SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-219
District Docket No. XIV-2012-0104E

IN THE MATTER OF	
MARK GERARD LEGATO	
AN ATTORNEY AT LAW	

Decision

Argued: October 15, 2015

Decided: April 4, 2016

Isabel McGinty appeared on behalf of the Office of Attorney Ethics

Robyn M. Hill 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 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). For the reasons stated below, we determine to grant the OAE's motion and to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1999. He was engaged in the practice of law in Somerville, Somerset County, New Jersey. He has no disciplinary history.

On May 7, 2012, a grand jury in Passaic County returned an indictment, charging respondent with two counts of second-degree attempt, via electronic or other means, to lure or entice a child or one he reasonably believed to be a child (identified in the indictment as "Lilfeml2"), with a purpose to commit a criminal offense with or against the child, on December 6, 2011 (count one) and January 10, 2012 (count two), contrary to N.J.S.A. 2C:13-6; one count of second-degree attempt to commit an act of aggravated sexual assault on a child less than thirteen years of age, by instructing the child (Lilfeml2) to insert her finger inside her vagina, during and between November 15, 2011 and January 10, 2012, contrary to N.J.S.A. 2C:5-1 and N.J.S.A. 2C:14-2a(1) (count three); one count of second-degree attempt to commit an act of sexual assault by committing an act of sexual contact in view of and/or upon Lilfeml2, a child less than thirteen years of age, with respondent being at least four years her senior, contrary to N.J.S.A. 2C:5-1 and 2C:14-2b (count four); one count of third-degree attempt to engage in sexual conduct with Lilfeml2, a child under the age of sixteen, which would impair or debauch the morals of the child, contrary to N.J.S.A. 2C:5-1 and N.J.S.A. 2C:24-4(a).

(count five); and one count of fourth-degree attempt to expose his intimate body parts for sexual gratification when he knew or reasonably expected that his acts were likely to be observed by Lilfem12, a child less than thirteen years of age, contrary to N.J.S.A. 2C:5-1 and N.J.S.A. 2C:14-4b(1) (count six).

On June 27, 2013, respondent pleaded guilty to count five of the indictment, admitting that, between November 15, 2011 and January 10, 2012, he had online conversations with a person whom he believed to be a girl about the age of twelve. Unbeknownst to respondent, the "girl" was an undercover law enforcement officer. Respondent operated his computer under the screen name "Fun-to-bear-around-99" and, at some point, engaged in conduct or conversation with a person using the screen name "Little-fem-12." He told LF12 that he was a forty-three-year-old male and she claimed to be a twelve-year-old female.

Respondent admitted that he had engaged in explicit conversations with LF12 that included asking her 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. Eventually, respondent engaged in a video chat with LF12 where he unzipped his pants and exposed his erect penis. He admitted that he did so knowingly and purposefully, and that, had LF12 actually been a twelve-year-old girl, engaging in explicit sexual conversation

with her would have impaired or debauched her morals. In his brief to the Board, respondent also acknowledged that he had scheduled two meetings with LF12, but did not appear for either.

The Honorable Greta Gooden Brown, J.S.C., accepted respondent's guilty plea. The State agreed to a flat three-year prison sentence, a special sentence of parole supervision for life, and a requirement that respondent comply with the provisions of Megan's Law. In addition, the State asked the court to order respondent to undergo an evaluation at the Adult Diagnostic and Treatment Center at Avenel, that he be prohibited from having any internet access, and that he be required to forfeit the computer and GPS system confiscated at the time of his arrest. The State emphasized the fact that respondent conducted these internet chats in his office, which was adjacent to a daycare center, and that his actions had caused alarm throughout the community.

Judge Brown conducted a sentencing hearing on March 7, 2014. By that time, respondent had submitted to the required psychosexual evaluation and risk assessment. As specifically noted during the sentencing hearing, the evaluator submitted that, "in his opinion based upon all of the factors" assessed, respondent was "not a risk for any offending." The court then weighed the aggravating and mitigating sentencing factors. Judge Brown found, as an aggravating factor, the need for not only specific deterrence of

this specific defendant, but also general deterrence. She also found, as mitigating factors, that the conduct neither caused nor threatened serious harm, and that respondent had no prior criminal record. Judge Brown rejected both the mitigating factor that the circumstances are unlikely to reoccur, and the aggravating factor that there is a risk that respondent would commit another offense, noting that the court was not in a position to find either factor applicable. The court did find, however, in mitigation, that the character and attitude of the defendant indicate that he is unlikely to commit another offense, and that he is likely to respond affirmatively to probation if such a sentence were available in this case.

In accordance with a supplemental agreement, the court sentenced respondent to a special sentence of parole supervision for life and ordered him to comply with the provisions of Megan's Law. The judge also ordered respondent to continue therapy with his doctor, to restrict his internet and computer access solely to work-related needs, to submit to periodic unannounced inspections, to pay for the installation of monitoring systems, and to forfeit all devices confiscated at the time of his arrest.

Pursuant to the State's motion, Judge Brown dismissed counts one, two, three, four, and six of the indictment.

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, asserting that the Supreme Court has communicated a heightened concern about the long-lasting harm to child victims flowing from sexual abuse. In fact, the OAE maintains, the Court put the bar on notice not only as recently as 2014, when it rendered its decision in In re Cohen, 220 N.J. 7 (2014) and its order in In re Frye, 217 N.J. 438 (2014), but also as far back as 1985, when it announced in In re Templeton, 99 N.J. 365, 376 (1985), that severe discipline would follow from misconduct 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." Because the Court historically has treated attorneys guilty of sexual offenses against children harshly, the OAE maintains, respondent can have no reasonable expectation that his egregious conduct would be treated differently. The OAE cited several cases in support of this contention, including In re Burak, 208 N.J. 484 (2012) (attorney disbarred following his guilty plea in federal court to one count of possession of child pornography; attorney possessed the equivalent of 753 child pornography images and was sentenced to eight years imprisonment; the Court also took into consideration the attorney's indictment for criminal sexual contact with a minor female relative during the time the FBI was investigating his child pornography activities); In re Sosnowski, 197 N.J. 23 (2008) (attorney disbarred following his guilty plea in federal court to felony possession of child pornography; attorney possessed sixty-seven images and eight sexually explicit videos of children engaged in sexual acts and had placed hidden cameras in a child's bedroom and bathroom; attorney sentenced to thirty-seven months in prison); and In re Cunningham, 192 N.J. 219 (2007), DRB 06-250 (December 21, 2006).

In Cunningham, the Court disbarred the attorney following his guilty plea to third-degree attempted endangering the welfare of

a child. The attorney admitted that he had engaged an individual whom he believed to be a twelve-year-old boy in internet "chat," which included, "in lurid detail, certain sexual acts that he hoped to perform on the boy." The boy was actually a detective participating in an undercover internet operation. The attorney invited the boy to meet with him, but never finalized that plan. In determining the appropriate discipline, we considered the attorney's conduct to be most analogous to that in 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 had communicated in an internet chat room with someone whom he believed to be a fourteen-year-old boy and arranged to meet with the boy for the purpose of engaging in sexual acts; the boy was actually an undercover enforcement officer; the attorney was arrested when he appeared for the meeting). Although we recognized the strong similarities in Cunningham's and Ferraiolo's misconduct, we nevertheless recommended a longer term of suspension – two years – noting 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). The Court disbarred Cunningham following his failure to appear on the return date of the Court's Order to Show Cause.

In light of the foregoing, the OAE maintains, even the case law predating the Court's analysis in Cohen and Frye gave respondent and all members of the bar ample notice that disbarment "was the just penalty to be imposed on a member of the bar who sought to victimize a child sexually and in the manner detailed in respondent's admissions."

With that foundation, the OAE relies primarily on two cases to support its position that respondent should be disbarred: In re Frye, supra, 217 N.J. 438, and In re Cohen, supra, 220 N.J. 7. In Frye, the Court disbarred an attorney who pleaded guilty, in the Superior Court of New Jersey, to third-degree endangering the welfare of a child, in violation of N.J.S.A. 2C-24-4(a), and who had failed, for fifteen years, to report his conviction to ethics authorities. The attorney admitted to being entrusted with the care of a minor whom he inappropriately touched on her rectal area. In addition, the attorney was found to have violated his probation six times over the course of fifteen years by failing to attend mandatory outpatient sexual offender therapy sessions.

In Cohen, supra, 220 N.J. 7, the Court imposed an indeterminate suspension on an attorney, a State Assemblyman at the time of his arrest, who pleaded guilty to second-degree

endangering the welfare of a child. His plea and conviction followed 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.

As in Frye, the OAE argues, respondent took steps towards the victimization of a child, intending to impair or debauch the morals of a child. Although aggravating factors were present in Frye, including the attorney's failure to report his conviction to the OAE, the Court stated that the disbarment was based primarily on the nature of the crime committed. Here, too, the OAE urges, justification for disbarment is grounded in the nature of respondent's misconduct, noting that "[c]rimes involving the sexual exploitation of children have a devastating impact and create serious consequences for the victim." In re Cohen, supra, 220 N.J. at 12.

The OAE acknowledged the Court's observation in Cohen that a significant factor in imposing discipline is whether the case involved touching or physical violence, which typically has resulted in disbarment. However, it argues that respondent's conduct is not significantly different from that of an attorney convicted of sexual assault of a child. Rather, the OAE emphasizes, respondent attempted to induce a twelve-year-old girl to touch

herself sexually and to view sexual images of him, while discussing with her how he would like her to touch him in a sexual manner.

The OAE urges respondent's disbarment, asserting that there are no conditions that will sufficiently assure the public that respondent could be monitored effectively in his practice of law. Specifically, because respondent is on parole supervision for life, he is in the custody of the Commissioner of the Department of Corrections, and his law office and computer are subject to unannounced inspections by parole representatives. It is unclear therefore, how respondent could comply with the provisions of RPC 1.6 (preserving client confidentiality). The OAE also questions how respondent could avoid a conflict of interest in his representation of clients across a broad spectrum of practice areas when he is also accountable to the Commissioner and parole authorities for his every action or endeavor.

Respondent argues for significantly less discipline – at most, the imposition of a suspension of less than one year – citing several cases and mitigating factors in support.

In mitigation, although respondent does not dispute the underlying facts of his conviction, he maintains that his conduct was aberrational and a direct result of severe depression. Specifically, respondent asserts that, at the time respondent committed the misconduct, he was experiencing severe marital

difficulties, extreme financial instability, intra-family conflict at his law office where he practices with his father and sister, and was dealing with his son's serious medical issue.

Respondent further relies on several other factors to support his contention that his conduct was not as serious as the OAE argues and is, therefore, deserving of significantly lesser discipline. First, respondent points to a letter from the administrator at Avenel, submitted to the court, pre-sentencing,[1] noting that, because of the "absence of a clear finding of compulsive behavior related to juveniles, [respondent] is not eligible for sentencing under the purview of New Jersey Sex Offender Act." The letter further stated that, although respondent's "behavior reflects poor judgment, no clear indication of sexual behavior as it specifically pertains to juveniles was elicited." Therefore, respondent maintains, he was sentenced to Tier 1, the lowest of three possible tiers established by Megan's Law, for the lowest risk of reoffending.

Next, respondent argues that disbarment cases typically involve "actualized" crimes, while he was convicted only of an attempt to commit a crime, and, therefore his conduct "did not involve a victim." Respondent further emphasizes that his arrest

[1] This report was quoted by respondent and Judge Brown during the sentencing hearing.

and conviction were "not the result of independent misconduct, but [rather were] the result of a law enforcement 'sting' . . . ."

In further support of his argument for the imposition of lesser discipline, respondent argues that, contrary to the OAE's concerns, he poses no danger to the public. If the OAE's concern were genuine, he maintains, it would have moved for his temporary suspension. Instead, the OAE took no such action, but waited to file the instant motion for final discipline. In the meantime, and since his arrest and sentencing, respondent maintains, he has complied with all of the court's directives relating to his supervised parole and has continued therapy, accumulating 120 sessions as of July 15, 2015. Finally, respondent submitted numerous character references, including letters from his former mother-in-law and his former wife, both of whom assert that respondent is not a pedophile, but rather an advocate for children.

In support of his plea for the imposition of discipline of less than a one-year suspension, respondent relies primarily on In re Cunningham, supra, 192 N.J. 219 and In re Ferraiolo, supra, 170 N.J. 600. Respondent argues that, although both Cunningham and Ferraiolo dealt with an attorney's sexual chats occurring online with a minor, both cases are distinguishable. First, Cunningham admitted to and was found to be a repetitive and compulsive offender. In contrast, respondent maintains, his misconduct was

aberrant and can be traced directly to the personal and professional stress he was under at the time. Further, he argues, the Board recommended a two-year suspension for Cunningham, who was disbarred only after he failed to appear before the Court for an Order to Show Cause.

Respondent distinguishes his conduct from that of Ferraiolo, noting that Ferraiolo actually appeared for a meeting he had arranged with the alleged minor and admitted to online contact with a second young boy with whom he had set a meeting. Ferraiolo acknowledged frequenting chat rooms that were established to introduce older men to young boys. Respondent argues that, unlike Ferraiolo, he never appeared for the two meetings he had set with LF12 and was communicating in an adult-only chat room.

Respondent further maintains that the mitigating factors recited in Ferraiolo are present here as well: an unblemished disciplinary record, many letters attesting to his character, and a favorable psychological prognosis.

Respondent also distinguishes his conduct from the attorneys in Frye and Cohen. Specifically, respondent contends that, in contrast to Frye, his crime was victimless in that it did not involve an actual child, but rather only an undercover law enforcement officer. Further, as previously noted, unlike Frye, respondent has met all his obligations under his sentencing,

reported his guilty plea in a timely fashion, and has otherwise cooperated every step of the way with the OAE.

In respect of Cohen, respondent points out that, although the Court in that case put the bar on notice of more severe discipline, respondent was arrested thirty-two months, and sentenced seven months, prior to that decision. Additionally, unlike Cohen, respondent was not sentenced to prison.

Respondent takes issue with the OAE's position that his practice cannot effectively be monitored, noting that he has practiced law for four years since his arrest and has complied with all the provisions of his sentence, without any complaint or suggestion of a parole violation. Further, he argues that the OAE's position that he is a danger to the public is a "red herring," emphasizing that the Avenel report concluded that he did not qualify for sentencing under the New Jersey Sexual Offenders Act and that all the tests conducted found that he is at the lowest tier for the risk of recidivism. Further, during the four years following his conduct, he has engaged in no instances of similar behavior.

In his submissions and arguments before us, respondent sought the entry of a protective order to maintain the confidentiality of various medical reports and evaluations he submitted, marked as Exhibits P-2 through P-4. Respondent relied on these exhibits,

in part, to mitigate his criminal conduct and to quell any concerns regarding his recidivism risk. For the reasons set forth below, we determined to grant respondent's application and to enter a protective order precluding the disclosure of these exhibits.

Rule 1:20-9(h) allows for the issuance of a protective order to prohibit the disclosure of information to protect the interest of a respondent, a witness, a grievant, or a third party. The exhibits at issue are medical records and psychological evaluations. Contained within these particular documents are the names of respondent's immediate family, including his two sons. Respondent's family members are innocent victims of his criminal behavior. We can discern no necessity to make this information public and subject respondent's family members to further scorn. Thus, we determined to grant respondent's motion for a protective order in respect of Exhibits P-2 through P-4.

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

In cases involving sexual misconduct, the discipline has ranged from a reprimand to disbarment. See In re Gilligan, 147 N.J. 268 (1997) (reprimand for 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); In re Pierce, 139 N.J. 533 (1995) (reprimand imposed on attorney convicted of lewdness after he exposed his genitals to a twelve-year-old girl); In re Ferraiolo, supra, 17 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 after he arranged 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 imposed on attorney 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 in the Superior Court of New Jersey 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 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 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, the Court imposed an indeterminate suspension in a recent 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 15, citing In re Templeton, 99 N.J. 365, 376 (1985)].

Importantly, the Court acknowledged that, over time, society has become more acutely aware of the pernicious effects of sexual crimes against children, noting recent changes in the law increasing the severity of those crimes. 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.

As respondent himself points out, his conduct and the facts of the instant matter are most analogous to the conduct and facts in Cunningham, supra, 192 N.J. 219 and Ferraiolo, supra, 170 N.J. 600.

In determining the appropriate discipline for Ferraiolo, we noted that it represented the first case before us that dealt with an attempt to endanger the welfare of a child. In the Matter of

Donald M. Ferraiolo, DRB 01-139 (October 16, 2001) (slip op. at 4). We sought guidance from several cases in which attorneys received varying terms of suspension after pleading guilty to the endangerment of a child involving an actual touching, including In re Ruddy, supra, 130 N.J. 95 (two-year suspension for attorney who pleaded guilty to four counts of endangering the welfare of a child by fondling several young boys while a volunteer as a youth athletic coach); In re Gernert, supra, 147 N.J. 289 (attorney suspended for one year following his conviction for harassment by offensive touching, a petty disorderly persons offense, for touching the breast of a teenager; aggravating factors included the particular vulnerability of the victim, the existence of an actual attorney-client relationship, and the special status of the attorney as a municipal prosecutor); and In re Addonizio, 95 N.J. 121 (1994) (three-month suspension for attorney following his conviction of fourth-degree criminal sexual contact with an eight-year-old boy, arising indirectly from an attorney-client relationship, but not related to the practice of law; the Court took into consideration that the conduct was aberrational and not the product of a diseased mind).

Based on the case law, a favorable psychological prognosis, and his unblemished career of thirty years, as well as letters attesting to his good character, we determined to suspend Ferraiolo

for one year. In the Matter of Donald M. Ferraiolo, supra, DRB 01-139 (slip op. at 5). Two of our members, however, voted for a two-year suspension, believing that increased internet usage by young people heightened the danger of adults preying on minors and that such misconduct deserved enhanced discipline. Ibid.

Five years later, in In re Cunningham, supra, 192 N.J. 219, DRB 06-250 (December 21, 2006), we were faced with similar conduct and the quandary of whether to enhance the discipline. Although we recognized the similarity between Cunningham's and Ferraiolo's misconduct, we nevertheless determined to impose a longer term of suspension – two years. As previously stated, in doing so, we noted 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, supra, DRB 06-250 (slip op. at 8). Ultimately, the Court issued an Order disbarring Cunningham, who had not appeared in response to the Court's Order to Show Cause.

Like Ferraiolo and Cunningham, here, too, respondent believed he was communicating with a minor (a twelve-year-old girl) and engaged her in discussions of certain sexual acts he would like the girl to perform on herself and on him, and certain acts he would like to perform on her. He also exposed himself during a

video chat. Respondent admitted to knowingly having these conversations with someone he believed to be a twelve-year-old girl and to planning two meetings with her, although he did not attend either meeting.

Despite these similarities, we believe that respondent's conduct does not warrant only a term of suspension. Rather, there are several factors that lead us to believe that to allow respondent to continue to practice law would seriously undermine public confidence in the bar.

Frist, we reject respondent's contention that, simply because he was in an adult chat room, he was not seeking out minors. By his argument, respondent snubs the undisputed and critical fact of this case – that he knowingly and purposefully engaged in sexually explicit conversations with, and exposed himself to, a person who, based on respondent's information and belief at the time he committed these acts, was a twelve-year-old girl. Respondent's attempt to minimize this basic truth leads us to the inescapable conclusion that he has not truly accepted responsibility for his actions and does not appreciate the gravity of his conduct, weighing heavily against any remorse he has professed.

Equally disturbing is respondent's attempt to lay the blame for his actions on his stressful life circumstances. In today's

society, there can be no tolerance for any individual, attorney or otherwise, to attribute such dangerous and reprehensible conduct to "stress." Stress, no matter how unbearable, can never be a justification for seeking out a twelve-year-old child for sexual activity, either online or in person. Indeed, such a claim would not defeat disbarment for knowing misappropriation of client funds – and it should not be allowed to defeat the ultimate sanction for endangering a child. There is no excuse, short of legal insanity, for respondent's conduct, and respondent's attempt to blame it on stress, again, convinces us that he is simply paying lip-service to the concept of remorse.

Finally, and in further aggravation, respondent committed this crime while in his law office, on his work computer. Moreover, and making matters worse, his office was located in close proximity to a day care center, which, according to the State, caused alarm throughout that community, further damaging public confidence.

In light of these factors, we view respondent's conduct in this matter to merit the very same sanction imposed in Frye, where the attorney pleaded guilty to a similar offense – endangering the welfare of a child "by engaging in sexual conduct which would impair or debauch the morals of the child" in violation of N.J.S.A.

2C:24-4(a), a crime of the third degree.[2] That Frye's violation involved an actual touching should not diminish the reprehensible and, many would say, repulsive nature of respondent's conduct. Respondent truly believed that a twelve-year-old girl was sitting at the other end of the conversations and, thus, intended to induce that twelve-year-old girl to engage in sexually explicit conduct with him. The type of damage respondent might have caused had he not been communicating with an undercover officer, instead of an actual child, as was his intention, cannot be measured. As a society, we can only be grateful that a law enforcement officer was sitting in that "child's" chair.[3]

Respondent preyed upon a person whom he believed to be a twelve-year-old child. As the Court acknowledged in Cohen, supra, 220 N.J. 7, we, too, believe that both society and the courts have a more acute understanding of the "long-lasting pernicious effects of sexual crimes against children." Id. at 17. Based on evolving views of these types of crimes, the precedential value of older

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[2] Since its enactment in 1978, the law has been amended several times, including in 1978, 1983, 1988, 1992, 1998, 2001, and 2013. Each change expanded the scope of the statute or increased the severity of the consequences for its violation.

[3] More than 45 million children between the ages of ten and seventeen use the internet. Among them, one in five has been sexually solicited; one in four has encountered unwanted pornography; and close to sixty percent of teens have received an e-mail or instant message from a stranger and half have communicated back. See, http://www.sdcda.org/preventing/protecting-children-online/facts-for-parents.html

case law should be limited in favor of an analysis that more closely focuses on the protection of our children. For these reasons, we recommend that respondent be disbarred.

We make clear that, although we believe the OAE has raised arguably valid concerns regarding the sufficiency and feasibility of the monitoring conditions placed on respondent as a result of his sentence, we do not base our recommendation on those concerns. Rather, we base our recommendation on the harmful and destructive nature of respondent's conduct, on his refusal to take genuine responsibility for it, and on the damage his continued practice would work on the public confidence in our profession.

Vice-Chair Baugh and Members Hoberman and Singer did not participate.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mark Gerard Legato
Docket No. DRB 15-219

Argued: October 15, 2015

Decided: April 4, 2016

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh						X
Clark	X					
Gallipoli	X					
Hoberman						X
Rivera	X					
Singer						X
Zmirich	X					
Total:	5					3

Ellen A. Brodsky
Chief Counsel