crime to which they are applied. *State v. Petrie*, 139 Or App 474, 477-78, 912 P2d 913
18 (1996).

19 4. APPLICATION OF THE SENTENCING GUIDELINES

20 When imposing a sentence under Oregon's sentencing guidelines, the Court begins by
21 determining the presumptive sentence for the crime or crimes of conviction. That presumptive
22 sentence depends on two factors: the seriousness of the crime and the criminal history of the
23 convicted person. OAR 213-002-0001(3)(d). The crime seriousness ranking for each count of
24 Encouraging Child Sexual Abuse in the First Degree is "8." OAR 213-017-0004. The
25 Defendant currently has no criminal convictions; his criminal history score is therefore "I."
26

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1 OAR 213-004-0007. The presumptive sentence for Count One herein is thus 16 to 18 months
2 imprisonment. Oregon Sentencing Guidelines Grid (*hereinafter* “SGL”).

3 After imposition of sentence on Count One, the Defendant will have been sentenced to
4 one person felony; his criminal history score at that point will be “D.” OAR 213-004-0007.
5 That increases the presumptive sentence on Count Two to a range of 27 to 28 months. SGL.
6 The second felony conviction resulting from sentencing in Count Two will reconstitute his
7 criminal history at “B,” with a presumptive sentence for Count Three of 35 to 40 months. SGL.
8 After entry of that conviction, the Defendant will have a criminal history score of “A,” with a
9 presumptive sentence on the remaining Counts—Four through Ten—of 41 to 45 months each.
10 SGL.

11 A. Optional Probation

12 A sentencing court may impose probation in lieu of a presumptive sentence of
13 imprisonment for an offense classified in grid block 8-I. OAR 213-005-0006(1). The Defendant
14 is eligible for this option in respect to Count One herein. In applying this provision of the
15 sentencing guidelines, the Court must make three specific findings: first, that an appropriate
16 treatment program is likely to be more effective than the presumptive term of imprisonment in
17 reducing the risk that the offender will reoffend; second, that a treatment program is available
18 and that the Defendant can be admitted to it within a reasonable period of time; and finally, that
19 the probationary sentence will serve the interests of the community by promoting reformation of
20 the offender. OAR 213-005-0006(1)(a)-(c).

21 The circumstances in this case meet all of the criteria for imposition of optional
22 probation. First, treatment is more likely than prison to reduce the risk of recidivism. As Dr.
23 Steinhauer states in her report, the Defendant has actively participated in treatment twice
24 weekly for nearly a year (over 14 months at this point). By three months ago at latest, he had
25 achieved what therapists term the action stage of change. Dr. Steinhauer anticipates a favorable
26 prognosis, particularly if treatment is not interrupted by imprisonment. To the best of counsel’s

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1 knowledge, sexual offense-specific treatment is inadequate if not non-existent within the
2 Department of Corrections. The risk of reoffending is best reduced by permitting the Defendant
3 to continue his course of treatment.

4 The second optional probation criterion is ready availability of the treatment program. In
5 this case, the program is not merely available and accessible within a reasonable period of time;
6 the Defendant is already enrolled and has been actively involved for over a year.

7 The final condition for optional probation is service to the interests of the community by
8 promotion of offender reformation. As Dr. Linn opines, the Defendant “appears amenable to
9 offense specific treatment and community supervision.” The Defendant’s therapy group
10 currently constitutes his primary support system and will continue to do so if he is permitted to
11 continue with his treatment. There is no reason to believe that a period of immersion in the
12 criminal subculture—commonly designated “imprisonment”—will do anything to “promote
13 offender reformation.” The most that can be hoped from such a course of action is that the
14 Defendant will manage to remain unaffected by months of continuous contact with hardcore
15 convicts. Treatment and probation offer far better prospects for success, both for the Defendant
16 and the community.

17 B. Downward Departure Factors

18 Only Count One of this case is eligible for reduction to optional probation under OAR
19 213-005-0006. The remaining counts can, however, be reduced from presumptive prison
20 sentences to terms of probation by application of the same factors which justify optional
21 probation for Count One. OAR 213-008-0002(1)(a)(I). The Court should apply those factors to
22 Counts Two through Ten and impose a downward dispositional departure to probation for all
23 counts for the reasons set forth *supra*.

24 One additional mitigating factor mentioned in the presentence investigation report is that
25 the Defendant has lived conviction-free within the community for a significant period of time
26

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1 preceding this conviction; that period being his entire 58 years of life. OAR 213-008-
2 0002(1)(a)(H).

3 A mitigating factor which was not listed in the presentence report is that the degree of
4 harm attributable to the Defendant's crimes of conviction was significantly less than typical for
5 such offenses. OAR 213-008-0002(1)(a)(G). While the Defendant has no way of ascertaining
6 what the "typical" degree of harm for such crimes may be, and while he in no way suggests that
7 his criminal acts were devoid of harmful effect, he does wish to bring to the Court's attention
8 some factors which may indicate a comparatively lesser degree of harm in his case. First, he at
9 no time paid any money for the illicit material he viewed; thus, his actions did not provide
10 financial incentive for past or future abuse or exploitation of children. Second, while he did
11 download child sexual abuse material, he at no time uploaded such images or otherwise shared
12 them with other persons. In this respect, his crimes are substantially less egregious than those of
13 another Oregon attorney charged with the same type and number of offenses. *See State of*
14 *Oregon v. Scott Louis Gilfillan*, Case Number 21CR45012.

15 C. Aggravating Factors

16 As well as providing factors which can form the basis for sentences less severe than those
17 ordinarily required under the sentencing guidelines, the administrative rules enumerate factors
18 which can be used by the Court to justify imposing more than the presumptive sentence. OAR
19 213-008-0002(1)(b). The presentence investigation report submitted in this case lists three such
20 aggravating factors: violation of public trust or professional responsibility; previous
21 interventions not having affected change of behavior; and prior negative consequences of similar
22 behavior.

23 I. Violation of Public Trust

24 A violation of public trust or professional responsibility is an aggravating factor under the
25 sentencing guidelines. OAR 213-008-0002(1)(b)(F). The presentence investigator cites this
26 factor in her report. The Defendant asserts that the investigator both misunderstands the rule and

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1 misstates the facts in this instance. While it is true that the Defendant was both a member of the
2 Oregon State Bar and the Chief Administrative Law Judge at the time of the offenses, it is not
3 accurate to assert that he was on the Board of the bar or scheduled to become its chair this year.
4 Rather, he was a member of the Board of the Administrative Law Section of the state bar, and
5 slated to be chair of that section.

6 The more significant issue here is that the public trust factor simply does not apply to the
7 crimes of conviction in this case. The Defendant's private—indeed, secret—criminal acts did
8 not involve any abuse of his public authority or professional credentials. *State v. Reid*, 140 Or
9 App 293, 296 n 2, 915 P2d 453 (1996); *see* UCrJI 3312. Admittedly, the Defendant's criminal
10 acts constituted professional misconduct by reflecting adversely on his fitness as a lawyer.
11 ORPC 8.4(a)(2). The bar possesses adequate remedies for addressing such misconduct. ORPC
12 8.5. The Defendant is not asserting, of course, that criminal acts implicating the Rules of
13 Professional Conduct could not in some circumstances also constitute aggravating factors for
14 violation of a public trust. In order to qualify as an aggravating factor under this rule, however,
15 the harm to a victim must result from the violation of the professional rule and not merely arise
16 from the same factual predicate. Otherwise, every criminal conviction imposed against an
17 attorney in Oregon would categorically carry an aggravating factor. The Defendant can find no
18 authority for such a sweeping application of this rule.

19 II. Previous Interventions Not Effective

20 The presentence investigation reports lists the following as an aggravating factor:
21 “[p]revious interventions accessed by the [D]efendant apparently did not effect change.” This
22 factor as stated does not appear in the sentencing guidelines rules; the closest enumerated
23 aggravating factor is “persistent involvement in similar offenses.” OAR 213-008-0002(1)(b)(D).
24 The use of the term “offenses,” however, indicates that this factor would not apply to lawful
25 access to sexually explicit material, even where such behavior may have violated workplace
26 rules or other standards. ORS 161.505. The reference to Defendant's outreach to an Employee

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1 Assistance Program “for help with sexual addiction,” the previous job loss attributed to
2 workplace viewing of pornography, and Defendant’s admission that his involvement in child
3 sexual abuse material did not commence until 2020, indicate that the intervention described here
4 does not relate to “similar offenses” or to any offenses as that term is defined.

5 Rather than an aggravating factor as such, it is possible that this alleged treatment failure
6 is offered to suggest that the Defendant is not amenable to treatment and that therefore he should
7 not be found eligible for optional probation. There is no indication, however, that the Defendant
8 actually engaged in any sexual offense treatment in 2016 or at any time prior to enrolling in his
9 current treatment program. His past contact with an Employee Assistance Program thus seems
10 of limited predictive value, particularly in comparison with the actual observations of a qualified
11 therapist regarding the Defendant’s nearly one year (over one year currently) of continuing
12 participation in offense-specific treatment.

13 III. Prior Negative Consequences

14 It is unfortunate, even tragic, that the Defendant did not recognize the self-destructive and
15 ultimately criminal path in which he was headed when he first suffered a personal and
16 professional loss as a result of his sex addiction. Had he taken the necessary steps to address his
17 issues the first time they got him into trouble, he would not have ended up throwing away his
18 family, his career, his reputation, and at least some of his freedom. This is the rule, however, and
19 not the exception for the downward spiral of addiction. For example, few people end up with a
20 Driving Under the Influence of Intoxicants charge the first time their drinking gets out of control.
21 The fact that it took such a precipitous fall for the Defendant to begin the road to recovery in no
22 way vitiates the work he is currently doing in treatment. His prior failures are no reason to deny
23 his present or anticipated successes.

24 5. SENTENCE

25 The presentence investigation report in this case recommends the following sentence for
26 Counts Three through Ten: a downward dispositional departure to five years probation; the full
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1 child sex crimes probation package; buccal samples for DNA testing; sexual offender
2 registration; no contact with minors; enhanced electronics package prohibiting access to internet-
3 capable devices and storage; and no contact with Laura Mann. The Defendant joins in this
4 recommendation, but requests that the Court extend this proposal to all ten counts in this case.

5 The Defendant is not, however, asking the Court to forego any incarceration in this case.
6 The Defendant recognizes that a period of confinement is appropriate, that the State will be
7 advocating vigorously for such a result, and that the community will expect it. The Court has the
8 authority to impose up to 90 days in jail on each count at the time of sentencing, subject to the
9 rule that only one-third of that amount may be imposed without a finding of adequate space in
10 the county jail. OAR 213-005-0013. Given that the Defendant was in custody on these matters
11 from April 11, 2022 to May 9, 2022, he recommends that the Court exercise its authority by
12 imposing 30 sanction units on Count One with no credit for time served.

13 6. CONCLUSION

14 A downward dispositional departure in this case is authorized by law. Such a sentence
15 presents the greatest likelihood of reducing the risk of recidivism, reforming the Defendant, and
16 protecting the community. The Court should impose such a sentence.

17
18 DATED: May 8, 2023.

19 Respectfully submitted,

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22 Lawrence L. Taylor, OSB #921410
23 Attorney for Defendant
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