SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-208
District Docket No. XIV-2008-0627E

IN THE MATTER OF	
NEIL M. COHEN	
AN ATTORNEY AT LAW	

Dissent

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

We respectfully dissent from the majority's determination that respondent should receive a two-year suspension for his misconduct. Our disagreement with the majority stems primarily from its notion that we need to make an assessment as to whether certain conduct of one offender is better, or worse, than that of another in matters involving the sexual exploitation of children. While we do not believe the majority is doing so intentionally, this precept does trivialize the horror of child pornography at any level. In our view, the time has come to stand up collectively as a profession and declare that there is no longer a need to measure the proper quantum of discipline in matters involving the sexual exploitation of children in any

regard. It is hard to envision a crime more loathsome. Although disciplinary cases are fact-sensitive and should be decided on a case-by-case basis, the conviction of a member of the bar for a sexual crime against children is a very serious offense that, absent exceptional, special circumstances, should be met with disbarment.

While this position may be too large a departure from existing precedent for the majority, it is quite the opposite in our opinion. As time goes by, our understanding of just how pervasive sexual crimes against children are continues to grow. As a result, the justice system is constantly "playing catch up." Nevertheless, eventually, the law does evolve to adopt a harsher view of such crimes. Precedent highlights this evolution as well.

In 2005, a Deputy Attorney General who had 996 images on his government-issued computer received probation. Here, in 2011, a state assembly member with thirty-four pictures received a five-year jail term. Now is the time to continue the evolution of how the profession handles offenders within its ranks.

Support for this evolution is also found in the way the language of N.J.S.A 2C:24-4 has changed. Just this year, the legislature amended that statute, effective August 14, 2013.

The amendment enhanced the penalties for a second-degree offense under the statute. One of the key changes is the addition of a requirement that defendants possessing twenty-five or more images of child pornography will be sentenced to a minimum term of five years for a first offense. That term is to be fixed at, or between, one-third and one-half of the sentence imposed by the court, or five years, whichever is greater, during which time the defendant is not eligible for parole.

Here, respondent was not subject to the 2013 amendments, when his case was before the criminal court. Hence, he spent a total of 434 days in prison, out of a possible 1,825. Under the 2013 amendment, he would have been required to spend the entire five years in prison, without the possibility of parole. These changes instill the public with confidence in the justice system. The legal profession needs to keep pace and be prepared to evolve on matters such as these to maintain the public's confidence in it.

Whether it is five pictures or 500, whether it was one incident of inappropriate touching or a series of molestations, there is no room for these offenders in the honorable ranks of this profession, whether they suffer from a mental disorder or not. These crimes are unique in their vileness. They should be met with the strongest response we have available as a

profession. Anything short of disbarment simply degrades the trust the public has in us.

Further, in the instant matter, what is equally despicable, is the fact that respondent used the receptionist at his district office, as a ruse, to circumvent the policies put in place at that office, when it became obvious that there was a pornography issue there. Essentially, respondent used an innocent third party, who could potentially have been subject to criminal liability herself, so that he could engage in his pornography habit. When coupled with the nature of his offense, the circumstances show his bankrupt character and consequent unfitness to be a member of the bar.

Moreover, we cannot help but wonder how members of the public would feel if, during the course of the representation, they learned that the attorney they had placed so much trust in was a registered Megan's Law offender. How would they then feel, when they learned that we, as a profession, allowed that attorney to maintain a license? We doubt they would have much faith in any member of the bar going forward, always wondering what the next attorney might be hiding about his or her character. We also doubt many members of the public would be able to understand why this attorney was not disbarred.

In light of the nature of respondent's crime and his betrayal of the public trust, we are convinced that he should be disbarred.

Bonnie C. Frost
Chair

Jeanne Doremus
Public Member

Dated: December 19, 2013

By: Isabel Frank
Isabel Frank
Acting Chief Counsel