Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-365
District Docket No. XIV-2018-0485E

In The Matter Of

Eyal Katzman

An Attorney At Law

Corrected
Decision

Argued: January 17, 2019

Decided: June 4, 2019

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

Respondent did not appear for oral argument, despite proper service.

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 criminal conviction in New York Supreme Court, Queens County, on two counts of third-degree criminal sexual act (victim less than seventeen years old), contrary to N.Y.P.L. 130.40-2; three counts of third-degree patronizing a prostitute, contrary to N.Y.P.L. 230.04; and three counts of endangering the

welfare of a child, contrary to N.Y.P.L. 260.10-1. We determine to recommend disbarment for respondent's violation of RPC 8.4(b).

Respondent was admitted to the New Jersey bar in 2002 and the New York bar in 2000. On May 3, 2017, he was disbarred in New York, effective July 14, 2016. In the Matter of Katzman, 150 A.D.3d 128 (N.Y. App. Div. May 3, 2017).

The New York Supreme Court, Queens County, returned an indictment charging respondent with the aforementioned crimes (counts one through eight) and three counts of third-degree sexual abuse (counts nine, ten, and eleven), contrary to N.Y.P.L. 130.55.[1] On July 14, 2016, a jury convicted respondent of counts one through eight. The court dismissed counts nine through eleven on motion by the prosecutor.

At trial, "A" testified that she began attending high school in September 2012, and that she had turned sixteen that Labor Day.[2] Early in the school year, she met fellow student "B" in science class, who then introduced her to respondent. In mid-September, A and B left school early and B used A's phone to call respondent to schedule a meeting. B told A that she did not need to lie to respondent about her age but that she could use a nickname instead of her real name.

[1] The date of the indictment is unclear from the record.
[2] The names of respondent's underage victims have been redacted.

Thereafter, A, B, and respondent all boarded the same bus. A and B exited the bus and followed respondent to his house. There, respondent touched A's breast on top of her clothing. B performed oral sex on respondent, who asked A to perform oral sex on him, but A declined. Upon A and B's departure, respondent paid cash to both. Respondent paid A approximately $100.

After that first meeting, respondent called A occasionally. Later in September, after A returned respondent's phone call, he asked her to come to his house. A agreed and took the bus to respondent's house. After they engaged in various sex acts, respondent gave A between $150 and $200.

A few weeks later, in October, A again agreed to meet respondent. After engaging in sexual contact with A, respondent asked whether she had any friends she could bring to his house. She replied that she did not. Respondent gave A between $150 and $200. She neither returned to respondent's house after this third meeting nor reported her sexual activity with respondent.

Another student "C," who was also 16, testified that she was recruited by a friend from science class to have sex with respondent.[3] B told C that they were going to meet respondent, that he was not the same age as them, that she had sent other friends to have sex with him, and that they would be paid for the sex.

[3] No names or initials are used in the transcripts. It is likely that this friend was "B," as identified above. Both A and C described B as a pregnant classmate. She will be identified as B going forward, for clarity.

C and B met respondent at the end of October or the beginning of November near his neighborhood. He asked C to expose herself and she complied. Respondent then offered C a ride on his motorcycle back to his house, but she wanted to take the bus with B.

Upon B and C's arrival and respondent's house, he prepared an alcoholic drink for C and she performed a sex act on him. Respondent asked C if she would return and whether she had any friends who might be interested in visiting him. He then left money on his nightstand for C. She took $60. B took $20 for bringing C to respondent.

Respondent admitted that he had been paying for sex for forty years, but denied ever paying for sex with a minor. He claimed that he first contacted B through an ad on Craig's List. He asserted that he did not have sex with B while she was pregnant because that was a "turn-off" to him, but did pay to have sex with her much later, after she had given birth. He also claimed that it was not until March 2014 that he had sex with A, that she stole money from him, and that he never saw her again. In regard to C, respondent claimed that he paid to have sex with her in November 2013.

On November 23, 2016, the Honorable Barry Schwartz, Queens County New York criminal court, sentenced respondent to one year of incarceration for each count. The sentences on counts one and two (concurrent) were to run

consecutively with counts three and four (concurrent), for a total of two years. The remaining counts were classified as misdemeanors and were merged. Respondent was sentenced to mandatory sex offender registration prior to release from incarceration, and mandatory financial fees and penalties were imposed.

The court determined that respondent's defense that the victims were over the age of consent was absolutely "untenable" and "indisputably untrue." The prosecutor contended that respondent showed no remorse during the trial, and had an extremely cavalier attitude about sexually abusing three underage girls. The court found that respondent's conduct was "arrogant, selfish and utterly unworthy of mercy."

On May 2, 2018, the Supreme Court of New York, Appellate Division affirmed respondent's conviction.

The OAE asserts that attorneys convicted of offenses involving the "physical sexual assault of minors" are usually disbarred. In re Cohen, 220 N.J. 7 (2014), In re Wright, 152 N.J. 35 (1997) (disbarred after digitally penetrating his minor daughter), In re X, 120 N.J. 459, 464-65 (1990) (disbarred following sexual assault of his three daughters), and In re Frye, 217 N.J. 438 (2014) (disbarred for improperly touching a nine-year-old child with intent to "impair or debauch the morals of the child"). In Cohen, a child pornography case, the

Court placed attorneys on notice that, going forward, engaging in crimes involving the sexual exploitation of children "may be considered grounds for losing the privilege of membership in a distinguished and trusted profession." In re Cohen, 220 N.J. at 18. The Court recognized the "devastating impact" and "serious consequences" caused by any form of sexual exploitation of minors. Id. at 12.

On May 21, 2017, the Court disbarred an attorney who had pleaded guilty to third-degree endangering the welfare of a child, admitting that, on multiple occasions, during a four-month period, he had masturbated in the presence of a nine-year-old girl who had been living in his house. In re Walter, 229 N.J. 173 (2017). Id. at 188-89.[4] Walter attempted to apportion blame to the child, arguing that "physical barriers broke down," and that they became too physically familiar with each other. Id. at 188. Agreeing with our majority opinion that Walter should be disbarred, the Court noted, "Walter has 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." Id. at 189. "The lack of apparent remorse, lack of acceptance of

[4] Walter is a consolidated matter involving three cases involving attorneys Mark G. Legato, Regan C. Kenyon, Jr., and Alexander D. Walter. Because attorney Walter's matter is most applicable here, the Court's consolidated opinion will simply be referred to as "Walter."

responsibility and multiple instances of masturbating in the presence of a child who was under his care clearly warrant Walter's disbarment." Ibid.

The OAE contended that, in accordance with Cohen and Walter, an attorney who trades sexual favors with a sixteen-year-old girl in exchange for money should be disbarred. Here, at sentencing, the prosecutor argued that respondent's conduct left "an indelible mark" on the childhoods of his victims that "can't be erased;" that respondent showed no remorse and had a "cavalier attitude" regarding the sexual abuse; and that respondent dehumanized his victims and prioritized his sexual gratification over their emotional well-being. The OAE emphasized the aggravating factors in those cases, such as a respondent's lack of remorse and the fact that the misconduct was part of a pattern, both of which are present here. See, e.g., In re Pena, 164 N.J. 222, 234 (2000) (lack of remorse) and In re Kelly, 120 N.J. 679, 689 (1990) (conduct part of a pattern).

The OAE recognized, in mitigation, that respondent does not have an ethics history in New Jersey. However, the OAE argued that minimal weight should be given to his lack of prior discipline, based on the seriousness of his criminal convictions and the fact that he appears to not have actively practiced law in New Jersey.

Finally, respondent failed to promptly notify the OAE of his criminal charges, as R. 1:20-13(a)(1) requires. However, in response to a letter from the OAE, his New York criminal counsel promptly replied, contending that respondent was unaware of his obligation to notify the New Jersey ethics authorities of his New York charges.

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).

As the OAE argued in its brief, attorneys who have committed sexual acts with minors are disbarred. See In re Frye, 217 N.J. 438 (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 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 Wright, 152 N.J. 35 (attorney disbarred for sexual contact with his daughter over a three-year period, involving at least forty instances of assault); and In re X, 120 N.J. 459 (attorney disbarred following sexual assault of his three daughters).

This jurisprudence has been further reinforced, as the OAE points out, through Walter and its progeny. In 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. Walter, 229 N.J. at 188.

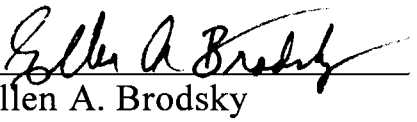
Respondent unequivocally should be disbarred. He solicited high school-aged girls for sex in exchange for money. He showed no remorse for his behavior at trial; rather, he claimed that the children seemed older than they actually were. The court found respondent's attempts in this regard to be untenable and absurd.

Therefore, when, as here, an attorney behaves in a manner 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).

Member Singer abstained.

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 Eyal Katzman
Docket No. DRB 18-365

Argued: January 17, 2019

Decided: June 4, 2019

Disposition: Disbar

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

Ellen A. Brodsky
Chief Counsel