

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

Thomas Dixon Johnston

VSB Docket No. 10-000-080283

Attorney at Law

On August 10, 2009, came Thomas Dixon Johnston and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth effective August 11, 2009. By tendering his Consent to Revocation at a time when disciplinary charges are pending, he admits that the charges in the attached Affidavit Declaring Consent to Revocation and Rule to Show Cause and Order of Suspension and Hearing are true.

The Board having considered the said Affidavit Declaring Consent to Revocation, and Bar Counsel having no objection, the Board accepts his Consent to Revocation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Thomas Dixon Johnston be and the same hereby is revoked, and that the name of the said Thomas Dixon Johnston be stricken from the Roll of Attorneys of this Commonwealth.

Entered this 11th day of August, 2009

For the Virginia State Bar Disciplinary Board

By *Barbara S. Lanier*
Barbara Sayers Lanier, Clerk of the Disciplinary System

RECEIVED

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

AUG 10 2009

IN THE MATTER OF
THOMAS DIXON JOHNSTON

VSB CLERK'S OFFICE

VSB Docket No. 10-000-080283

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Thomas Dixon Johnston, after being duly sworn, states as follows:

1. That Thomas Dixon Johnston was licensed to practice law in the Commonwealth of Virginia on 06/08/1970;
2. That Thomas Dixon Johnston submits this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13-28.
3. That Thomas Dixon Johnston's consent to revocation is freely and voluntarily rendered, that Thomas Dixon Johnston is not being subjected to coercion or duress, and that Thomas Dixon Johnston is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia;
4. Thomas Dixon Johnston is aware that there is currently pending a proceeding involving allegations of misconduct of committing a felony in violation of RPC 8.4(b):
 - a) That on or about July 2, 2009, Respondent pled guilty to violations of Title 18, United States Code Section 2252A(a)(2)(A) in United States of America v. Thomas D. Johnston, in the United States District Court for the Eastern District of Virginia, Richmond Division, Criminal No. 3:09CR193.
5. Thomas Dixon Johnston acknowledges that the material facts upon which the

allegations of misconduct are predicated are true; and

6. Thomas Dixon Johnston submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if the disciplinary proceedings based on the said alleged misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

Executed and dated on Aug 6 2009



Thomas Dixon Johnston
Respondent

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by Thomas Dixon Johnston on Aug 6 2009

Grant Kibler

Notary Public

My Commission expires: 9/30/12



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
THOMAS DIXON JOHNSTON

VSB Docket No. 10-000-080283

RULE TO SHOW CAUSE
AND
ORDER OF SUSPENSION AND HEARING

It appearing to the Board that Thomas Dixon Johnston was licensed to practice law within the Commonwealth of Virginia on June 8, 1970, and,

It further appearing that Thomas Dixon Johnston entered a guilty plea to Receipt of Child Pornography in violation of Title 18, United States Code, Section 2252A(a)(2)(A), in the United States District Court for the Eastern District of Virginia, Richmond, Division, on July 2, 2009, in the matter United States of America v. Thomas D. Johnston, Criminal No. 3:09CR193, and

It is ORDERED, pursuant to the Rules of Court, Part 6, Section IV, Paragraph 13-22, that the license of Thomas Dixon Johnston to practice law within the Commonwealth of Virginia be, and the same is, hereby SUSPENDED, effective upon entry of this order.

It is further ORDERED that Thomas Dixon Johnston appear before the Virginia State Bar Disciplinary Board at the State Corporation Commission, Courtroom A, Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia, at 9:00 a.m., on Friday, August 28, 2009, to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked.

It is further ORDERED that Thomas Dixon Johnston shall forthwith give notice, by certified mail, of the suspension of his license to practice law in Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and the presiding judges in pending

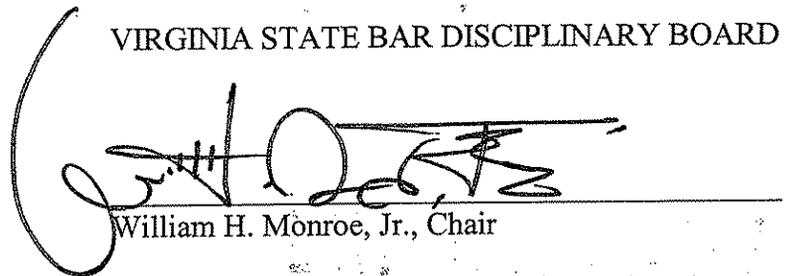
litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Attorney shall give such notice within fourteen (14) days of the effective date of the suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension order. The Attorney shall also furnish proof to the bar within sixty (60) days of the effective date of the suspension order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that a copy of the Waiver of Indictment and Statement of Facts be attached to this Rule to Show Cause and Order of Suspension and Hearing and made a part hereof.

It is further ORDERED that an attested copy of this Rule to Show Cause and Order of Suspension and Hearing, with attachments, shall be mailed to Thomas Dixon Johnston, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, 605 Ridge Top Road, Richmond, Virginia 23229, a copy by regular mail to Todd B. Stone, Todd B. Stone, PLC, 101 Shockoe Slip, Suite K, Richmond, Virginia 23219 and a copy hand-delivered to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTER THIS ORDER THIS 30th day of July, 2009

VIRGINIA STATE BAR DISCIPLINARY BOARD



William H. Monroe, Jr., Chair

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

JUL 13 2009

Richmond Division

VSB CLERK'S OFFICE

UNITED STATES OF AMERICA,

Criminal No. 3:09CR193

v.

THOMAS D. JOHNSTON,

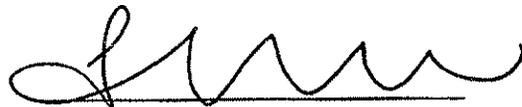
Defendant.

WAIVER OF INDICTMENT

I, THOMAS D. JOHNSTON, the above named defendant, accused of Receiving Child Pornography, in violation of Title 18, United States Code Section 2252A(a)(2)(A); being advised of the nature of the charge, the proposed information, and of my rights, hereby waive in open court prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

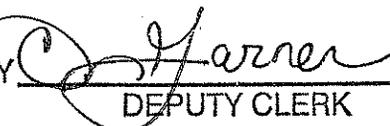
Date: 7.2.09


THOMAS D. JOHNSTON
Defendant


Todd B. Stone
Counsel for Defendant

Before:  /s/
Honorable Henry E. Hudson
UNITED STATES DISTRICT JUDGE

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CLERK, U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

JUL 13 2009

VSB CLERK'S OFFICE

UNITED STATES OF AMERICA)

v.)

) Criminal No. 3:09CR193

THOMAS D. JOHNSTON,)

Defendant.)

STATEMENT OF FACTS

The United States and the Defendant stipulate that the following facts are true, and had this matter proceeded to trial the United States could have proven them beyond a reasonable doubt:

1. During all relevant times set forth in this Statement of Facts, the defendant, THOMAS D. JOHNSTON, resided at an address in Richmond, Virginia, which is located in the Eastern District of Virginia.

2. On or about April 17, 2008, Special Agent George Howell, FBI Richmond Division, working in an undercover capacity, accessed the Internet and connected to the Gnutella file sharing network and conducted a search for images of child pornography, using a known search term commonly associated with images of child pornography on the Gnutella network. A review of the search results showed file names containing the search term available for download from Internet protocol (IP) address 64.83.19.21. Special Agent Howell subsequently determined

A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT
BY *Q. Warner*
DEPUTY CLERK

that one still image file and five digital video files were available for download from this IP address having file names indicative of child pornography.

3. From on or about April 17, 2008, 5:21 PM EDT, to on or about April 18, 2008, 12:17 AM EDT, Special Agent Howell downloaded two video files from IP address 64.83.19.21 depicting children engaged in sexual acts with adults, to include: a prepubescent female being anally penetrated by an adult male and prepubescent females orally copulating with adult males.

4. On or about May 23, 2008, Special Agent Howell again accessed the Internet and connected to the Gnutella network in order to conduct a search for images of child pornography, using another known search term commonly associated with images of child pornography on the Gnutella network. A review of the search results showed a file name containing the search term, available for download from IP address 64.83.19.21. Special Agent Howell determined that one still image file was available for download from this IP address that was identical to a file that was available for download from the same IP address on April 17, 2008. On or about May 23, 2008, at 3:12 PM EDT, Special Agent Howell downloaded from IP address 64.83.19.21 the following file "6yr old yo underage child daughter childsex childfugga childlover ptsc pthc lsm lsn pedo rape torture cum ass pussy hussyfan mafiasex r@ygold dick Sandra teen model b.jpg", which depicted a prepubescent female with her legs spread and genitals exposed.

5. In response to Department of Justice subpoenas, Cavalier Telephone advised that at the dates and time frames during which Special Agent Howell downloaded the aforementioned files, IP address 64.83.19.21 was assigned to the law office of Canfield, Baer, Heller & Johnston, located at 2201 Libbie Avenue, Richmond Virginia, in the Eastern District of Virginia.

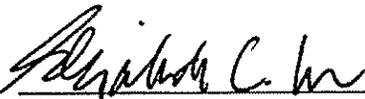
6. On August 18, 2008, investigators with the FBI executed a federal search warrant at the law office located at 2201 Libbie Avenue, Richmond, Virginia, where they seized a Sony Vaio laptop, model PCG-7A2L, service tag C300GQPA; and an Apple Powerbook G4, serial number QT14007EL99, both belonging to the defendant, who was employed at the law firm as an attorney.

7. A forensic analysis performed by the Richmond Division of the Federal Bureau of Investigation on the Sony Vaio laptop computer belonging to JOHNSTON disclosed hundreds of images of child pornography on its hard drive, including both still and video image files, and ranging from child erotica, to lascivious exhibition of the genitals, to explicit hard core sexual activity. Included among the images was the image file, "1217439461325.jpg" which provides the basis for Count One of the pending Criminal Information and depicts a prepubescent child lying face down, with the minor's hands bound by rope behind the child's back, while an adult male is engaged in anal intercourse with the child. This image traveled in interstate and foreign commerce before the defendant downloaded it on July 30, 2008, onto his computer located in the Eastern District of Virginia.

8. As part of his guilty plea, the defendant acknowledges that he did the above-described acts voluntarily and intentionally, and not because of accident or mistake, and that he further knew his actions were illegal at the time.

Respectfully submitted,

DANA J. BOENTE
UNITED STATES ATTORNEY

By: 
Elizabeth C. Wu
Assistant United States Attorney

After consulting with my attorney and pursuant to the plea agreement entered into this day between myself and the United States, I hereby stipulate that the above Statement of Facts are true and accurate and had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.


THOMAS D. JOHNSTON
Defendant

I am counsel for Defendant. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to agree to this Statement of Facts is an informed and voluntary decision.


Todd B. Stone
Counsel for Defendant