SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-351
District Docket No. XIV-2011-0641E

IN THE MATTER OF	
REGAN CLAIR KENYON, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: February 18, 2016

Decided: April 4, 2016

Hillary Horton appeared on behalf of the Office of Attorney Ethics

Edmund DeNoia appeared on behalf of respondent

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

Some lines are not blurred. They are crystal-clear and should never be crossed. On this, we all agree. Both the respondent in this case, however, and the attorneys in In the Matter of Mark Gerard Legato, DRB 15-219, and In the Matter of Alexander D. Walter, DRB 15-362, which we also decide today, crossed that line. The only issue before us is the discipline to be imposed, specifically, whether these attorneys should be spared the

ultimate discipline for their venture to the other side of that line. We believe not and recommend disbarment.

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 attempting to endanger the welfare of a child by attempting to engage in sexual conduct that would impair or debauch the morals of the child, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:24-4(a). We determined to grant the OAE's motion and, as noted, recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 2006. He has no disciplinary history.

On March 7, 2013, a Morris County Grand Jury returned an indictment, charging respondent with second-degree attempted sexual assault, contrary to N.J.S.A. 2C:5-1 and 2C:14-2c(4) (count one), third-degree attempted endangering the welfare of a child, contrary to N.J.S.A. 2C:5-1 and 2C:24-4(a) (count two), second-degree child luring, contrary to N.J.S.A. 2C:13-6 (count three), and third-degree attempted promoting obscene material, contrary to N.J.S.A. 2C:5-1 and 2C:34-3b(2) (count four). On June 27, 2013, respondent pleaded guilty before the Honorable Mary Gibbons Whipple, J.S.C., to one count of attempted endangering the welfare of a child, a crime of the third degree.

During the plea allocution, respondent admitted that, between February 16 and June 23, 2011, he engaged in several internet chats with a person whom he believed to be a fourteen-year-old girl. In fact, unbeknownst to him, respondent was communicating with an undercover law enforcement officer. He sent to her images of, and links to, hardcore adult pornography.[1] Respondent admitted that the website information and images would impair or debauch the morals of a person under the age of sixteen. Respondent also admitted that it was only later that he learned that he was actually corresponding with an undercover law enforcement officer.

[1] Several other details regarding respondent's online interactions with the putative child can be found in the confidential Pre-Sentence Report (PSR). Those details are not listed here due to the confidential nature of the PSR. During oral argument before us, respondent's counsel questioned how the Board came into possession of the PSR, alluding to objections regarding its use by his predecessor. Respondent's former counsel, however, did not object to the Board's right to receive and consider the PSR. To the contrary, that attorney agreed that "a PSR can be considered in imposing discipline on an attorney." Rather, he raised concerns about being the source of the confidential report. On receipt of former counsel's letter expressing his concerns, we obtained the PSR from the OAE in the normal course, thus alleviating counsel's concerns. Moreover, counsel had suggested that in In the Matter of Joseph Haldusiewicz, DRB 05-064 (July 7, 2005), we acknowledged the confidentiality restrictions of the PSRs. Our right to review the PSR, however, is distinct from our ability to disclose its contents in our decisions, which are public. In Haldusiewicz, while we recognized that our review of the PSR, although appropriate, ordinarily does not permit us to discuss information contained within it, we noted that, based on the attorney's waiver of the confidentiality of a portion of the PSR, we were permitted to reveal that portion of it.

During sentencing, it was revealed that, although respondent had arranged to meet with the girl, he did not appear for that meeting.

On December 6, 2013, Judge Whipple sentenced respondent to a suspended three-year term of incarceration, appropriate fines, and parole supervision for life, and further required him to comply with Megan's Law and treatment. During sentencing, the judge found one aggravating factor: the need for deterrence, and three mitigating factors: respondent had no prior criminal activity; the conduct was based on circumstances unlikely to recur; and respondent's character and attitudes indicate that he is unlikely to commit another offense. The judge found that the mitigating factors outweighed the aggravating factors, which justified the imposition of a suspended sentence. She also required respondent to continue to seek psychological treatment, to "follow all recommendations of his treatment provider," and to continue to attend Sexaholics Anonymous (SA) meetings (a twelve-step program akin to Alcoholics Anonymous).

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, and relies on several cases to support its recommendation. In In re Ferraiolo, 170 N.J. 600 (2002), an attorney contacted an undercover officer posing as a fourteen-year-old minor. Ferraiolo arranged to meet "the minor" for sexual activity. He appeared at the location to meet the child, but met the undercover officer instead. The Court suspended Ferraiolo for one year. In addition, the OAE cited In re Cunningham, 192 N.J. 219 (2007), where an attorney contacted an undercover officer posing as a twelve-year-old boy, and solicited him for sex. Cunningham sent messages to the child and invited him to meet in a secluded area, but did not appear for that meeting. In Cunningham, we concluded "that, as societal standards evolve, so does our attitude toward this sort of criminal behavior, and that predatory conduct directed at our young children requires more serious discipline." In the Matter of Steven C. Cunningham, DRB 06-250 (December 21, 2006) (slip op. at 8). Thus, we determined that Cunningham should receive a two-year suspension

for his misconduct. One member voted for disbarment. The Court disbarred Cunningham after he failed to appear in response to the Court's Order to Show Cause.

Although the OAE acknowledges that respondent's conduct is similar to that of the attorneys in Cunningham and Ferraiolo, it nevertheless urges enhanced discipline, specifically referencing our recognition, in Cunningham, of the increase in awareness of the danger of sexual exploitation of children. Indeed, the OAE notes, the Court has signaled a more critical view of crimes involving the sexual exploitation of children, which have a "devastating impact and create serious consequences for the victims." In re Cohen, 220 N.J. 7, 12 (2014).

The OAE addresses several aggravating and mitigating factors in this case. In aggravation, the OAE notes, respondent's conduct was reprehensible, irresponsible, and far below the standard expected of a member of the bar. In mitigation, respondent was reported to be suffering from mental illness (sexual addiction) at the time of the crime and subsequently sought treatment. Nonetheless, in light of precedent set in Cunningham and the Court's opinion in Cohen, the OAE recommends that respondent be disbarred.

Conversely, respondent argues that discipline significantly less than disbarment is warranted. He believes that his conduct

merits, at most, a suspension of less than one year. Respondent does not, and, indeed, cannot, dispute the underlying facts of his conviction. He maintains, however, that his conduct was the direct result of an addiction beginning when he first accessed the internet at the age of thirteen, when he began to secretly view pornographic images and movies and engage in anonymous, illicit online chats.

Respondent acknowledged his addiction and, six days after his arrest, he began treatment with Dr. Michael Nover, Ph.D.[2] Dr. Nover diagnosed respondent with adjustment disorder with mixed anxiety and depressed mood, and paraphilia not otherwise specified. The paraphilia diagnosis was based on features of voyeurism and exhibitionism, which occurred through the internet and never in person. Ultimately, Dr. Nover described respondent's condition as "sexual addiction" and treated him with relapse prevention therapy, in addition to respondent's participation in SA.

In his report, Dr. Nover notes his review of various "discovery" materials provided by respondent, including "a transcript of sexually explicit conversation between Mr. Kenyon and the 14 year old female (police officer), which involved approximately 21 chats between February 16, 2011 and June 23,

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[2] Counsel for respondent submitted Dr. Nover's report as an attachment to his brief, urging us to consider it in mitigation.

2011." Dr. Nover further detailed respondent's initial account of his behavior, during which respondent disclosed that he engaged with a person online who identified as a fourteen-year-old girl. He acknowledged exchanging explicit pictures, directing her to masturbate, and agreeing to meet with her, on June 24, 2011. Respondent maintained, however, that he never intended to appear for that meeting.

Respondent told Dr. Nover that his exchanges with the girl were an "online escape" and "fantasy," adding he did not believe that the individual with whom he was chatting was really a fourteen-year-old girl. Rather, he simply presumed it was another adult who, like himself, was engaging in sexual fantasy.[3]

Respondent provided Dr. Nover with details about the collateral consequences of his behavior. He left the law firm where he had been employed to focus on his rehabilitation and to spare the firm any further embarrassment. He took jobs outside of the legal field to make ends meet and eventually started a real estate investment company with a friend, performing some legal work for the company. However, between the business and his limited solo practice, respondent earned less than $9,000 last year. Hence,

[3] This is inconsistent with respondent's sworn admissions on the record during his plea allocution, where he admitted that his internet contact was with a person he believed to be under the age of sixteen.

his wife became the primary wage earner for the family and respondent became the primary caregiver for their two children.

After his arrest, because of his lack of income, respondent and his family lost their house in Pennington, New Jersey. They reside with respondent's in-laws. Respondent still has significant student loan debt and owes a substantial amount of money to his in-laws and to his own parents. He maintains that his ability to practice law is critical to his family's financial wellbeing.

Dr. Nover opined that respondent has made a significant and consistent commitment to his treatment and was making excellent progress, noting that respondent took full responsibility for his behavior and never attempted to minimize, rationalize, or deny it. Dr. Nover determined that respondent's progress "for a full and sustained recovery is quite good," and further found no clinical indication that respondent presented "any tangible or identifiable intent to harm his children or any children sexually or otherwise."

Respondent submitted several letters of support, including letters from his parents, his aunt, his business partner, two clients, his uncle, and a close friend.

Respondent argues that neither the law, nor the facts support the OAE's recommendation for disbarment. He contends that the two primary cases that the OAE cites, Ferraiolo and Cunningham, demonstrate why he should not be disbarred. In both of those cases,

the attorneys attempted to meet with persons they believed to be minors. Here, respondent notes that, although he and "the girl" arranged to meet, he never appeared for any such meeting, despite every opportunity to do so.[4] Moreover, Cunningham admitted that he was sexually attracted to minor boys and engaged in repetitive, inappropriate sexual behavior. In contrast, both Dr. Nover, and Dr. Blandford from the Adult Diagnostic and Treatment Center, a correctional facility in Avenel, New Jersey, for sex offenders, found that respondent has no sexual interest in underage persons.[5] Respondent has sought treatment, confronted his underlying issue of sex addiction, engaged in continuous treatment and support, and shown substantial and concrete improvement.

Finally, respondent argues that disbarment cases typically involve more serious behavior, including actual contact with a child, and that many cases with more detrimental conduct have resulted in discipline short of disbarment.

Following a review of the full record, we determine to grant the OAE's motion for final discipline. Thus, we next address the appropriate quantum of discipline for respondent's misconduct.

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[4] Like Cunningham, respondent made an agreement to meet with the purported child on a specific date. Like Cunningham, respondent did not appear for that meeting.

[5] Despite this reference, respondent did not produce Dr. Blandford's report to support his contention.

In cases involving sexual misconduct, discipline has ranged from a reprimand to disbarment. See, e.g., In re Gilligan, 147 N.J. 268 (1997) (reprimand for attorney who was 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, 139 N.J. 533 (1995) (reprimand for 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, supra, 170 N.J. 600 (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 when he appeared for a pre-arranged meeting with 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 the attorney fondled several young boys); and In re Herman, 108 N.J. 66 (1987) (three-year 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. See, e.g., In re Frye, 217 N.J. 438 (2014) (disbarment for attorney who pleaded guilty in the Superior Court of New Jersey to the third-degree crime of endangering the welfare of a child, in violation of N.J.S.A. 2C:24-4(a), and failed for fifteen years to report his conviction to ethics authorities; attorney admitted to being entrusted with the care of a minor, whom he inappropriately touched on her rectal area; the attorney violated his probation six times over 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 in response to the Court's Order to Show Cause; 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).

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. 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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> [Id. at 9, citing In re Templeton, 99 N.J. 365, 376 (1985).]

The Court further observed that "[a]ttorneys who have been convicted of offenses involving the physical sexual assault of children have typically been disbarred by this Court." Id. at 16, citing In re Wright, supra, 152 N.J. at 35; and In re "X", 120 N.J. 459, 464-65, (1990) (disbarment for attorney who sexually

assaulted his three daughters over an eight-year period). The Court noted, in contrast, that in In re Herman, supra, 108 N.J. at 67, the attorney received a three-year suspension for second-degree assault.

The Court took the opportunity, in Cohen, to provide insight into its reason for disbarring Frye,[6] explaining that it had based Frye's disbarment sanction on the crime itself, and his failure to notify the OAE of his conviction for more than fifteen years, "during which he continued to practice law with impunity." Cohen, supra, at 16.

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. It also noted recent changes in the law increasing the severity of crimes involving possession and dissemination of child pornography, and increasing the age of the child victim under the child endangerment statutes. The Court cautioned the bar that, although it had not adopted a per se rule of disbarment, convictions in egregious cases would result in disbarment. Id. at 18-19.

Today, we also decide and transmit to the Court our decision recommending disbarment in In the Matter of Mark Gerard Legato, supra, DRB 15-219. There, the attorney admitted that he had engaged

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

in explicit conversations with an individual whom he believed was a twelve-year-old girl. The interactions included asking the girl to touch herself in her genital area and telling her that he would like to engage in oral sex with her as well as penetrate her. Unbeknownst to Legato, he was interacting with an undercover police officer. Eventually, Legato engaged in a video chat with the undercover officer during which 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. He pleaded guilty to and was convicted of third-degree attempting to endanger the welfare of a child by attempting to engage in sexual conduct that would impair or debauch the morals of a child, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:24-4(a). In the Matter of Mark Gerard Legato, supra, DRB 15-219 (slip op. at 3-4).

In analyzing the Legato matter, we considered the Court's observation in Cohen that both society and the courts have a more acute understanding of the "the long lasting pernicious effects of sexual crimes against children." We determined that, based on evolving views

on these types of crimes, the precedential value of older case law is limited.

While recognizing that the primary purpose of discipline is not to punish the attorney, but rather to preserve the confidence of the public in the bar, we determined that the facts of the Legato case were a prime example of "misconduct [by an] attorney [that] 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." In re Templeton, supra, 99 N.J. at 376. In reaching that determination, we noted that the type and extent of damage Legato could have caused had he communicated with an actual child, as was his intention, instead of with an undercover officer, could not be measured. We apply that same reasoning here.

Our dissenting colleagues argue for an indeterminate suspension for respondent, questioning whether the conduct he has engaged in is the sort of "egregious" conduct the Court referenced in Cohen. First, they point out that respondent never created or disseminated child pornography, never met with a child in person, and never physically touched a child, factors present in almost all of the various disbarment cases cited. Our colleagues, however, concede that the continuing victimization that occurs through the repetitive printing and viewing of child pornography, as was the

case in Cohen, is arguably a more passive and indirect exploitation than online sexual exchanges with a minor. They also acknowledge that, in situations involving on-line exchanges with a minor, "the predator is an active agent in potentially harming a child with sexual conversation and images," which casts serious doubts on his character. We could not agree more, but we would end our analysis there, however, and would conclude that respondent is no longer worthy to practice law because of his willingness to be that active agent.

Our dissenting colleagues also place what we consider to be undue weight on the fact that respondent's contact arose in the context of an undercover "sting" operation and, therefore, his contact was with a police officer and not with an actual child. To us, the focus more properly belongs on respondent's intention to commit such a reprehensible act. Respondent was in an adult chat room when another user, identified as a fourteen-year-old girl, approached him. On twenty-one separate occasions over the course of four months, respondent willingly engaging sexually explicit conversations and shared pornographic images and videos with that individual, whom he believed to be a fourteen-year-old girl. Nothing in the facts suggests that respondent was reluctantly lured into these illicit interactions, or that he displayed any timidity or hesitation in engaging the putative child in the

illicit activity. Rather, the facts clearly and convincingly establish that respondent willingly and actively not only engaged in the activity, but also persisted in it on multiple occasions over a sustained period of time. In short, he kept going back for more.[7]

Respondent's ready and active participation notwithstanding, the Court has before rejected a similar defense. See, e.g., In re Cammarano, 219 N.J. 415 (2014), in which the attorney, then the Mayor of Hoboken, pleaded guilty to and was convicted on federal charges of extortion under color of official right. His arrest and conviction followed an undercover investigation involving a cooperating government witness, disguised as a developer. During the attorney's election campaign, and after his successful election, he accepted monies from the cooperating witness in exchange for promises that the witness would receive expedited zoning approvals for unspecified construction projects. Id. at 417. In recommending that the attorney receive a three-year prospective suspension for his conduct, a majority of this Board considered, in mitigation, that the attorney was the target of a government operation, who had been approached by a cooperating

[7] It is worth noting that, in this respect, respondent's conduct is arguably more egregious than that of Cunningham, who was disbarred for similar conduct that occurred during three on-line conversations, as opposed to twenty-one such interactions.

government witness and who, therefore, "was a passive, not an active, participant in the bribe." In the Matter of Peter J. Cammarano, DRB 13-174 (December 17, 2013) (slip op. at 17). The Court rejected the majority's position, noting that the public confidence "is undermined as thoroughly by a mayor with his hand out waiting for a bribe as by one actively seeking a bribe." In re Cammarano, supra, 219 N.J. at 423. The Court disbarred the attorney, noting that, going forward, any attorney who is convicted of official bribery or extortion should expect to lose his license to practice law in New Jersey. Id.

We, too, believe that the fact that respondent was discovered and arrested as a result of an undercover investigation and encounter does not render his conduct less blameworthy. Nor does that circumstance undermine the public confidence in the profession any less. Rather, it is the nature of respondent's conduct on which we should focus our review. As this Board's dissent stated in Cohen:

> 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.
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> In the Matter of Neil M. Cohen, DRB 13-208 (December 19, 2013) (Dissent at p. 1-2).

Today, we echo these sentiments expressed by our colleagues over two years ago. We add, however, that although we have acknowledged in our deliberations and our decisions in these matters society's evolving understanding of the pernicious effects of sexual crimes against children, we believe that, as a profession, we should not be content to keep up with social mores and values. Rather, we should strive to place ourselves ahead of those sensibilities and to become the standard for self-regulation in addressing this type of misconduct.

Our dissenting colleagues have encouraged the imposition of an indeterminate suspension, instead of disbarment, to allow for the consideration of any rehabilitation respondent may achieve in the future. It has not escaped our attention that respondent has submitted to us Dr. Nover's report to support his contention, in mitigation, that he presents no risk of re-offense and that he has made great strides towards recovery from his sexual addiction. However, it matters not whether respondent may or may not commit this behavior again, or that his therapist sees great strides in his recovery, or that his family members support him in his recovery efforts. We base our discipline recommendation on the

conduct respondent already has committed – not on conduct that he may, or may not, commit in the future.[8]

We note, moreover, that although Dr. Nover reports that, as a step toward recovery, respondent freely and fully has accepted responsibility for his conduct, we view respondent's professed acceptance with a jaundiced eye. Even in his initial history to Dr. Nover, respondent denied any belief that the person he was engaging was a fourteen-year-old child. Rather, he maintained that he believed he was communicating with another adult, who was engaging in sexual fantasy. Not only does this statement conflict with respondent's specific sworn admissions during his plea allocution, but it also undercuts any meaningful claim of acceptance of responsibility and contrition. Respondent's denial of this critical fact calls into question whether he truly

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[8] Although we do not argue for a per se disbarment rule in cases of sexual misconduct involving children, we note that the Court invariably has disbarred attorneys who have knowingly misappropriated trust funds, despite the likelihood that the attorney would not repeat the same offense in the future. In those cases, the simple fact that the attorney has engaged in knowing misappropriation has justified the attorney's disbarment. Indeed, the Court has concluded that, in such cases, no amount of mitigation will save an attorney from disbarment. See, In re Noonan, 102 N.J. 157, 160 (1986). Similarly, here, the fact that respondent knowingly engaged someone he believed to be a fourteen-year-old girl in illicit on-line activity, regardless of his reasons and despite the unlikelihood of re-offense, is enough to convince us that the ultimate discipline is appropriate.

understands the gravity of his conduct, presumably the linchpin of respondent's recovery.

All of this said, as in Legato, our disbarment recommendation rests only on the nature of respondent's conduct, notwithstanding any efforts in respect of rehabilitation, or on the numerous letters in support of respondent's efforts, or on his progress toward recovery. Rather, as the Court noted in Cammarano, supra, 219 N.J. 415:

> [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 can conceive of no explanation or justification for such reprehensible conduct. Respondent's sexual addiction may explain his proclivity for pornography and for engaging in adult chat rooms. It cannot and should not be allowed to explain or to mitigate knowingly engaging a child in sexual interaction. In our view, public confidence in the bar would be severely undermined were we to tolerate in our ranks those whose character and judgment are so compromised that they are willing to engage a child in the manner respondent has.

For these reasons, we recommend respondent's disbarment.

Vice-Chair Baugh and Members Clark and Boyer voted to impose an indeterminate suspension, and filed a separate dissenting decision. Member Singer voted to impose a one-year suspension and also filed a separate dissent.

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 Regan C. Kenyon, Jr.
Docket No. DRB 15-351

Argued: February 18, 2016

Decided: April 4, 2016

Disposition: Disbar

Members	Disbar	Indeterminate Suspension	One-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:	5	3	1			

Ellen A. Brodsky
Chief Counsel