Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-297
District Docket No. XIV-2017-0649E

In The Matter Of	:
Jeffrey Toman	:
An Attorney At Law	:

Decision

Argued: November 15, 2018

Decided: January 29, 2019

Hillary Horton appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.[1]

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

[1] In a November 9, 2018 letter to the Office of Attorney Ethics, respondent asserted that he would not appear for oral argument, maintaining that he is not a member of the New Jersey bar and, therefore, not subject to the Court's jurisdiction.

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 plea of nolo contendere in the Lackawanna County Court of Common Pleas, Pennsylvania, to first-degree misdemeanor corruption of a minor. The OAE recommended respondent's disbarment.

For the reasons set forth below, we determined to grant the motion for final discipline and to recommend respondent's disbarment.

Respondent was admitted to the New Jersey and Pennsylvania bars in 2010. He has no history of discipline. On June 4, 2018, respondent's license to practice law in New Jersey was administratively revoked for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund) for seven consecutive years.[2]

On March 16, 2017, respondent appeared in the Lackawanna County Court of Common Pleas and pleaded nolo contendere to first-degree misdemeanor corruption of a minor.[3] Beginning on July 1, 2015, respondent

---

[2] Contrary to respondent's letter, because his misconduct pre-dated his revocation, he remains subject to the jurisdiction of the attorney disciplinary system. See R. 1:28-2(c).

[3] A plea of nolo contendere is "a plea by which a defendant does not expressly admit his guilt, but nonetheless waives his right to a trial and authorizes the

(footnote cont'd on next page)

engaged in sexual activity via text messages with a fourteen-year-old female (I.S.). Respondent requested I.S. to send photos of herself while she wore little clothing or a bikini, discussed topics of a sexual nature, and sent her pictures of his genitalia. Respondent was introduced to I.S. through her mother, whom he was representing in a child custody proceeding against I.S.'s father.[4]

On June 27, 2017, respondent was sentenced to incarceration in the Lackawanna County Prison for a term of six months to twenty-three months. I.S. told the court that respondent's sexually predatory behavior had a "huge negative impact on her life;" that respondent took advantage of her at a particularly vulnerable time, when he was supposed to be representing her mother in a legal matter; and that the repercussions of respondent's conduct would affect her for the rest of her life.

In turn, I.S.'s mother requested that respondent serve prison time. She emphasized that respondent took advantage of the trust she had placed in him

---

(footnote cont'd)
court for purposes of the case to treat him as if he were guilty." N.C. v. Alford, 400 U.S. 25, 35 (1970).

[4] Many of the facts on which we relied were taken from the Affidavit of Probable Cause attached to the Police Criminal Complaint. It is unclear from the record whether this is a confidential document. Nevertheless, we treated it as the equivalent to a New Jersey pre-sentence report, which is confidential. Therefore, those details have been omitted here.

her attorney and that respondent had destroyed their lives with "no ounce of remorse."

As part of his sentence, respondent was required to submit to a mental health evaluation and a drug and alcohol evaluation, and to refrain from contact with the victim. The judge agreed to consider work release or home arrest at an appropriate time in the future, but required that the sentence be served immediately at the Lackawanna County Prison. Five months later, on November 22, 2017, the judge granted respondent's Petition for Home Confinement.

On March 26, 2018, the Pennsylvania Office of Disciplinary Counsel (ODC) and respondent filed a Joint Petition in Support of Discipline on Consent (Joint Petition) before the Disciplinary Board of the Supreme Court of Pennsylvania. The Joint Petition sought a three-year suspension, retroactive to the date of respondent's temporary suspension in Pennsylvania (October 8, 2017). The Petition asserted, in mitigation, that respondent was convicted of a single, first-degree misdemeanor offense; he accepted prison time as part of his sentence; he willingly consented to suspension beyond one year and one day, which will require him to petition for reinstatement prior to resuming the practice of law; he has no ethics history; he did not have physical contact with the minor; and he does not hold public office.

On May 9, 2018, the Supreme Court of Pennsylvania granted the Joint Petition and suspended respondent for three years, retroactive to October 8, 2017.

In support of its recommendation for disbarment, the OAE cited the Court's May 24, 2017 consolidated opinion in In re Legato, 229 N.J. 173 (2017). The Court's decision encompassed three disciplinary matters in respect of three attorneys (Legato, Kenyon, and Walter). In sum, the Court ordered an indeterminate suspension for Legato and Kenyon, and disbarred Walter. Legato and Kenyon targeted persons online whom they believed to be underage children, but who were undercover police officers. Those attorneys never met with the "children" or caused any actual harm. Id. at 186. Walter, however, was disbarred because his misconduct involved more direct contact with a nine-year-old girl who was under his care. Moreover, he exhibited a lack of remorse and failed to accept responsibility for his conduct. Id. at 188.

Since Legato, Kenyon, and Walter, the Court has disbarred two attorneys who targeted minors online, but actually were engaging undercover officers. See, In re Nilsen, 229 N.J. 333 (2017) and In re Gillen, 230 N.J. 382 (2017). Both attorneys were arrested when they appeared for a meeting with their putative victims.

Based on the foregoing, the OAE argues that respondent crossed the line into disbarment. He had explicit text conversations with a minor and sent her pictures of his genitalia. The victim was not an undercover officer but, rather, a real child. Further, the victim was not a random child he contacted online, but, rather, was the daughter of his client involved in a custody dispute.

The OAE lists mitigation as respondent's lack of disciplinary history, but contends that little weight should be given to this factor because, two years after respondent was admitted to the New Jersey bar, he became and remained ineligible to practice for failure to pay his annual registration fee to the Fund. In aggravation, respondent did not notify the OAE of his criminal charges, as R. 1:20-13(a)(1) requires.

Following a review of the record, we determine to grant the OAE's motion for final discipline. 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 us 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, 139 N.J. at 451-52; In re Principato, 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, 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. 165, 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).

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. 433 (1995) (reprimand; attorney convicted of lewdness after he exposed his genitals to a twelve-year-old girl); In re Ferraiolo, 170 N.J. 600 (2002) (one-year suspension for attorney who pleaded guilty to the third-degree offense of attempting to endanger the welfare of a child; the attorney, who had communicated in an internet chat room with someone whom he believed to be a fourteen-year-old boy, was arrested after he arranged to meet the "boy" for the purpose of engaging in sexual acts; the "boy" was a law enforcement officer); In re Gernert, 147 N.J. 289 (1997) (one-year suspension for petty disorderly offense of harassment by offensive touching; the victim was the attorney's teenage client); In re Ruddy, 130 N.J. 85 (1992) (two-year suspension for endangering the welfare of a child; the attorney fondled several young boys); 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); In re Frye, 217 N.J. 438 (2014) (disbarment for attorney who pleaded guilty to third-degree 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 having been entrusted with the care of a minor girl 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, 192 N.J. 219 (2007) (disbarment for attorney who, on three 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 committing sexual acts on a family member; the behavior occurred over a three-year period and involved at least forty instances of assault).

More recently, the Court imposed an indeterminate suspension in a case involving child pornography. In re Cohen, 220 N.J. 7 (2014). 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 the attorney's state-issued computer and on his private law office computer. Id. at 9. The Court stated that:

> [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.
>
> [Cohen, at 11, 15]

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, 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)).

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

---

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

More importantly, in Cohen, the Court acknowledged that, over time, society has become more acutely aware of the pernicious effects of sexual crimes against children. It further noted 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 will result in disbarment. Id. at 18-19.

As the OAE points out, the most recent line of pertinent cases has created a more consistent rule applicable to attorneys who commit crimes of a sexual nature involving minors. The attorney in Legato admitted that he had engaged 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 such 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 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, DRB 15-219 (April 4, 2016) (slip op. at 3-4).

The Court determined that an indeterminate suspension was appropriate for Legato because "he admitted to targeting an underage child online, but never took the additional step of meeting with the minor. Instead, the communication with the purported minor was limited to online interaction." In re Legato, 229 N.J. at 186. The Court noted that, although Cunningham, "paved a path for disbarment without physical interaction, we do not find the need for complete disbarment for Legato." Id. The Court made clear that, by imposing an indeterminate suspension on Legato, he will be subject to "vigorous review" before the Court considers restoration of his license. Id.

As to attorney Kenyon, over the course of a four-month period, he engaged in multiple internet chats with a person he believed to be a fourteen-year-old girl. Unbeknownst to him, he had been communicating with an undercover law enforcement officer. Kenyon admitted that, in addition to his illicit chats, he sent images of, and links to, hardcore adult pornography; that he did so knowingly and purposefully; and that, had the person actually been a fourteen-year-old girl, his interactions with her would have impaired or debauched her

morals. Like Legato, Kenyon admitted that he arranged to meet with the girl, but did not appear for that meeting. Kenyon was sentenced to parole supervision for life (PSL). In the Matter of Regan Clair Kenyon, DRB 15-351 (April 4, 2016) (slip op. at 3-4).

As with attorney Legato, the Court determined that Kenyon's conduct merited an indeterminate suspension. Like Legato, Kenyon engaged in illicit online conversations with an individual he believed to be a minor, but he never met the child in person. Kenyon's psychiatric evaluation was also favorable. In re Legato, 229 N.J. at 186. The Court observed that, while Kenyon was suspended, the stringent requirements of Megan's Law and PSL would protect the public from him. Further,

> [a]s with respondent Legato, Kenyon will be subject to parole supervision, continuing psychological counseling, and limitations on his access to and usage of the Internet. Kenyon too will be subject to "vigorous review" before his license may be restored. We refrain from applying a bright-line disbarment and find indeterminate suspension the appropriate discipline.
>
> Id. at 187.

In respect of both the Legato and Kenyon matters, the Court recognized the difficulty inherent in successfully petitioning the Court for readmission while under PSL. "As a practical matter, in this case, at this time, disbarment and indeterminate suspension are disciplinary differences without a distinction.

Only time will tell whether they become markedly different sanctions." Id. at 187. Although there was no actual harm or contact to an actual minor, which would require disbarment, the Court stated, "[t]o be clear, we do not minimize the reprehensibility of Legato's and Kenyon's conduct simply because the children in the online chat rooms were actually undercover agents. We do, however, find a significant distinction between online and personal physical contact." Id. at 188.

Walter's conduct was substantially different from that of Legato and Kenyon. Walter masturbated in the presence of K.P., a nine-year-old girl, who had moved into his home and for whom "he had a legal duty to assume responsibility." Walter admitted that he masturbated in front of K.P. during times when he was alone with her and that he did so for his own sexual gratification. He further admitted that the child observed him masturbating and that his conduct was sexual conduct that would impair or debauch K.P.'s morals. In the Matter of Alexander D. Walter, DRB 15-362 (April 4, 2016) (slip op. at 2).

As to Walter, the Court found that "the nature and severity of his conduct, the physical presence of the child, and his position of power over and responsibility for the child" brought the conduct into the realm of Frye and Wright. Walter "demonstrated that he is willing to take advantage of his power

for his own benefit, encapsulating the precise object that we are tasked with maintaining -- public confidence in the bar." The Court found that Walter's apparent lack of remorse, lack of acceptance of responsibility and multiple instances of masturbating in the presence of a child, who was under his care, warranted disbarment. Legato, 229 N.J. at 188.

Since the Legato cases, two attorneys have been disbarred for sexual crimes against minors. In In re Nilsen, 229 N.J. 333, the attorney engaged in online chats with an individual purported to be the thirty-two-year-old mother of a nine-year-old girl. He discussed engaging in sex with both the mother and daughter, sent photos of himself, explained how the mother could access child pornography to "acclimate" her daughter, and purchased a plane ticket to Atlanta to meet with them. In the Matter of Tobin G. Nilsen, DRB 16-222 (February 23, 2017) (slip op. at 3). Prior to his departure for Atlanta, Nilsen was arrested by law enforcement officers in New Jersey for soliciting a different putative mother/daughter pair, a presumptive six-year-old girl and her mother. Id. at 3-4. Nilsen was arrested when he appeared for a scheduled meeting with them. Id. at 5.

In In re Gillen, 230 N.J. 382, the attorney was convicted in New York state court of attempted dissemination of indecent material to minors. At his plea hearing, Gillen admitted that he intentionally used a system to engage in

communications, which described sexual conduct with a person whom he believed to be a minor, in an attempt to induce the other person to engage in sexual contact or conduct. In the Matter of Daniel M. Gillen, DRB 16-269 (April 25, 2017) (slip op. at 4-5). Gillen engaged in explicit text conversations with a girl whom he believed to be fourteen-years-old, but who was an undercover officer. Id. at 2-3. He also sent files of explicit pictures and links to pornographic websites Id. at 3. Gillen was arrested after setting a date to meet the girl and appearing for that meeting, with wine coolers and Viagra. Id. at 2.

Both Gillen and Nilsen were disbarred because, although they were communicating with undercover officers, the two appeared for meetings with the putative underage victims.

Here, as in Walter, respondent inappropriately communicated with an actual fourteen-year-old girl, the daughter of his client. He had in-person meetings with her while in his role as an attorney, albeit with I.S.'s mother present. Moreover, he had explicit text conversations with I.S., who was already vulnerable, given the pending custody dispute, while simultaneously representing her mother in that dispute. Respondent's conduct is deeply troubling on multiple levels. At least two people, I.S. and her mother, have been victimized by their attorney and may never feel safe or protected from an attorney, should they need counsel again. This factor alone renders access to the

justice system for these two individuals that much more frightening. Indeed, I.S. described the negative impact respondent's predatory conduct had and would continue to have on her in the future.

Therefore, we remain resolute that when, as here, an attorney behaves in a matter such "as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession," that attorney should be disbarred. In re Templeton, 99 N.J. 365, 376 (1985). We so recommend to the Court.

Member Rivera 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey Toman
Docket No. DRB 18-297

Argued: November 15, 2018

Decided: January 29, 2019

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph	X		
Rivera			X
Singer	X		
Zmirich	X		
Total:	8	0	1

Ellen A. Brodsky
Chief Counsel