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	:	Dissent

Argued: February 18, 2016

Decided: April 4, 2016

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

Seven members of this Board recommend that respondent be disbarred. One member recommends imposition of an indefinite suspension. I dissent from the recommendation for disbarment and recommend that respondent be suspended from practicing law for up to two years but that, if an indefinite suspension is imposed, the Court permit respondent to apply for reinstatement in less than five years pursuant to Rule 1:20-15A(a)(2).

We are asked to impose discipline on respondent following his guilty plea in New Jersey Superior Court on February 14, 2012 to the third-degree offense of endangering the welfare of a child which occurred during the period December 1, 2010 to April 1, 2011 when a nine or ten-year-old girl and her mother lived with him and

he had some degree of responsibility for her. In entering his plea, respondent admitted that he masturbated in front of her, apparently more than once, and that this conduct "would impair her morals." (Plea Transcript at pp. 10-12). He was given a suspended three-year sentence with life-long parole supervision.

This is a more serious and difficult case than are the cases of In the Matter of Regan Clair Kenyon, DRB 15-351, in which I also dissented, and In the Matter of Mark Gerard Legato, DRB 15-219, both also decided this date. It is more difficult because it involves a real child of younger, more vulnerable age, and conduct that she could not avoid by leaving a "chat room," as could the fictional "children" in Kenyon and Legato. On the other hand, as serious as was respondent's conduct, it was far from the most serious sexual conduct addressed by our cases, e.g., In re Addonizio, 95 N.J. 121 (1994)(three-month suspension for attorney who pleaded guilty to aggravated sexual assault for performing oral sex on eight-year-old boy); In re Ruddy, 130 N.J. 85 (1992)(two-year suspension where attorney fondled several young boys); In re Frye, 217 N.J. 438 (2014) (attorney disbarred for touching rectal area of a nine year old girl, where he then violated probation six times and did not report his offense for fifteen years); In re Wright, 152 N.J. 35 (1997)(attorney disbarred after conviction for aggravated sexual assault for digitally

penetrating his daughter's vagina more than forty times over three years); In re "X", 120 N.J. 459 (1990)(attorney disbarred for sexually assaulting his three daughters over eight-year period). In contrast, here there was no physical assault and respondent did not touch the child.

Since there is no "per se" disbarment for sexual offenses, In re Cohen, 220 N.J. 7, 18 (2014), the facts here do not seem to me to rise to the "disbarment" level. While Cohen put the bar on notice that disbarment "may" result in "egregious cases" involving children, this case arose well before Cohen was decided. But even if it had arisen after Cohen, the totality of the facts, including those in mitigation described below, do not place it in the "egregious" category.

Cohen was a case involving child pornography and the Court did not leave to open-ended interpretation what types of cases it would classify as "egregious." Rather, it provided specific examples of the types of cases that would warrant disbarment, 220 N.J. at 15-16: (1) In re Burak, 208 N.J. 484 (2012) (attorney had 753 pornographic images of children engaging in sadistic or masochistic conduct and images of violence such as bondage that he had viewed and traded over ten-year period; he received eight-year prison sentence; and he was also indicted for sexual contact with a minor female); (2) In re Sosnowski, 197 N.J. 23 (2008)

(attorney possessed sixty-seven images of child pornography and videos of children engaging in sexual acts and also placed hidden cameras in child's bathroom and bedroom; he received a thirty-seven-month prison sentence); and (3) cases of physical sexual assault of children, such as In re Wright, 152 N.J. 35 (1997) (attorney convicted of aggravated criminal sexual assault for digitally penetrating his minor daughter's vaginal area). Respondent's acts, as serious as they are, do not come close to the acts of attorneys in those disbarment-level cases.

There also are significant mitigating factors here. First, respondent's criminal acts occurred in December 2010 to April 1, 2011, five years ago, and he pleaded guilty in February 2012, over four years ago. During all that time the OAE did not seek his temporary suspension and he has continued to practice to the present time with no ill effect on his clients, the public or the bar, garnering support and praise from attorneys who work with him and who have written letters on his behalf. The substantial gap in time between his criminal activity and present should weigh against disbarment which, now, under all the circumstances, would appear purely punitive. E.g., In re Verdiramo, 96 N.J. 183, 187 (1984) (saying, "the public interest in proper and prompt discipline is necessarily and irretrievably diluted by the passage of time. Disbarment now would be more vindictive than just").

In addition, respondent's criminal acts seem to be aberrant behavior for a 55-year-old man with no history of criminal activity or sexual involvement with children. That his behavior was an aberration seems especially clear based on detailed psychological reports finding that he is no danger to the community, not likely to reoffend and not drawn to children. Respondent's therapist, Dr. Howard Silverman PhD, whom he has been seeing regularly since May 2011, found respondent to be a "low risk individual" "highly unlikely" to reoffend based both on clinical judgment and formal risk assessment factors; and he found no pedophilic preferences and a history of maintaining intimate relationships with age-appropriate partners. Respondent was also evaluated by Dr. Philip Witt, PhD, who similarly concluded that respondent is "a low-risk individual" unlikely to reoffend, whose behavior in this case:

> was the result of a confluence of one of a kind factors.... In the context of enormous stress in his life [including]...alienation in his marriage and overall stress, he performed what for him were admittedly bizarre, out of character behaviors....

Submissions to us by third parties on respondent's behalf lend further insight on the issue of proper discipline. First, the New Jersey attorney who owns the intellectual property firm that has employed respondent since November 2011, describes respondent's work for the firm, certifying that respondent "is a highly valued senior associate;" and that "[t]he firm would suffer

hardship if [respondent] was no longer able to practice IP law with the firm." Another attorney with the same firm who also knows about respondent's conviction, also wrote describing respondent's valuable assistance on various patent matters and saying that he "demonstrates honesty and integrity in his work ethic," "has maintained a positive and professional demeanor," and "has a passion for a career in patent law." Second, respondent's daughter who now attends college studying geology and engineering, describes respondent as a "wonderful" and "incredibly supportive" father who always put the needs of herself and her older brothers ahead of his own needs, putting all three children through college which he encouraged all three to attend, and who gave her "the confidence to pursue a highly technical degree ... in a male dominated field." She expresses confidence that her father's conviction is uncharacteristic and will not recur. Finally, respondent's own detailed Certification expresses his "deep remorse" for his actions.

In imposing discipline, we are directed to consider not only the "nature and severity of the offense" but also "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).

This crime is wholly unrelated to respondent's law practice,[1] and the record reflects his general good, responsible and trustworthy conduct over very many years first as an engineer and then as a patent attorney (except the aberrant behavior resulting in the criminal charge). The majority considers only the offense conduct despite significant mitigating facts in the record and the Court's direction that mitigating facts be considered, e.g., In re Lunetta, supra, 118 N.J. at 445-46; In re Cohen, supra, 220 N.J. at 9.

Not only does the majority refuse to find or apply any mitigation, but worse, the majority denigrates, and even seems to penalize respondent for advancing, well-documented mitigation by calling him "disingenuous" in claiming that he has accepted responsibility for his actions and accusing him of advancing "platitudes" in describing what seems to me to be sincere remorse, embarrassment, and contrition. (Opinion, at 18). It also seems to me that the majority misreads a therapist's report provided in mitigation, when it says with regard to a description of a therapy session that respondent "appears to cast blame on the child" and that it is off base in accusing respondent of "trivializ[ing] the

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[1] For this reason, I do not consider his promise to practice only at home with no contact with clients to be relevant. There is no evidence whatsoever that clients were ever imperiled or affected in any way by respondent's behavior and if the Court permits him to retain his license, there is no reason to limit his practice in that way.

true nature of" his conduct. (Opinion, at 19). I do not read that evidence or the record as a whole that way.

To support its refusal to apply any mitigation, the majority (at pp. 17-18) mistakenly "appl[ies] the same reasoning" as in In re Cammarano, 219 N.J. 415 (2014), which rejected evidence of Cammarano's rehabilitation in mitigation. But Cammarano was a very different type of case involving bribery and public corruption. In it, the Court announced a *per se* disbarment rule for public corruption cases, which the Court said were "corrosive to our democracy and undermine[] public confidence in honest government" with "incalculable" "pernicious effects." Id. at 417. Where *per se* disbarment applies, mitigation cannot, by definition, be considered. Since no *per se* rule of disbarment is applicable here, Cammarano is inapplicable.

Contrary to the majority, I find the following significant mitigation: (1) the long period of time that has passed since respondent's offense during which time he has continued to practice law with the respect of his colleagues; (2) the fact that his ethical misconduct was aberrant; (3) respondent's immediate diligent ongoing engagement in therapy; (4) his sincere remorse; and (5) his lack of any danger to the bar, his clients, or the public, as found by the psychologists who have evaluated him. An opinion such as the majority's here is weakened when it ignores

and, I would say distorts, so substantial a part of the record as this mitigation evidence.

In summary, if there is to be "per se" disbarment for all sexual offenses concerning children, that pronouncement should come from the Court. But the Court has said there is no such rule, In re Cohen, supra, 220 N.J. at 18, and I do not find the totality of facts here involving aberrant behavior unrelated to the practice of law by a 55-year-old attorney who appears to be sincerely remorseful to be so egregious as to warrant disbarment. Nonetheless, I would impose substantial discipline, namely, a suspension of up to two years.[2]

Disciplinary Review Board
Anne C. Singer, Member

By: 
Eflen A. Brodsky
Chief Counsel

[2] As in Kenyon, I do not believe that an indeterminate suspension is warranted here both because it is too severe and also because respondent has already been engaged in therapy over the five years since his arrest and shown progress sufficient for his therapists to pronounce him "a low risk individual" "highly unlikely" to reoffend. Therefore, it is unclear what else he would have to, or could, show for reinstatement after five more years.