SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-362
District Docket No. XIV-2012-0157E

IN THE MATTER OF	
ALEXANDER D. WALTER	
AN ATTORNEY AT LAW	

Decision

Argued: February 18, 2016

Decided: April 4, 2016

Hillary Horton appeared on behalf of the Office of Attorney Ethics

Frederick J. Dennehy appeared on behalf of respondent

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13, following respondent's guilty plea to third-degree endangering the welfare of a child, in violation of N.J.S.A. 2C:24-4(a). We determine to grant the OAE's motion and to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 2007. He has no disciplinary history.

On July 22, 2011, a Monmouth County grand jury returned an indictment charging respondent with two counts of second-degree sexual assault, contrary to N.J.S.A. 2C:14-2b (counts one and two); second-degree endangering the welfare of a child, contrary to N.J.S.A. 2C:24-4(a) (count three); and fourth-degree lewdness, contrary to N.J.S.A. 2C:14-4b(1) (count four).

On February 14, 2012, respondent pleaded guilty before the Honorable Richard W. English, J.S.C., to count three of the indictment, endangering the welfare of a child, amended to a third-degree charge. During the plea colloquy, respondent admitted that, on multiple occasions between December 1, 2010 and April 1, 2011, he masturbated in the presence of K.P., a nine-year-old girl, who had moved into his home and for whom, he admitted, "he had a legal duty to assume responsibility." Respondent admitted that he masturbated in front of K.P. during times when he was alone with her and that he did so for his own sexual gratification. He further admitted that the child observed him masturbating and that his conduct was sexual conduct that would impair or debauch K.P.'s morals.

Judge English held a sentencing hearing on June 1, 2012. The judge found two aggravating factors: the risk of recidivism and the need for deterrence. He also found two mitigating factors: no criminal history and the excessive hardship to respondent or his dependents

that imprisonment would entail. Thus, Judge English sentenced respondent to parole supervision for life with Megan's Law registration. The judge also imposed applicable fines and penalties, ordered respondent to continue psychological counseling with Dr. Howard D. Silverman until discharged, and prohibited respondent from having contact with the victim or her family.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Specifically, the conviction establishes a violation of RPC 8.4(b). Pursuant to that rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Hence, the sole issue before the Board is the extent of discipline to be imposed on respondent for his violation of RPC 8.4(b). R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, supra, 139 N.J. at 460 (citations omitted).

Rather, we must take into consideration many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect the attorney's clients. In re Schaffer, 140 N.J. 148, 156 (1995). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Gavel, 22 N.J. 248, 265 (1956). Thus, offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, will, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995).

The OAE strongly urges respondent's disbarment. In support, the OAE notes the Court's increasing intolerance for attorneys who engage in the sexual exploitation of children and its recognition of the harm such conduct causes its child victims. Moreover, the OAE maintains, no longer is physical sexual contact with the victim

a prerequisite to disbarment, citing In re Cunningham, 192 N.J. 219 (2007) (disbarment for attorney convicted of third-degree attempted endangering the welfare of a child; the attorney communicated with an individual whom he believed to be a twelve-year-old boy and explicitly described sexual acts that he hoped to engage in with the child);[1] In re Sosnowski, 197 N.J. 23 (2008) (disbarment for attorney who pleaded guilty in federal court to possession of child pornography; the attorney possessed sixty-seven still images of child pornography and eight sexually explicit video files of children engaged in sexual acts and exposing their genitals; in addition, the attorney had placed hidden cameras in a children's bathroom and bedroom; he was sentenced to thirty-seven months in prison with five years of supervised release and was ordered to pay a $100 assessment); and In re Burak, 208 N.J. 484 (2012) (disbarment for attorney convicted of possession of child pornography; attorney had been actively viewing child pornography for ten years, possessed the equivalent of 753 images of child pornography, and had traded the images with other persons).

The OAE acknowledged that the Court has imposed lesser discipline on attorneys who exposed themselves to minors, specifically, In re Gilligan, 147 N.J. 268 (1997) (reprimand for

[1] We observe, however, that Cunningham failed to appear at the hearing on the Court's Order to Show Cause, a factor that may have contributed to the Court's decision to impose his disbarment.

attorney following his conviction for a disorderly persons offense of lewdness, N.J.S.A. 2C: 14-4) and In re Pierce, 139 N.J. 433 (1995) (reprimand for an attorney following his conviction for a disorderly persons offense of lewdness, N.J.S.A. 2C:14-4). Although it recognized some similarities between the conduct in those cases and respondent's conduct in this case, the OAE, nevertheless, considered those cases distinguishable on several bases.

First, the OAE maintains, the Court decided those matters twenty-one and nineteen years ago, respectively. In the years following, discipline in cases involving sexual misconduct directed at children has increased as the Court, the legislature, and the public have become more acutely aware of the serious harm suffered by the child victims of this conduct. Next, the OAE notes, Pierce and Gilligan were convicted of disorderly persons lewdness offenses, while respondent has been convicted of the third-degree crime of endangering the welfare of a child. Finally, the OAE argues, respondent's victim here was particularly vulnerable, as she was only nine or ten-years-old at the time of the crime and lived in respondent's home.

The OAE also contends that recent cases highlight the evolution of societal attitudes concerning matters involving the sexual exploitation of children, citing In re Frye, 217 N.J. 438 (2014) (attorney disbarred following his guilty plea to third-degree endangering the welfare of a child, in violation of N.J.S.A. 2C-

24-4(a); the attorney admitted to being entrusted with the care of a minor, whom he inappropriately touched on her rectal area; he also failed to report his conviction to ethics authorities for a period of fifteen years and violated his probation six times during the course of that period by failing to attend mandatory outpatient sexual offender therapy sessions) and In re Cohen, 220 N.J. 7 (2014) (indeterminate suspension imposed on attorney, a State Assemblyman, who pleaded guilty to second-degree endangering the welfare of a child, based on his possession of sexually explicit pornographic images of children, discovered on his state-issued desktop computer and on his private law office computer). In determining to impose an indeterminate suspension on Cohen, the Court noted a "more acute awareness of the long-lasting pernicious effects of sexual crimes against children," and the Legislature's acknowledgement of this heightened awareness when it amended N.J.S.A. 2C:24-4 to increase the severity of crimes involving possession and dissemination of child pornography, and increased the age of the child victim under the statute. Id. at 17-18.

Therefore, the OAE posits, more recent cases, such as Frye, and Cohen, indicate that the attorney disciplinary system will treat attorneys convicted of sexual offenses against children with decreased leniency and that Pierce and Gilligan would have been decided differently if their conduct were under review today.

Finally, citing the Board's dissent in Cohen, the OAE maintains that the conviction of a member of the bar for a sexual crime against a child is a very serious offense that, absent exceptional, special circumstances, should be met with disbarment. Here, describing respondent's conduct as "exploitative and harmful in the extreme," the OAE argues that disbarment is necessary for the protection of the public, especially its youngest and most vulnerable members. Thus, the OAE argues, because respondent has offered no exceptional mitigation, and because he has "squandered the trust that the public places in attorneys," he should lose his privilege to practice law in this state.

Conversely, respondent argues that the appropriate discipline for his behavior is a censure, with clear future practice restrictions. Respondent additionally requests that, should we recommend a suspension, he be allowed to continue work as a patent agent during any term of suspension imposed.[2]

In support of his plea for the imposition of a censure, respondent argues that no attorney has been disbarred for an offense

[2] Respondent acknowledges that, working as a patent agent would be barred under the strictures of R. 1:20-20, but emphasizes that allowing him to work as a patent agent would allow him to remain employed by his present law firm in a non-legal capacity and to continue to pay his debts and support his family. To support his request in this regard and, presumably to provide some assurances, respondent submits the certification of the principal of the law firm by which he is currently employed, indicating that respondent "has never and will never meet with clients alone."

that has involved sexual touching of himself in the presence of a child, without additional aggravating factors. Furthermore, he maintains, those cases of criminal sexual conduct involving children that have resulted in disbarment have been described as "egregious," and have included aggravating factors that are not present in this case. Rather, here, respondent argues, aside from the nature of the crime itself, there are no aggravating factors, as evidenced by the fact that the judge did not sentence him to a term of incarceration; that he was placed on the lowest tier of Megan's Law offenders; and that he poses no threat to the public.

On the other hand, respondent advances several mitigating factors to justify a censure. Specifically, describing his actions as aberrational, respondent maintains that his rehabilitation serves as strong mitigation. Here, respondent notes that he voluntarily began psychological counseling with Dr. Silverman prior to sentencing and that he continues to treat to date, albeit with less frequency. Dr. Silverman reports that respondent is at a low risk for recidivism, and that, as time passes, the risk continues to decrease. Respondent points out that five years have passed, without incident, since his misconduct, during which he has continued to practice law.

To further support his contention that he no longer poses a risk for re-offense, respondent offered the report of Dr. Philp H.

Witt, Ph.D., who evaluated him on December 12, 2014. In that report, Dr. Witt concluded that respondent does not pose a risk to himself or to others and that he should be permitted to continue practicing law.

During his examination with Dr. Witt in December 2014, respondent acknowledged the allegations against him. Dr. Witt explained in his report that, as respondent described the events, he and K.P. were in an indoor swimming pool in his home "and in the course of being in the pool with the young girl, [respondent] believes that physical barriers broke down, and the two became too comfortable with each other physically."[3] According to Dr. Witt, respondent described the offense itself as happening in the context of significant life stress as follows:

> It was a confluence of one-of-a-kind situations. My marriage was deteriorating. I was working long hours with a terrible commute. I was commuting into New York City at the time, so I would have to get up at 5 o'clock, and I wouldn't be home again until nine at night. I would be exhausted all the time. I was under stress. . . Conditions were stressing me out. Also there were significant expenses with the house. And my wife at the time was profligate.

[3] Dr. Witt refers to additional circumstances in his report; however, he appears to have taken those circumstances from the confidential pre-sentence report. Although respondent himself submitted Dr. Witt's report to us with those references, and although Dr. Witt factored those circumstances into his risk assessment, we have omitted them from our decision.

> It was difficult to get her to control her spending. So all of those combined.[4]

Respondent argues, in conclusion, that his is not an egregious case that justifies disbarment. Rather, "[respondent] touched himself in front of a minor; [he] did not physically harm or fondle the child. [He] was not convicted of a sexual crime involving violence; he was not sentenced to prison; and he has dutifully complied with all of the terms of his sentence." Thus, respondent urges that "[o]ne misguided action in the course of an entire life should not merit disbarment."

Finally, respondent has submitted two letters in support of his mitigation plea: one from his adult daughter, who acknowledges his commitment to remaining a part of her life even after he divorced her mother, and the other from a colleague, attesting to respondent's "honesty and integrity in his work ethic and interaction with other employees of the firm."

Following a review of the full record, we determine to grant the OAE's motion for final discipline. The only issue remaining is the appropriate discipline for respondent's misconduct.

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[4] Respondent does not specifically offer "life stress" as a mitigating factor in his brief, but attaches Dr. Witt's full report as an exhibit. Respondent relies on this report for the proposition that he poses no threat to himself or others. It is worth noting, however, that as recently as December 2014, the date of Dr. Witt's exam, respondent explained his behavior, at least in part, as caused by these life stressors.

In cases involving sexual misconduct, the discipline has ranged from a reprimand to disbarment. Reprimand cases include In re Gilligan, supra, 147 N.J. 268 (attorney convicted of lewdness when he exposed and fondled his genitals for sexual gratification in front of three individuals, two of whom were children under the age of thirteen) and In re Pierce, supra, 139 N.J. 533 (attorney convicted of lewdness after he exposed his genitals to a twelve-year-old girl).

Attorneys in the following cases were suspended: In re Ferraiolo, 170 N.J. 600 (2002) (one-year suspension for attorney who pleaded guilty to the third-degree offense of attempting to endanger the welfare of a child; the attorney, who had communicated in an internet chat room with someone whom he believed to be a fourteen-year-old boy, was arrested after he arranged and then attempted to meet the "boy" for the purpose of engaging in sexual acts; the "boy" was a law enforcement officer); In re Gernert, 147 N.J. 289 (1997) (one-year suspension for petty disorderly offense of harassment by offensive touching; the victim was the attorney's teenage client); In re Ruddy, 130 N.J. 85 (1992) (two-year suspension for endangering the welfare of a child after he fondled several young boys); and In re Herman, 108 N.J. 66 (1987) (three-year retroactive suspension for attorney who pleaded guilty to second-degree sexual assault after he touched the buttocks of a ten-year-old boy).

Several cases involving sexual misconduct have resulted in disbarment: In re Frye, supra, 217 N.J. 438 (disbarment for attorney who pleaded guilty to endangering the welfare of a child (third degree), in violation of N.J.S.A. 2C:24-4(a), and who failed for fifteen years to report his conviction to ethics authorities; attorney admitted to being entrusted with the care of a minor girl whom he inappropriately touched on her rectal area; the attorney violated his probation six times during the course of fifteen years by failing to attend mandatory outpatient sexual offender therapy sessions); In re Cunningham, supra, 192 N.J. 219 (disbarment for attorney who, on three separate occasions, communicated with an individual, through the internet, whom he believed to be a twelve-year-old boy and described, in explicit detail, acts that he hoped to engage in with the boy and to teach the boy; a psychological report concluded that the attorney was a compulsive and repetitive sex offender; attorney did not appear for the Order to Show Cause before the Court); and In re Wright, 152 N.J. 35 (1997) (attorney disbarred for digitally penetrating his daughter's vagina; behavior occurred over a three-year period and involved at least forty instances of assault).

As previously noted, more recently, the Court imposed an indeterminate suspension in a case involving child pornography. In re Cohen, supra, 220 N.J. 7. There, the attorney, a State

Assemblyman at the time of his arrest, pleaded guilty to second-degree endangering the welfare of a child, following an investigation into sexually explicit pornographic images of children discovered on a state-issued desktop computer used by the attorney and on his private law office computer. In re Cohen, supra, 220 N.J. at 9. The Court stated:

> [c]rimes involving the sexual exploitation of children have a devastating impact and create serious consequences for the victims. . . Thus, the moral reprehensibility of this type of behavior warrants serious disciplinary penalties, up to and including disbarment, albeit mitigating circumstances might call for lesser discipline in particular cases. . . Disbarment is the most severe punishment, reserved for circumstances in which 'the misconduct of [the] attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession'
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> [Ibid.]

Further, the Court took the opportunity, in Cohen, to provide insight into its reason for disbarring Frye.[5] The Court explained that it had based Frye's disbarment sanction on the crime itself, and on his failure to notify the OAE of his conviction for more than fifteen years, "during which he continued to practice law with impunity." Id. at 16.

[5] The Court did not issue an opinion in Frye.

More importantly, in Cohen, the Court acknowledged that, over time, society has become more acutely aware of the pernicious effects of sexual crimes against children, again, noting recent changes in the law increasing the severity of those crimes. The Court cautioned the bar that, although the Court had not adopted a per se rule of disbarment, convictions in egregious cases will result in disbarment. Id. at 18-19.

Today, we also decide and transmit to the Court our decisions recommending disbarment in In the Matter of Mark Gerard Legato, DRB 15-219, and In the Matter of Regan Clair Kenyon, DRB 15-351. Both attorneys in those cases pleaded guilty to third-degree attempting to endanger the welfare of a child. In both cases, the attorneys had engaged in sexually explicit on-line conversations with a person they believed to be a minor girl, a twelve-year-old in Legato's case, and a fourteen-year-old in Kenyon's case. In Legato, during the course of his on-line chats with the putative girl, the attorney asked her to touch herself in her genital area, telling her that he would like to engage in oral sex with her and to penetrate her. Unbeknownst to him at the time, he was interacting with an undercover police officer. Eventually, Legato engaged in a video chat with the undercover officer where he unzipped his pants and exposed his erect penis. He admitted that he did so knowingly and purposefully, and that, had the person actually been a twelve-

year-old girl, engaging in explicit sexual conversation with her would have impaired or debauched her morals. Legato also acknowledged that he had scheduled two meetings with the girl, but did not appear for either. Legato pleaded guilty to the same third-degree offense as respondent and was also sentenced to lifetime parole.

In Kenyon, over the course of a four-month period, the attorney engaged in multiple internet chats with a person he believed to be a fourteen-year-old girl. Unbeknownst to him, he had been communicating with an undercover law enforcement officer. Kenyon admitted that, in addition to his illicit chats with the girl, he sent her images of, and links to, hardcore adult pornography; that he did so knowingly and purposefully; and that had the person actually been a fourteen-year-old girl, his interactions with her would have impaired or debauched her morals. Like Legato, Kenyon also admitted that he arranged to meet with the girl, but ultimately did not appear for that meeting. Kenyon also was sentenced to lifetime parole.

Both Legato and Kenyon had urged us to consider, in mitigation, that neither one of them posed a continuing danger to the public and, further, like respondent in this matter, that both of them had sought treatment following their arrest and had since made substantial progress in their rehabilitative efforts. Moreover, both attorneys, again, like respondent in this case, maintained that their conduct was aberrational and they posed no risk for re-offense.

In analyzing both the Legato and the Kenyon matters, we considered the Court's observation in Cohen that both society and the courts have a more acute understanding of "the long lasting and pernicious effects of sexual crimes against children." We determined that, based on those evolving views, the precedential value of older case law is limited and that the focus more properly belongs on the attorneys' intention and willingness to commit such a reprehensible act. We could conceive of no explanation for the type of conduct committed by the attorneys and ultimately concluded that, regardless of any rehabilitative efforts and progress, and regardless of the absence of a risk of re-offense, the conduct committed by both attorneys was "so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." In re Templeton, 99 N.J. 365, 376 (1985). In determining to recommend that both attorneys be disbarred for their conduct, we specifically rejected, as mitigation, the rehabilitative progress they had urged us to consider, citing In re Cammarano, 219 N.J. 415 (2014). There, the Court stated:

> [The] concerns raised by this case are greater than whether this respondent is capable of rehabilitation . . . . In the end, we are charged with insuring that the public will have confidence in members of the bar . . . In this

> case, any discipline short of disbarment will not be keeping faith with that charge.
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> [Id. at 424.]

We apply the same reasoning in this case. Respondent's conduct, committed in the presence of a mere child, can be described as nothing short of morally reprehensible. While admitting to masturbating in the presence of K.P. during times when he was alone with her for his own sexual gratification, respondent nevertheless urges us to impose only a censure, noting that he did not fondle her and that he did not cause her physical harm. Yet, the emotional and psychological damage respondent caused this child cannot be accurately measured. Respondent's conduct will have a profound impact on her life and on the person she will become. This he acknowledges. [6]

The type of damage respondent has caused this child cannot be undone by monetary reparations,[7] by any host of platitudes respondent may offer, or by any sense of remorse he professes. Indeed, in our

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[6] In discussing the consequences of his conduct with Dr. Witt, respondent stated that "what [he] had heard about the consequences to [the child] really drove it home for [him], and these are consequences that may not even show up for years in her life, and even the intrusive questioning and investigation she had to endure as a result of my behavior, it's just terrible."

[7] Both in his history to Dr. Witt and in his certification accompanying his brief, respondent referred to monthly payments he was making to the child and her family as a result of the settlement of civil litigation they had filed against him, based on his criminal conduct.

view, respondent is disingenuous in his claims that he has recognized and accepted responsibility for his actions. Respondent's own description of the events to Dr. Witt (that he and K.P. were in an indoor swimming pool in his home "and in the course of being in the pool with the young girl, [respondent] believes that physical barriers broke down, and the two became too comfortable with each other physically") strongly suggests otherwise. Shockingly, instead of placing responsibility wholly on himself, where it belongs, respondent appears to cast some blame on the child as well for allowing her physical barriers to break down and to become too comfortable with respondent physically.

We cannot accept respondent's characterization of his conduct as consisting of "one misguided action." Not only is the characterization inaccurate by suggesting only a single instance of misconduct,[8] but also respondent's description of his conduct as "misguided" trivializes the true nature of it. Respondent admits that a nine-year-old girl was placed in his care for reasons not relevant here. On multiple occasions during a five-month period, respondent subjected that child to conduct that may present for her a lifetime of challenge, which respondent acknowledges.

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[8] Respondent admitted during his plea allocution that the child was left alone with him at various times during a five-month period when the child lived in his home and that, "at those times," he masturbated in her presence, knowing that the child was observing him in that activity.

Nevertheless, he asks for extraordinary consideration, urging that he be allowed to continue in the privilege of practicing law in the privacy of his own basement, under circumstances where he will face no challenges. We cannot, in good conscience, grant respondent that consideration.

To us, respondent's conduct is so morally reprehensible "as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." In re Templeton, supra, 99 N.J. at 376. That respondent is able to practice solely from his home with no client contact and that he successfully has done so for the past five years; that he will practice exclusively in the area of patent law; that his daughter and colleague consider him to be of good character; or that he is in the process of rehabilitation, does not undermine public confidence any less. The public does not base its level of confidence on the parameters of an offending attorney's practice area or on the confidence that attorney's family and colleagues continue to have in him. Rather, the public sees only the depravity of respondent's conduct. In our view, he should not be allowed to further degrade the profession by remaining among its ranks. For these reasons, we recommend that respondent be disbarred.

Member Boyer voted to impose an indeterminate suspension. Member Singer voted to impose a two-year suspension, and filed a separate dissenting decision.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Alexander D. Walter
Docket No. DRB 15-362

Argued: February 18, 2016

Decided: April 4, 2016

Disposition: Disbar

Members	Disbar	Indeterminate Suspension	Two-year Suspension	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Boyer		X				
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer			X			
Zmirich	X					
Total:	7	1	1			

Ellen A. Brodsky
Chief Counsel