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November 23, 2021

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Jonathan Lloyd Becker**
Docket No. DRB 21-199
District Docket No. XIV-2021-0218E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (one-year suspension or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a one-year term of suspension for respondent's violation of RPC 1.14(a) (when a client's capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client) and PRC 8.4(g) (engaging, in a professional capacity, in conduct involving discrimination – specifically, the sexual harassment of a minor).

Specifically, on April 21, 2016, respondent was assigned to represent the interests of a minor, K.B., as the court-appointed attorney for the child, in connection with K.B. and her mother's petition for modification of a visitation order in family court in New York. It was alleged that K.B.'s father violated the existing visitation order, that he harassed K.B. via Facebook, and that the harassment led K.B. to harm herself. At the time of respondent's appointment, K.B. was twelve years of age.

On May 3, 2016, K.B. met respondent for the first time, at his office. During the meeting, respondent directed K.B. to log into her Facebook account, reviewed various messages between K.B. and her father, and copied the messages. Respondent also asked K.B. if she was sexually active. Respondent then discussed, in graphic detail, a criminal case he had handled when he was an assistant district attorney that involved a twelve-year-old girl engaging in sex with a nineteen-year-old male. He told K.B. that the twelve-year-old girl and the nineteen-year-old male had sex a couple times a week, and that the nineteen-year-old male ultimately went to prison for five years. Respondent assured K.B. that their conversation was confidential, and respondent conveyed, by example, that, if K.B. told him that she had sex with ten guys, he could not tell anyone about their conversation, not even her doctor. Later, when K.B. adjusted her shorts, respondent asked if they were uncomfortable, to which K.B. replied in the negative. Respondent then stated that her shorts looked like they would hurt her vagina. Thereafter, respondent questioned K.B. about whether or not she intended to tell anyone about their conversation, and he told K.B. that he could end up in jail if she did.

Prior to the May 3, 2016 meeting, there were no allegations that K.B. was a victim of sexual abuse or that she was at risk of sexual abuse. Immediately after the May 3, 2016 meeting, K.B. informed her mother of respondent's comments, which had made K.B. uncomfortable. Two days later, on May 5, 2016, with help from her mother, K.B. requested that the court remove respondent as her attorney, and, on May 9, 2016, the court granted that request and appointed new counsel.

On December 5, 2016, after she spoke with K.B., K.B.'s new counsel filed a complaint against respondent with the Attorney Grievance Committee (the AGC) for the Third Judicial Department of New York. Later, on January 22, 2019, the AGC filed a verified petition, charging respondent with having violated New York RPC 8.4(h) (conduct that adversely reflects on the lawyer's fitness as a lawyer).

On March 18, 2019, respondent answered the petition and denied that he had violated New York RPC 8.4(h). Respondent maintained that, during his May 3, 2016 meeting with K.B., he had behaved professionally and appropriately. Specifically, he argued that it was appropriate for him to have viewed K.B.'s Facebook messages and that he had an ethical duty to do so, because both she and her mother alleged that K.B.'s father had harassed K.B. via Facebook. He also argued that, based on his "training and experience as a sex crimes and child pornography prosecutor, criminal defense attorney and family court attorney, there was information that [K.B.] was at risk for sexual abuse" or that she had already been victimized and, thus, he determined that there was a basis to inquire further on the subject. Respondent did not recall whether he asked K.B. about her sexual history. However, he admitted that he discussed the criminal case, told K.B. that their conversation was confidential, and, as an example, hypothesized that, were K.B. to tell him that she was sexually active, he could not tell anyone, not even her doctor.

Respondent denied that he made any comments about K.B.'s vagina or that he instructed K.B. not to tell anyone about their conversation. He claimed that the sexual portion of their meeting was brief, and that the majority of their discussion related to K.B.'s relationship with her parents and the pleadings to be drafted on behalf of K.B. Respondent speculated that K.B. may have lied

about what took place during their May 3, 2016 meeting because she was upset that he advised her that she did not have a viable claim for harassment against her father. He argued that K.B. and her mother falsely accused K.B.'s father of harassing K.B. via Facebook messages and that, therefore, their statements against him lacked credibility.

In his defense, respondent requested that consideration be given to the fact that, at the time of his appointment to K.B.'s case, he had been an attorney for more than six years and had served as an attorney for minors for less than two years. He further described himself as inexperienced, and he maintained that he may have been disabled by vicarious trauma associated with his prior work as an assistant district attorney.

On August 29, 2019, the New York disciplinary hearing was held before a referee. K.B. testified that, on May 3, 2016, she met with respondent alone, except for approximately ten minutes when her mother participated in the meeting. She testified that, when they were alone, respondent asked her to log into her Facebook account, reviewed various messages between her and her father, and copied the messages. K.B. testified that respondent asked whether or not she had a boyfriend and if they had sex; discussed a criminal case that he previously handled; assured her that their conversation was confidential and, as a hypothetical, stated that, if she told him that she had sex with ten guys, that he could not tell anyone about their conversation, not even her doctor. She testified that, when she adjusted her shorts, respondent asked if her shorts were uncomfortable and stated that her shorts looked like they hurt her vagina. K.B. further testified that respondent asked her not to tell anyone about their meeting, because he could get into trouble.

Respondent testified that, based upon his prior training and experience, he was concerned that K.B. had been sexually abused or was at risk of sexual abuse, and, thus, he determined that there was a basis to inquire further about her sexual history. Respondent admitted that he asked K.B. about her sexual history and that they talked about confidentiality. He admitted that he explained "confidentiality to include that it didn't matter how many men [K.B.] had sex with or boys or whoever that [he] couldn't tell anybody." He testified that he never used the word "vagina" or made any comments about K.B.'s shorts. However, on cross-examination, respondent questioned K.B. on that very topic, inquiring "[d]o you recall me saying that the way you were adjusting your shorts my saying to you that you made me uncomfortable."

On October 31, 2019, the referee found that respondent had not engaged in conduct that reflected adversely on his fitness as a lawyer when he examined and copied K.B.'s Facebook messages; inquired about K.B.'s sexual activity; discussed the criminal case; or informed K.B. that their conversation was confidential and hypothesized that if K.B. told him that she slept with ten guys that he could not tell anyone, not even her doctor. Conversely, the referee found that respondent had inquired about whether or not K.B.'s shorts hurt her vagina during a closed-door meeting that involved only respondent and his minor client, that the inquiry was made soon after their sexually charged discussion, and that his conduct reflected adversely on his fitness as a lawyer. The referee also noted that respondent questioned K.B. about whether or not she intended to disclose their conversation to anyone and that, although this conduct did not adversely reflect

on his fitness as a lawyer, it evidenced respondent's consciousness of guilt over his comments about K.B.'s shorts.

On February 20, 2020, the Supreme Court of New York determined that respondent had engaged in misconduct, in violation of New York RPC 8.4(h). Specifically, the court found that respondent had violated New York RPC 8.4(h) on multiple occasions: when he discussed a case that involved an adult engaged in criminal sex acts with a child, when there was no allegation of sexual misconduct in the matter to which respondent was appointed; when he gave an example of attorney-client confidentiality, wherein he provided a hypothetical regarding the minor client's sexual activity; when he referenced the child's vagina and purported physical discomfort of her shorts; and when he requested that the child not disclose to anyone the substance of their conversation, because he could be punished. However, the court found that respondent had not violated any New York RPCs when he viewed and copied K.B.'s Facebook messages. Respondent's license to practice law in New York was suspended for eight months, effective March 30, 2020.

On March 20, 2020, respondent reported the suspension of his license to practice law in New York to the OAE, as Rule 1:20-14 requires. Later, on September 3, 2021, respondent and the OAE stipulated that respondent's conduct violated RPC 1.14(a) and RPC 8.4(g). In mitigation, the parties stipulated that respondent had no disciplinary history in New Jersey; admitted his unethical conduct to the OAE; expressed remorse; and had changed his procedure for client interviews. Additionally, beginning on April 26, 2021, respondent began weekly counseling with a clinical psychologist. The parties stipulated that the clinical psychologist had determined that respondent was not a threat to the public and was fit to be reinstated to the New York Bar.

Based on the above facts, the Board determined that respondent engaged in discrimination, by his sexual harassment of K.B., in violation of RPC 8.4(g), which states that "[i]t is professional misconduct for a lawyer to: engage, in a professional capacity, in conduct involving discrimination . . . because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm."

Further, the Supreme Court's official comment (May 3, 1994) to RPC 8.4(g) provides:

"Discrimination" is intended to be construed broadly. It includes sexual harassment, derogatory or demeaning language, and, generally, any conduct towards the named groups that is both harmful and discriminatory.

Specifically, the Board determined that respondent engaged in sexual harassment of his twelve-year-old client, K.B., by discussing a case that involved an adult engaged in graphic, criminal sex acts with a child, when there was no allegation of sexual misconduct or risk thereof in K.B.'s matter; by providing the hypothetical regarding K.B.'s potential sexual activity as an example of the strength of their attorney-client confidentiality; by referencing K.B.'s vagina and the perceived physical discomfort of her shorts; and, when viewed in totality, by subsequently requesting that K.B. not disclose to anyone the substance of their conversation, because he could

be criminally punished. The minor client was harmed by respondent's misconduct, as demonstrated by her prompt report to her mother of her discomfort stemming from respondent's behavior. Respondent, thus, violated RPC 8.4(g).

Additionally, the Board determined that the facts of this case prove, by clear and convincing evidence, that K.B.'s capacity to make adequately considered decisions in connection with the representation was diminished, because of her minority, and that respondent failed to maintain a normal attorney-client relationship with his minor client when he engaged her in the wholly irrelevant, sexually-charged discussion. Respondent, thus, violated RPC 1.14(a).

This matter, which involved the sexual harassment of a minor client, presented an issue of first impression for the Board. All reported cases that have addressed a violation of RPC 8.4(g) for sexual harassment have involved adult victims and have resulted in a reprimand or greater discipline. *See, e.g., In re Pinto*, 168 N.J. 111 (2001) (attorney reprimanded, with the condition of sensitivity training, for sexually harassing a vulnerable, unsophisticated female client; the attorney engaged in "extremely crude," explicit conversations about what he could do sexually with her; on one occasion, he massaged the client's shoulders, kissed her on the neck, and told her that she should show herself off; on another occasion, he slapped the client on the buttocks); *In re Hyderally*, 162 N.J. 95 (1999) (attorney reprimanded, on a motion for reciprocal discipline, for his sexual advances toward two legal-aid clients); *In re Pearson*, 139 N.J. 230 (1995) (attorney reprimanded, where he hugged his client, put his hands on her buttocks, and pushed his head into her chest and commented about the size of her breasts); *In re Rea*, 128 N.J. 544 (1992) (attorney reprimanded, where he had a sexual relationship with a client who, because of her past history and mental health, lacked the capacity to freely consent to the relationship); and *In re Liebowitz*, 104 N.J. 175 (1985) (attorney reprimanded for sexual misconduct with an assigned client, where he invited the client to his apartment; requested that she enter his bedroom and sit on the bed next to him while he made telephone calls; unbuttoned the top of her dress; kissed her on the lips; removed his clothing; and urged her to join him in bed; additionally, after the client told him that she had to leave and went into the living room, the attorney pulled her back into the bedroom, touched her, and placed her hand on his genital area).

Suspensions also have been imposed. *See In re Garofalo*, 229 N.J. 245 (2017) (attorney suspended for six months for sexually harassing two employees at his law firm; in one instance, he sent repeated, unwanted communications of a sexual nature, over the course of ten years, and showed no remorse for his misconduct after the victim, the police, and the partners at his law firm warned him to stop) and *In re Witherspoon*, 203 N.J. 343 (2010) (attorney suspended for one year for his sexual harassment of four female clients; in all four matters, the attorney repeatedly made inappropriate propositions whereby he offered his legal services in exchange for sex and, in two of matters, he discriminated based on sexual orientation; in aggravation, the attorney had a significant disciplinary history and showed no remorse for his misconduct).

Additionally, although it involved the violation of a different subsection of RPC 8.4, the Board drew similarities between the instant matter and *In re Gernert*, 147 N.J. 289 (1997), where the attorney, like respondent, committed misconduct against his minor client, in an isolated

incident between them. In Gernert, the attorney received a one-year suspension for his violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) after he behaved inappropriately with his sixteen-year-old client; namely, stroked her hand; made inappropriate advances towards her; kissed her cheek; and knowingly touched her breast (slip op. at 2). In Gernert, unlike in this matter, there was physical contact and a second allegation of sexual misconduct against respondent, wherein the victim elected not to proceed. Id. at 2-3. Like respondent, the attorney in Gernert had no disciplinary history. Id. at 5.

In the most recent RPC 8.4(g)/sexual harassment case encountered by the Board, In the Matter of Kevin Michael Regan, DRB 20-134 (March 22, 2021), it imposed a censure on the attorney for sending an improper, sexually explicit e-mail to an existing, adult client two days after her divorce had been finalized (slip op. at 2, 15-16, 23). The Board found that the e-mail constituted derogatory and demeaning sexual harassment, and it rejected the attorney's claimed belief that his e-mail would be received favorably due to prior interactions between the parties. Id. at 16. As in this matter, that client asserted that she was disturbed by her attorney's behavior. Id. at 16-17. Like respondent, the attorney in Regan had no disciplinary history. Id. at 23. The Board declined to impose a term of suspension on the attorney in Regan, distinguishing his behavior from the attorneys in Witherspoon and Garofalo, who had harassed multiple victims. Ibid. The Court agreed with the Board's determination. In re Regan, __ N.J. __ (2021).

The Board determined that its sanction in Regan, which was built on the precedent of Pinto, Hyderally, Rea, Liebowitz, and Witherspoon, warranted a significant term of suspension for respondent's sexual harassment of K.B., a minor client. Indeed, significant aggravating weight was allocated to the vulnerability and age of the client victimized by respondent. In further aggravation, as found in Hyderally and Liebowitz, K.B. was not only a minor, but she was also a court-appointed client, and respondent immediately betrayed his position of trust. Additionally, as in Pinto, Rea, and Gernert, K.B., as a minor, had a diminished capacity to make adequately considered decisions in connection with the representation.

Respondent's misconduct arguably is distinguishable, in some respects, from the other cases detailed above, because it involved one victim and occurred on only one occasion.¹ Additionally, unlike the other cases, there is no evidence in the record that respondent requested to engage in a sexual relationship with the victim or touched her inappropriately.

In mitigation, respondent has no disciplinary history in New Jersey; cooperated with the disciplinary authorities by entering into this motion; promptly reported to the OAE the suspension of his license to practice law in New York; expressed remorse; and reported to have changed his procedure for client interviews. Respondent also has engaged in weekly counseling sessions with a clinical psychologist since April 26, 2021.

¹ This distinction is not intended to diminish the experience or injury of the victim, but merely to distinguish respondent's misconduct from behavior that occurred over an extended period or involved multiple victims. Notably, the victim in this case ensured that respondent's conduct could not reoccur by reporting his unethical behavior to her mother and by seeking new counsel.

Considering the aggravating and mitigating factors, the Board determined that a one-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar. New York disciplinary authorities, who had the benefit of the disciplinary hearing and the live testimony of respondent and the victim, also concluded that a term of suspension was warranted for his sexual harassment of his minor client. Additionally, here, respondent has consented to a one-year term of suspension.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 8, 2021.
2. Stipulation of discipline by consent, dated September 3, 2021.
3. Affidavit of consent, dated August 24, 2021.
4. Ethics history, dated November 23, 2021.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel

TME/jm
Enclosures

- c: (w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
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Office of Attorney Ethics (e-mail and interoffice mail)
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