SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 97-295

IN THE MATTER OF :

RAYMOND H. WONG, :

AN ATTORNEY AT LAW :

Decision

Argued: October 16, 1997

Decided: September 28, 1998

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Peter N. Gilbreth appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District VII Ethics Committee ("DEC"). The complaint charged respondent with a violation of RPC 8.4(b) (criminal conduct that reflects adversely on an attorney's honesty, trustworthiness or fitness), arising out of an accusation charging respondent with the fourth degree crime of endangering the welfare of a child.

Respondent was admitted to the New York and the New Jersey bars in 1988 and 1989, respectively. He maintains an office in Somerset County, New Jersey, and also in New York. He has no history of discipline.

By letter dated January 23, 1995, respondent's counsel advised the Office of Attorney Ethics ("OAE") that, on December 15, 1994, a Morris County accusation had charged respondent with endangering the welfare of a child, a fourth degree crime. Respondent entered a plea of not guilty and was admitted to the Morris County pre-trial intervention program ("PTI") on December 15, 1994. After respondent successfully completed the program on January 19, 1996, the charge was dismissed.

The facts that gave rise to the accusation are as follows:

On July 26, 1993 Detective George M. Botsko of the Morris County Prosecutor's Office interviewed Z,[1] now twenty-two years old, who was the victim of a sexual assault in 1986. Z had not previously reported the incident. Z told Detective Botsko that, when she was approximately ten years old, she had been sexually assaulted by respondent, who was then thirty years old. At the time, respondent was a law student.

The assault involved two incidents, both of which took place while respondent was helping Z practice gymnastics. During one, respondent touched Z between her legs, near her inner thigh. The second incident involved digital penetration of her vagina. The instances occurred at the same location and within the same timeframe.

On November 3, 1994, in the presence of Z, her family, Detective Botsko and respondent's counsel, respondent admitted that, approximately eight years earlier, he had digitally penetrated Z. During the conference respondent confessed, "I digitally penetrated

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[1] To comply with a protective order about the identity of the victim, this decision refers to her by the fictitious initial "Z."

her. I'm sorry I did that. I hope you, [Z], will recover; I don't know why it happened, but it did."

The OAE did not dispute that respondent has had a very successful legal career since his admission to the bar in 1989. Indeed, the record is replete with testimony and documentation attesting to respondent's achievements and character.

The complaint charged respondent with sexual assault (a second degree crime) for the conduct described in the first incident since it involved sexual contact with a victim less than thirteen years old, where the actor was at least four years older than the victim. The complaint further alleged that the conduct described in the second incident constituted aggravated sexual assault, a first degree crime, because sexual penetration had occurred and the victim was less than thirteen years old.

* * *

Because respondent admitted that the criminal act occurred, the DEC considered only whether it had jurisdiction over conduct that took place prior to respondent's admission to the bar of New Jersey as well as the extent of discipline, if any, to be imposed. The DEC concluded that, based on In re Scott, 105 N.J. 457 (1987) (public reprimand imposed for an appellate division law clerk who was admitted to the bar nine days after her arrest for possession of cocaine) and In re Hankin, 146 N.J. 525 (1996) (reprimand imposed where an

attorney issued a fraudulent receipt in connection with the sale of a boat. The attorney was scheduled to be admitted to the bar seven days after the date of the misconduct), the disciplinary system does have jurisdiction over respondent's pre-admission misconduct. In addition, the DEC noted that the fact that respondent's conduct did not involve the practice of law would not save him from discipline.

The DEC adopted the following mitigating factors:

> Respondent's act was not done in his capacity as an attorney; Respondent's exemplary personal and professional record; Respondent's prompt notification and cooperation with the disciplinary authorities; the fact that Respondent was not yet a member of the bar when the offense was committed; the isolated nature of the offense; and the almost eleven year time span that has occurred since the offense. These are all reasons to impose a lesser sanction.
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> [Hearing panel report at 7]

The DEC distinguished In re Addonizio, 95 N.J. 121 (1984), where an attorney who engaged in sexual misconduct toward an eight-year old boy was convicted of a fourth degree offense, and was thereafter suspended for three months. Noting that respondent was not yet an attorney at the time of the offense, the DEC concluded that a lesser sanction than that imposed in Addonizio was appropriate and recommended a reprimand.

Before the Board, respondent argued that jurisdiction should be determined on a case by case basis, looking at the totality of the circumstances and pointing here to the passage of time. As to the quantum of discipline, respondent again pointed to the passage of time, highlighted his achievements, the fact that he did not make misrepresentations on his bar

application or to the Committee on Character and drew attention to how the underlying matter was handled by the criminal justice system. Respondent urged the imposition of a suspended suspension or reprimand.

The OAE disputed the DEC's recommendation for a reprimand, contending that the nature of the offense supports a lengthy suspension.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence.

The Board finds that respondent's pre-admission misconduct is subject to the jurisdiction of the disciplinary system. See In re Kerrigan, 146 N.J. 557 (1996), (eighteen-month suspension on an attorney who pleaded guilty to one count of mail fraud; the attorney's offense occurred four years prior to his admission to the bar). In addition, despite respondent's non-guilty plea, criminal conduct could still be found, based on respondent's admissions. In In re Rigolosi, 107 N.J. 192 (1987), the Court ruled as follows:

> Our task is to determine from an independent review of the record, notwithstanding respondent's acquittal of the criminal charges, whether it has been established by clear and convincing evidence that respondent engaged in illegal conduct that adversely reflects on his fitness to practice law.
> [Id. at 206]

As noted by the DEC, "[t]he essential facts in this matter are not in dispute.

Respondent admit[ted] to having had improper sexual contact with a minor in 1986, while he was in law school, prior to his admission to the bar of the State of New Jersey." Indeed, at the conference with Z, respondent admitted as follows: "I digitally penetrated her [Z]. I'm sorry I did that. I hope you, [Z], will recover; I don't know why it happened but it did." At the DEC hearing, however, although respondent did not deny that he had digitally penetrated Z's vagina, he disavowed any intentional wrongdoing. In essence, respondent testified that gymnastics necessarily involves touching the other person, sometimes in the thigh, buttocks or vaginal area, and that such touching could involve accidental penetration. Z, in turn, was unequivocal: respondent had first picked her up and then had inserted his thumb inside her vagina for a period of time that was sufficient for her to realize that the penetration had not been accidental; she had to ask respondent twice to put her down. Under these circumstances, there can be no other conclusion but that respondent's conduct was deliberate and knowing. The facts do not in any way support a finding that his actions could have been accidental.

The question of the appropriate level of discipline for this respondent remains. This matter does not rise to the level of In re X, 120 N.J. 459 (1990), where an attorney was disbarred after his guilty plea to three counts of second degree sexual assault. The attorney in X had sexually assaulted his three daughters over a period of eight years. Similarly, respondent's conduct was not as egregious as that in In re Palmer, 147 N.J. 312 (1997), where the Court disbarred an attorney who pleaded guilty to seven counts of third degree

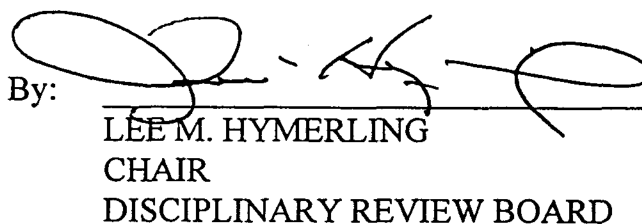
aggravated criminal sexual contact and one count of fourth degree criminal sexual contact. In In re Herman, 108 N.J. 66 (1987), a three-year suspension resulted where the attorney pleaded guilty to one count of sexual assault. The attorney admitted that, several times during a three-month period, he touched the buttocks of a ten-year old boy who was visiting his son at respondent's house. See also In re Ruddy, 130 N.J. 85 (1992) (where the attorney was suspended for two years based on his guilty plea to four counts of endangering the welfare of a child; over a two and one-half year period, the attorney fondled four preteen boys who were visitors to his house); In re Lugara, 115 N.J. 660 (1989) (twenty-two month suspension for attorney who pleaded guilty to child abuse and cruelty toward a nine-year old girl, while he was a teacher's assistant at an elementary school); In re Addonizio, supra, 95 N.J. 121 (1984) (attorney convicted of a fourth degree offense for performing fellatio on an eight-year old boy; the attorney received a three-month suspension because the conduct was aberrational and not the product of a diseased mind.

Respondent attempted to distinguish these cases by pointing out that, in each, either a guilty plea was entered or a finding of guilt was made. The lack of a criminal conviction, however, is not a bar to the imposition of discipline. In re Rigolosi, supra, 107 N.J. 192 (1987). Unquestionably, cases dealing with sexual offenses, particularly those involving children as victims, are fact-sensitive. Many factors must be considered in dispensing the appropriate form of discipline, including the circumstances leading up to the wrongdoing, the consequences to the victim, the attorney's prior record and reputation, the passage of

time, and the attorney's rehabilitation. Here, the Board has balanced respondent's many accomplishments, the delay in prosecuting this matter and the fact that the victim of his actions has achieved her peace, against the nature of his misconduct, and the necessarily negative public perception of a bar that would allow such conduct by its members. After consideration of these factors, the Board sees no purpose to be served by suspending respondent. Clearly, however, his conduct requires that respondent pay a price, but in a constructive way. The Board unanimously determined that a reprimand is sufficient discipline. A majority of the Board, however, was of the opinion that further service is required of respondent to make amends for his actions. Accordingly, six members of the Board voted to require respondent to perform 250 hours of community service. Obviously, that service is not to involve any activities with children. Three members of the Board, although agreeing that a reprimand is sufficient discipline, did not believe that a requirement of community service was warranted.

The Board further determined that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 9/28/98

By: 

LEE M. HYMERLING
CHAIR
DISCIPLINARY REVIEW BOARD

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Raymond H. Wong
Docket No. DRB 97-295

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Disposition: Reprimand and 250 Hours of Community Service

Members	Disbar	Suspension	Reprimand and 250 hrs of community service	Reprimand	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole				x			
Lolla			x				
Maudsley			x				
Peterson				x			
Schwartz			x				
Thompson				x			
Total:			6	3			

Robyn M. Hill 10/6/98
Robyn M. Hill
Chief Counsel