SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-218
District Docket No. XIV-2022-0196E

In the Matter of Michael T. Rave
An Attorney at Law

Argued
January 18, 2024

Decided
March 20, 2024

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

Robert E. Dunn appeared on behalf of respondent.

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Introduction

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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and convictions, in the Superior Court of New Jersey, to third-degree endangering the welfare of a child – possession of items depicting the sexual exploitation or abuse of a child, in violation of N.J.S.A. 2C:24-4(b)(5)(b)(iii), and fourth-degree criminal sexual contact with a minor, in violation of N.J.S.A. 2C:14-3(b). The OAE asserted that these offenses constitute violations of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

For the reasons set forth below, we unanimously determine that respondent violated the Rules of Professional Conduct. However, we are unable to reach a consensus among the eight participating Members regarding the appropriate quantum of discipline. As set forth below, four Members voted to recommend an indeterminate suspension and four Members voted to recommend disbarment.

Respondent earned admission to the New Jersey bar in 1995. At the relevant time, he was employed by a New Jersey bank as a mergers and acquisitions attorney. Previously, until September 2020, he had been a partner at a law firm in Parsippany, New Jersey. Since May 2022, when the bank terminated his employment, he has worked as an attorney performing document review and, occasionally, legal services on a contract basis. In January 2023, he launched a corporate legal recruiting agency, based in Wilmington, Delaware.

Facts

On January 31, 2023, in Morris County Superior Court, before the Honorable Noah Franzlau, J.S.C., respondent waived his right to an indictment and pleaded guilty to a two-count Accusation charging him with third-degree endangering the welfare of a child – possession of less than one thousand items depicting the sexual exploitation or abuse of a child, contrary to N.J.S.A. 2C:24-4(b)(5)(b)(iii);[1] and fourth-degree criminal sexual contact with a minor,

[1] N.J.S.A. 2C:24-4(b)(5)(b)(iii) provides that "[a] person commits a crime of the third degree if [the person] knowingly possesses, knowingly views, or knowingly has under [the person's] control, through any means, including the Internet, less than 1,000 items depicting the sexual exploitation or abuse of a child." The statutory definition of "[i]tem depicting the sexual
(Footnote cont'd on next page)

while the victim was at least thirteen years old but less than sixteen years old and the actor was at least four years older than the victim, contrary to N.J.S.A. 2C:14-3(b).[2]

During his plea allocution, respondent admitted that, on or about April 13, 2022, while using the website Omegle – which provides a live video feed from the user to other individuals on the site – he masturbated in view of a fourteen-year-old child. Respondent further admitted that, on April 13, 2022, he had saved – on a laptop computer found at his residence – eighty-three[3] images depicting sexual exploitation or abuse of a minor, meaning images that

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exploitation or abuse of a child" includes "a photograph, film, video, an electronic, electromagnetic or digital recording, an image stored or maintained in a computer program or file or in a portion of a file, or any other reproduction or reconstruction which: (a) depicts a child engaging in a prohibited sexual act or in the simulation of such an act[.]" N.J.S.A. 2C:24-4(b)(1).

[2] N.J.S.A. 2C:14-3(b) provides that "[a]n actor is guilty of criminal sexual contact if [the actor] commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2 c.(1) through (5)." An "act of sexual contact" is defined as "an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present[.]" N.J.S.A. 2C:14-1(d). Relevant here, the "circumstances set forth" in the statute include sexual contact where "[t]he victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim[.]" N.J.S.A. 2C:14-2(c)(4).

[3] Pursuant to N.J.S.A. 2C:24-4(b)(7), "for aggregation purposes, each depiction of the sexual exploitation or abuse of a child shall be considered a separate item[;]" however, "each depiction that is in the form of a film, video, video-clip, movie, or visual depiction of a similar nature shall be considered to be 10 separate items[.]" The record here does not clearly specify which category or categories of items were found in respondent's possession.

depicted children engaging in sexual acts such as vaginal penetration and fellatio.

On April 13, 2023, respondent took part in a psychosexual evaluation at the Adult Diagnostic and Treatment Center, in Avenel, New Jersey.[4] During the evaluation, he stated that he had started using the website Omegle[5] sporadically, starting five or six months before his April 2022 arrest, accessing it once or twice monthly. Although he acknowledged that he accessed the site to find

[4] Pursuant to the New Jersey Sex Offender Act, individuals convicted of enumerated offenses must be referred for a psychological examination which "shall include a determination of whether the offender's conduct was characterized by a pattern of repetitive, compulsive behavior and, if it was, a further determination of the offender's amenability to sex offender treatment and willingness to participate in such treatment." N.J.S.A. 2C:47-1.

[5] Omegle, which shut down in November 2023, was a free online chat service that "worked . . . by randomly pairing users from around the world in one-on-one video calls or text chats, with each caller able to terminate the chat at any point to be assigned a new pairing. The site marketed itself as a way to make friends online." Leo Sands, Video chat app Omegle closes . . . , Washington Post (Nov. 9, 2023), www.washingtonpost.com/technology/2023/11/09/omegle-chat-app-shutdown. During the COVID 19 pandemic, Omegle reportedly "[saw] a resurgence, particularly with teenagers feeling alienated by months of remote learning and limited face-to-face socializing." Taylor Lorenz, Oh, So We're Doing Random Video Chat Again?, New York Times (Mar. 1, 2021), www.nytimes.com/ 2020/07/24/style/omegle-random-video-chat.html.

During the period at issue here, Omegle was open to users aged thirteen and above; however, users between the ages of thirteen and seventeen were required to indicate that they were using the site with parental permission and supervision. Bill Chappell, Video chat site Omegle shuts down after 14 years . . . , NPR (Nov. 9, 2023), www.npr.org/2023/11/09/1211807851/omegle-shut-down-leif-k-brooks.

It was not until October 2022 that Omegle restricted its use to individuals aged eighteen years and older. Risks of children exposed to sexual violence on Omegle at n.6, Canadian Centre for Child Protection (Aug. 29, 2023), protectkidsonline.ca/app/en/blog_ 202308_risks_of_children_exposed_to_sexual_violence_on_omegle.

women who would watch him masturbate, he claimed that he never intended to seek out minors and that he believed that, because the site advertised as an adult site, it never occurred to him that minors might be using it. However, he informed the evaluator that "[a]pparently, some of the girls were underage. They didn't look underage to me but apparently they were[.]"

Regarding the child pornography on his computer, respondent stated that he had begun visiting "teen pornography" websites a couple times a month, starting in 2020 or 2021. However, he asserted that he had visited these websites to view images of women ages eighteen and older and denied specifically searching for or saving child pornography.

The evaluator concluded that respondent's "criminal sexual behavior meets the criteria for repetition as he possessed multiple videos that depicted the sexual exploitation of children and he recorded himself masturbating to minors online." However, the evaluator did not reach "a clear finding of compulsive sexual behavior." Accordingly, the New Jersey Sex Offender Act's sentencing provisions for individuals who engage in repetitive, compulsive behavior did not apply to respondent. See N.J.S.A. 2C:47-3.

On May 19, 2023, respondent's sentencing hearing took place before Judge Franzlau. The prosecutor, in his remarks to the court regarding the

applicable aggravating factors, pointed out that respondent had made statements during his Avenel evaluation that minimized his criminal misconduct. Accordingly, Judge Franzlau asked respondent, under oath, whether he stood by the statements that he had made during his plea allocation. Respondent confirmed that he did. The judge also engaged in the following colloquy with respondent:

> If you were to contest or appeal this matter, based upon the fact that you didn't know what you were pleading guilty to, or you really didn't know that the girls were underage, or have a good faith belief that they were, do you understand that the Court is going to – based upon your statements here today, that you're standing behind your plea, the Court is going to look to what you actually said at the time of the plea, as opposed to what you said in your Avenel evaluation?
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> [OAE-Ex.D at 12:14-14:18.][6]

In reply, respondent confirmed that he understood and had no reservations about moving forward based upon his prior plea allocution to having committed both crimes.

Judge Franzlau sentenced respondent to a two-year period of non-custodial probation for each of the two counts, with the two terms to run

[6] "OAE-Ex.D" refers to the transcript of the May 19, 2023 sentencing hearing, appended to the OAE's October 3, 2023 brief in support of its motion for final discipline.
"R-Ex.H" refers to respondent's psychological evaluation conducted by Anthony V. D'Urso, Psy.D., appended to respondent's December 4, 2023 brief to us.

concurrently; required his compliance with Megan's Law; and required him "to continue in sex offender therapy until completion and/or as recommended by Probation." The judge also required respondent to pay applicable fines and to comply with random drug and alcohol testing. Respondent was not sentenced to Parole Supervision for Life (PSL) because his offenses were not among the crimes to which PSL applies. See N.J.S.A. 2C:43-6.4.

During sentencing, the judge found two aggravating factors: the risk that respondent would commit another offense and the need for deterring the defendant and others from violating the law. The judge found three mitigating factors: respondent's lack of prior criminal activity; his character and attitude indicated that he was unlikely to commit another offense; and he was particularly likely to respond affirmatively to probationary treatment. The judge concluded that the mitigating and aggravating factors were in equipoise.

In accordance with respondent's plea agreement, the court dismissed all other charges in the complaint.

Respondent properly notified the OAE of the charges against him, his plea, and his sentencing, as R. 1:20-13(a)(1) requires.

The Parties' Positions Before the Board

The OAE's Motion for Final Discipline

The OAE urged us to recommend respondent's disbarment, relying on the Court's recent decisions in cases where attorneys have been disciplined for criminal sexual misconduct involving children. First, the OAE considered the Court's May 24, 2017 consolidated opinion in In re Legato, 229 N.J. 173 (2017), which encompassed the disciplinary matters of three attorneys (Legato, Kenyon, and Walter). The Court imposed indeterminate suspensions on Legato and Kenyon, and disbarred Walter. In re Legato, 229 N.J. at 178.

Legato and Kenyon each pleaded guilty to attempted endangering the welfare of a child, a third-degree offense, based on his engagement in sexually explicit online conversations with a child who, in reality, was an undercover law enforcement officer. Id. at 179-80. Legato believed that the individual with whom he communicated was twelve years old; Kenyon believed that the individual with whom he communicated was fourteen years old. Ibid.

Walter pleaded guilty to third-degree endangering the welfare of a child based on his masturbating in the presence of a nine-year-old girl who had been staying at his house with him and her mother. Id. at 181.

The OAE noted that, in disbarring Walter, while imposing indeterminate suspensions on Legato and Kenyon, the Court found Walter's misconduct to be more egregious because it occurred between two "real" people, whereas Legato and Kenyon had "no . . . contact to an actual minor, which would require disbarment." In re Legato, 229 N.J. at 188-89. The OAE asserted that, in those matters, the Court apparently distinguished between attorneys who target actual children and attorneys who, in the OAE's words, "cruise[] online selecting victims at random without regard to whether they are real children or simulated child personalities."

The OAE emphasized, however, that in In re Nilsen, 229 N.J. 333 (2017), and In re Gillen, 230 N.J. 382 (2017) – both decided after Legato, Kenyon, and Walter – the Court disbarred attorneys who used electronic communications to target "children" online, despite the fact that the "children" actually were law enforcement officers. The OAE also relied on In re Toman, 237 N.J. 429 (2019), in which the Court disbarred an attorney who pleaded guilty, in Pennsylvania, to first-degree misdemeanor corruption of a minor after he used text messages to engage his client's fourteen-year-old daughter in sexual activity.

In addition, the OAE highlighted the Court's recognition of the "devastating impact and . . . serious consequences" experienced by child victims

of sexual exploitation. In re Cohen, 220 N.J. 7, 12 (2014). Moreover, the OAE emphasized Justice Albin's rationale, in his dissenting opinion in In re Legato (wherein he favored disbarment rather than indeterminate suspensions for Legato and Kenyon), that "our society and our legal system have undergone a sea change in our understanding of the nature, extent, and effect of sexual exploitation of children. Sexually abused children are irreparably harmed and permanently scarred." In re Legato, 229 N.J. at 191. Although Justice Albin did not question that Legato and Kenyon were capable of rehabilitation, he wrote that "[a]ttorneys must know that there are certain lines that can never be crossed if they intend to retain the privilege to practice law" and concluded that Legato's and Kenyon's conduct crossed such a line. Id. at 195-96.

Based on the above precedent, the OAE argued that respondent should be disbarred.

Respondent's Submissions to the Board

Conversely, through counsel, respondent acknowledged that he should be disciplined but argued that disbarment would be too severe a sanction.

Respondent asserted that his matter was distinguishable from the cases on which the OAE relied. First, addressing the consolidated matters in In re Legato,

229 N.J. at 181, 188-89, he pointed out that Walter masturbated in the physical presence of a nine-year-old who was living at his house; in contrast, he asserted, he had masturbated online, and the minor who viewed him was between thirteen and sixteen years of age. He also pointed out that, unlike Legato and Kenyon (who received indeterminate suspensions), he was not subject to PSL. Id. at 179-80, 187.

Further, he distinguished his conduct from that of the disbarred attorneys in Nilsen, Gillen, and Toman. He emphasized that the attorney in Nilsen had attempted to meet, in person, with a six-year-old child and the child's mother to have sex with them; had attempted to meet with a nine-year-old child for the purpose of having sex; and had sought to hire children or instruct the children's parents to train children to have sex with him.

Further, he argued that his conduct differed from that of the attorney in Gillen, who communicated with an individual whom he believed to be a fourteen-year-old child (in fact, a member of law enforcement) for purposes of sexual contact and to arrange a time and place to meet in person.

Finally, respondent contrasted his misconduct with that of the attorney in Toman, who engaged a minor in sexually explicit ways and sent her pictures of

his genitalia, all while representing the minor's mother against her father in ongoing child custody proceedings.

In mitigation, respondent urged us to consider numerous factors. After his arrest, he began treatment with Jeffrey C. Singer, Ph.D. In an August 2022 letter to respondent's counsel, Dr. Singer stated that respondent was attending and benefiting from weekly outpatient sex-offender specific psychotherapy sessions, lasting fifty minutes. He had expressed "remorse, guilt, and shame" regarding his misconduct; "appear[ed] to be emotionally stable, and not prone to instrumental, destructive impulsivity;" and was not "labor[ing] under refractory deviant patterns of sexual arousal, or from current irresistible sexual urges that are problematic." Dr. Singer concluded that respondent posed "an extremely low risk to anyone at large in the public."

Respondent also submitted a report by Anthony D'Urso, Psy.D., who conducted a May 5, 2022 psychosexual evaluation of respondent and subsequently reviewed additional materials provided by respondent's counsel. Dr. D'Urso recounted the events and evidence underlying the charges against respondent, as follows:

> On 9/23/2021, the New Jersey State Police received a Cyber Tipline from the National Center for Missing and Exploited Children (NCMEC) who assigned the case to the Morris County Prosecutor's Office. Four video files

depicting the sexual exploitation or abuse of minors were identified. A search warrant was executed and forensic examination was conducted on his electronic media including his laptop where he was found exposing himself to minors. [Respondent's] face was seen in one of the videos along with his penis and the victim's faces. Discovery information was provided by the office of [respondent's counsel] and is reviewed below.

An executive summary of the Cyber Tipline dated September 23, 2021, revealed four uploaded files by [respondent] that formed the basis of these charges. The files revealed prepubescent minors that included sexually explicit conduct, nudity and suggestive poses including focus on genitalia. The four images were summarized by the Cyber Tipline.

[Respondent] also engaged others in the Omegle app, an adult public app, which randomly matches users to talk one-to-one using either text or video. On this app, [respondent] was captured masturbating to four adolescent females who were interviewed by the Morris County Prosecutor's Office. The juveniles varied in their reports on remembering or viewing [respondent] masturbate. At least one parent was also seen in the background of the video capture of the faces of the four juveniles. [Respondent] did not chat with the minor victims nor were they recruited to meet in person. He was however, engaged in exhibitionistic behavior by masturbating in their presence through the app. The juveniles were fully clothed and not recruited to act in a sexual manner.

[R-Ex.H at 1-2.]

During his interview with Dr. D'Urso, respondent admitted that "he exposed himself to the minors on the videos on his computer on multiple occasions," over an approximately two-month period. He acknowledged that "the minors in the videos he engaged were between 13 and 17 years old;" "denied that they were prepubertal;" and "denied any attempts at meeting underage victims." Regarding pornography, Dr. D'Urso reported that, once respondent's "consumption of certain pornographic images became satiated, he would look for different images leading to his involvement in child erotica and pornography. The preference for minors was as the post pubertal latency and adolescent levels."

Respondent counsel's brief to us includes the following conclusions from Dr. D'Urso's report:

> [Respondent] has sought treatment and reported on examination his willingness to change his pattern of self-serving and avoidant conduct. He has not attempted to meet minors or engage them in acts of contact offenses. [Respondent] was accurate in his appraisal of his behavior. He identified two paths of sexual addiction, one collecting images that were increasingly stimulating including pornography with children and the other exhibitionism that resulted in seeking others for sexual stimulation online.
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> [Respondent] has seemingly engaged in two contradictory forms of behavior. First, he has over time developed an addiction for sexual stimulation through

pornography that led to increasingly more risky images for sexual stimulation. He noted that his behavior became increasingly risky through the use of pornography at work that could have resulted in termination prior to this current arrest. This pattern of online varied pornography use occurs when chronic use of similar pornography is satiated. This use of pornography leads to alternate forms of stimulation even when primary self-identified sexual preferences are not pedophilic. Second, he engaged in exhibitionistic behavior. Adults with this tendency gain sexual stimulation from exposing themselves to others. While certainly appearing to be an attempt at a contact crime, exhibitionism is a paraphilia[7] where exposing himself is the sexual stimulation. Exhibitionism is another form of paraphilia that is self-serving and self-gratifying without typically seeking contact with a stranger for sexual physical engagement. Both of these patterns reflect a self-indulgent approach to sexuality with suppressed recognition to its impact on a victim in early adolescence.

There are a number of significant stressors in his life and, as his therapist points out, he is addressing them in a stable manner. His willingness to engage in treatment suggest[s] a compliance with legal supervision. Given the limited duration of the child pornography and the exhibitionism with adolescents, [respondent] can be treated on an outpatient basis. Dynamic and static assessments of risk would rate him as low risk. However, his response to the outcomes of his behavior, i.e., arrest, loss of employment, loss of significant

[7] "Paraphilia" refers to "any of a group of disorders in which unusual or bizarre fantasies or behavior are necessary for sexual excitement. The fantasies or acts persist over a period of at least 6 months and may take several forms[,]" including exhibitionism. American Psychological Association Dictionary of Psychology, dictionary.apa.org/paraphilia (last visited Jan. 2, 2024).

> relationships, has not led to decompensation, regression or return to substance use. Supervision and his current support systems, i.e., parents, residential stability, therapy, will all serve as the structure to support therapeutic change and control which is consistent with low risk.
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> [R-Ex.H at 8-9.]

Respondent also provided to us a November 28, 2023 supplemental report from Dr. Singer. Dr. Singer stated that respondent continued his regular attendance of fifty-minute individual sex-offender specific psychotherapy sessions, now on a bi-weekly, rather than weekly, basis. He described respondent as "committed to his emotional and psychological development;" "continu[ing] to approach his psychotherapy sessions in an open-minded, conscientious manner;" and "continu[ing] to gain insight and self-awareness of the psychological etiologies of his past behavior." Dr. Singer opined that respondent's "emotional stability and ability to delay gratification as well as to refrain from impulsivity, remain well intact."

In a December 4, 2023 certification to us, respondent expressed deep regret for his actions. He highlighted his continuing therapy with Dr. Singer and stated that he also took part in daily Sex and Love Addicts Anonymous (SLAA) meetings and spoke to his SLAA sponsor daily by telephone. Moreover, he emphasized his efforts to help his community "through helping fellow addicts

and volunteering many hours at a local animal shelter." He further explained that he "would like to be able to continue to be a productive member of society" and that "I believe that retaining my license would greatly assist me in doing so."

Respondent also provided details about the collateral consequences of his behavior. In May 2022, after his employer, the bank, became aware of the then pending charges against him, the bank terminated him from a position in which he had earned more than $500,000 a year. As a consequence, he forfeited unvested restricted stock units totaling more than $250,000 and approximately $5,000 in employer contributions to his 401(k) plan. He had trouble finding work other than as an attorney performing document review and occasional contract work. Moreover, he had to pay $295 per session for sex-addiction therapy. His girlfriend at the time of his arrest subsequently terminated their relationship. His sister and several former friends no longer maintain their relationships with him.

Respondent, through counsel, urged us to weigh other information in mitigation, as well. Specifically, he has no disciplinary history in twenty-eight years at the bar; cooperated with law enforcement during the investigation underlying his conviction; pleaded guilty, thus, avoiding "the time and resources

of a trial and the emotional drain on the witnesses who would have to testify;" suffered a myocardial infarction in 2019; became addicted to prescription opioids in the early 2000s, attended a recovery program, and successfully maintained sobriety from 2008 to the present; was motivated to avoid recidivism owing to the negative effects of his criminal conduct on his employment, finances, family, and relationships; and had achieved many accomplishments in his life and in his career, including serving "for many years as a member of the New Jersey Corporate Business Law Study Commission, a New Jersey Legislative Commission charged with updating the New Jersey Business Corporation Act."

Finally, respondent submitted three letters of support, written by his Narcotics Anonymous (NA) sponsor and two friends, describing his rehabilitation efforts and positive changes he had made since his arrest; his success, since 2008, in addressing his opioid addiction; his volunteer activities through NA and the SPCA; and his good character.

In conclusion, respondent asked that we deny the OAE's request that we recommend his disbarment. He did not, however, specify an alternative quantum of discipline that he believed would be appropriate.

During oral argument before us, the OAE reiterated the position set forth in its brief in support of the motion for final discipline.

In turn, respondent reiterated the arguments and mitigating factors set forth in his brief and asserted that a two-year term of suspension would be sufficient discipline for his misconduct. Respondent also emphasized that he had been classified as Tier 1 (low risk) under Megan's Law.

We also considered the information contained in the confidential Pre-Sentence Report, which is included as a sealed exhibit in the record.

Analysis and Discipline

Unanimous Finding of Misconduct

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).

Respondent's guilty plea to possessing items depicting the sexual exploitation or abuse of a child, in violation of N.J.S.A. 2C:24-4(b)(5)(b)(iii), and to masturbating using an online video feed, through the website Omegle,

with a fourteen-year-old present on the site, in violation of N.J.S.A. 2C:14-3(b), thus, establishes violations 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 is the extent of discipline to be imposed. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Legato, 229 N.J. at 182 (quoting Cohen, 220 N.J. at 11). Overall, in fashioning the appropriate penalty, we consider 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, . . . prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances," including the "details of the offense, the background of

respondent, and the pre-sentence report," before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse an 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, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995).

In sum, we find that respondent violated RPC 8.4(b).

Quantum of Discipline

Before 2014, in cases involving sexual misconduct against children, the discipline imposed ranged from a reprimand to disbarment. See, e.g., In re Gilligan, 147 N.J. 268 (1997) (reprimand for attorney convicted of lewdness for exposing and fondling his genitals, for his sexual gratification, in front of three individuals, two of whom were under the age of thirteen); In re Ferraiolo, 170 N.J. 600 (2002) (one-year suspension for attorney convicted of third-degree 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 Ruddy, 130 N.J. 85 (1992) (two-year suspension for attorney convicted of 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 convicted of third-degree endangering the welfare of a child; the attorney inappropriately touched a minor on her rectal area while the minor was entrusted to his care; the attorney also repeatedly violated the terms of his probation by

failing to attend mandatory therapy sessions and failed, for fifteen years, to report his conviction to disciplinary authorities).

More recently, however, in Cohen, 220 N.J. at 9, the Court imposed an indeterminate suspension where the attorney – a member of the state assembly at the time of his arrest – pleaded guilty to second-degree endangering the welfare of a child, following an investigation that led to the discovery of explicit pornographic images of children on his state-issued computer and on his private law office computer. The attorney received a five-year prison sentence for his offense. Ibid. In his disciplinary matter, the Court weighed, in aggravation, that he had downloaded child pornography using a state-owned computer at his office and, further, exposed "an innocent third party to the risk of criminal liability" by using a receptionist's computer for this purpose. Id. at 17. In mitigation, the Court weighed that he had been sexually abused as a child. Id. at 18.

In imposing an indeterminate suspension, the Court acknowledged that, over time, society has become more acutely aware of the pernicious effects of sexual crimes against children and, further, noted recent changes in the law increasing the severity of those crimes. Id. at 17-18. In addition, the Court emphasized 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.
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> [Id. at 12.]

The Court cautioned the bar that, although it had not adopted a "bright-line rule requiring disbarment in all cases involving sexual offenses against children, in the future, convictions in egregious cases involving child pornography may result in disbarment of attorneys who commit these offenses, in light of society's increasing recognition of the harm done to the victims of those offenses." Id. at 9.

Since Cohen, 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. Most significantly, in In re Legato, 229 N.J. at 178, the Court addressed three consolidated matters, each involving an attorney who had pleaded guilty to committing a sexual offense against a child.

The attorney in Legato admitted that he had engaged in explicit online conversations with an individual whom he believed to be a twelve-year-old girl. Id. at 179. 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 and intercourse with her. Ibid. Unbeknownst to Legato, however, he was interacting with an undercover police officer. Ibid. Eventually, Legato engaged in a video chat with the undercover officer, during which he unzipped his pants and exposed his erect penis. Id. Although Legato scheduled two in-person meetings with his putative victim, he did not appear on either occasion. Ibid. 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." Id. at 186.

In Kenyon, over the course of a four-month period, the attorney engaged in multiple internet chats with a person he believed to be a fourteen-year-old girl but who was, unbeknownst to him, an undercover officer. Id. at 180. Kenyon admitted that, in addition to his illicit chats, he sent to his intended victim images of, and links to, hardcore adult pornography. Ibid. Like Legato, Kenyon also admitted that he arranged to meet with his intended victim; however, he did not appear for that meeting. Ibid. The Court determined that Kenyon's conduct merited an indeterminate suspension, noting that – like Legato – he engaged in

illicit online conversations with an individual whom he believed to be a minor, but he never met the "child" in person. Ibid.

In imposing indeterminate suspensions on Legato and Kenyon, the Court noted "that the public is protected while [they] are suspended and under parole supervision for at least fifteen years." Id. at 187. Thus, "with the protections of Megan's Law and PSL in place," the Court "stop[ped] short of eliminating all hope of future reinstatement," further observing that "[w]e cannot anticipate what therapies, pharmaceuticals, or treatments may become available to help control or rehabilitate Legato or Kenyon." Ibid. Simultaneously, however, the Court emphasized that each attorney would "be subject to 'vigorous review' before his license may be restored." Id. at 186-87.

In contrast to the online misconduct undertaken by the attorneys in Legato and Kenyon, the attorney in Walter masturbated, on multiple occasions, in the physical presence of a nine-year-old child. Id. at 181. He engaged in this misconduct at times when the two were alone in a swimming pool at his home, where the child and her mother resided. Ibid. 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" warranted disbarment. Id. at 188-89. Moreover, the Court explained that Walter had "demonstrated that he [was]

willing to take advantage of his power for his own benefit, encapsulating the precise object that [the Court is] tasked with maintaining – public confidence in the bar." Ibid. The Court also noted that he apparently lacked remorse, failed to accept responsibility, and engaged in repeated acts of misconduct toward the child. Ibid.

Addressing all three cases and contrasting Legato and Kenyon with Walter, the Court found "a significant distinction between online and personal physical contact" and noted that, in the first two cases, there had been "no actual harm or contact to an actual minor, which would require disbarment." Id. at 188.[8] The Court, thus, declined to adopt a bright-line rule requiring disbarment in all cases involving sexual offenses against children. Id. at 182, 187. Rather, the Court stated that the imposition of discipline in these matters "requires a fact-sensitive inquiry on a case-by-case basis[,]" where the "appropriate level of discipline may depend on different factors, such as whether the case 'involved touching, physical violence, or actual dissemination [of child pornography] to others, the number of pictures or videos, or whether the perpetrator suffered

[8] As mentioned above, in a dissenting opinion, Justice Albin would have disbarred both Kenyon and Legato. He concluded that "[t]he sexual exploitation or abuse of children – whether completed or, as in the Legato and Kenyon matters, attempted – is such an egregious violation of societal norms that no discipline short of disbarment will ensure public confidence in the bar or the judiciary's governance of the bar." In re Legato, 229 N.J. at 189.

from mental illness or sexual abuse himself or herself.'" Id. at 182-83 (second alteration in original) (quoting Cohen, 220 N.J. at 18).

Since the Court's decision in In re Legato, three more attorneys have been disbarred for sexual crimes against minors.

First, in In re Nilsen, 229 N.J. 333 (2017), the Court disbarred an attorney who engaged in online chats with an individual purported to be the thirty-two-year-old mother of a nine-year-old girl. Unbeknownst to him, however, he was communicating with an undercover law enforcement officer. In the Matter of Tobin G. Nilsen, DRB 16-222 (February 23, 2017) at 3. 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. Ibid. Prior to his departure for Atlanta, however, 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.

Second, in In re Gillen, 230 N.J. 382 (2017), 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 engaged in explicit online

conversations with a girl whom he believed to be fourteen years old but who, unbeknownst to him, was an undercover officer. In the Matter of Daniel M. Gillen, DRB 16-269 (April 25, 2017) at 2-5. Additionally, he sent to the girl files of explicit pictures and links to pornographic websites. Id. at 3-4. Gillen was arrested after setting a date to meet the girl and appearing for that meeting, with wine coolers and drugs used to treat erectile dysfunction. Id. at 2.

Finally, in In re Toman, 237 N.J. 429 (2019), the attorney engaged in sexual activity, through text messages, with the fourteen-year-old daughter of a client whom he was representing in a child custody dispute against the child's father. In the Matter of Jeffrey Toman, DRB 18-297 (January 29, 2019) at 2-3. Specifically, the attorney requested that the girl provide photos of herself wearing little clothing, discussed topics of a sexual nature, and sent her pictures of his genitalia. Id. at 3. In recommending the attorney's disbarment, we noted that the fourteen-year-old was already vulnerable, given the pending custody dispute, and that neither she nor her mother may ever feel safe from an attorney, should they need counsel again. Id. at 17.

Since Toman, we have considered one additional case involving an attorney convicted of sexual offenses against children, In the Matter of Michael R. Shapiro, DRB 21-127 and 21-189 (December 7, 2021), and recommended

disbarment. Although the attorney subsequently consented to disbarment before the Court adjudicated the matter – and consequently, the Court dismissed the matter as moot, In re Shapiro, 250 N.J. 92 (2022) – our analysis is informative to the instant facts.

Specifically, the attorney in Shapiro engaged in sexually illicit text message chats, over the course of several weeks, with three purported fourteen-year-old girls who were, unbeknownst to him, undercover law enforcement officers. In the Matter of Michael R. Shapiro, DRB 21-127 and 21-189 at 24. In his exchanges with two of the purported girls, he discussed meeting to engage in sexual acts, but he never arranged a formal meeting with either. Ibid. However, in his exchanges with his third putative victim, he took the overt act of arranging a formal meeting to determine whether she was, in fact, a fourteen-year-old girl before they could engage in sexual acts. Ibid. While driving towards the rendezvous area, he sent a message that he could no longer meet because his daughter was ill, at which point law enforcement continued to follow his vehicle towards the meeting location. Ibid. A few miles away from the meeting area, law enforcement initiated a traffic stop and arrested the attorney, who admitted that he was going to meet with someone underage and that he "should have just cut it off." Ibid.

We found the attorney's misconduct most similar to that of the attorneys in Gillen and Nilsen, who were both disbarred because, although they were communicating with undercover officers, they appeared for meetings with their putative underage victims. Id. at 24-25. We reasoned that, although Shapiro did not appear at the arranged meeting with his putative victim, he was arrested while driving to the location; his proffered reason for attempting to back out of the rendezvous was not because he had lost sexual interest in the child, but because of his own child's purported illness; and despite his attempt to back out, he continued to drive towards the meeting location and admitted, upon his arrest, that he was going to meet with an underage girl. Ibid. Thus, in our view, he did not actually repudiate his scheduled meeting with the putative minor. Ibid.

In recommending Shapiro's disbarment, we concluded that the fact that he did not make it to the arranged location because law enforcement stopped him a few miles away did not place him in the same category as the indeterminately suspended attorneys in Legato and Kenyon, who took no demonstrable steps to appear for meetings with their putative underage victims. Id. at 25. Moreover, his misconduct, which occurred over the course of several weeks, was not simply a bad mistake, but, rather, constituted a pattern of behavior to sexually pursue three different putative children. Ibid. He could have

discontinued his behavior; however, he did not do so until he was apprehended by law enforcement. Ibid.

In closing, we reiterated that, "[a]s in Gillen and Nilsen, we remain resolute that when 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,' the attorney should be disbarred." Ibid. (quoting In re Templeton, 99 N.J. 365, 376 (1985)).

Here, respondent was convicted of two distinct (in both their timing and their nature) child sexual offenses: child endangerment, based on his possession of multiple items depicting child sexual abuse; and sexual contact with a minor, based on his masturbating within view of a fourteen-year-old using Omegle's one-to-one video chat service.

However, we are equally divided on whether respondent's misconduct warrants a permanent bar on his ability to hold a license to practice law in New Jersey.

Members Recommending Indeterminate Suspension

The Members recommending indeterminate suspension in this case conclude that respondent's misconduct, while deplorable, is most similar to the

precedent in which the Court has imposed discipline short of disbarment. Thus, those Members would leave it to the Court to determine, in the future, whether respondent has rehabilitated himself to the extent that he may be eligible for reinstatement to the practice of law. An indeterminate suspension allows for that possibility.

In support of this determination, these Members note that, with respect to respondent's possession of child pornography, unlike the attorney in Cohen, who also possessed explicit pornographic images of children, respondent's crime did not meet the enhanced elements requiring a prison sentence or PSL, or implicate the other aggravating factors present in that case.

Turning to respondent's misconduct on the Omegle online platform, these Members find respondent's behavior more akin to the misconduct in Legato and Kenyon, where the Court determined that an indeterminate suspension was appropriate because, although the attorneys admitted to targeting underage children online, they never took the additional step of meeting or attempting to meet with the minor.

These Members acknowledge that, in imposing indeterminate suspensions on Legato and Kenyon, the Court emphasized that "the public is protected while [they] are suspended and under parole supervision for at least

fifteen years," and that, in this case, respondent is not subject to PSL. However, after careful consideration of the nature of respondent's misconduct, these Members find that the ultimate holding in Legato, where the Court stopped short of disbarment, still applies – "[w]e cannot anticipate what therapies, pharmaceuticals, or treatments may become available to help control or rehabilitate" attorneys like respondent, Legato, or Kenyon. As the Court declared in Legato, if respondent is indeterminately suspended, he should be "subject to 'vigorous review' before his license may be restored."

Moreover, these Members see a distinction between respondent's misconduct and that of the attorney in Walter, who masturbated, on multiple occasions, in the physical presence of a nine-year-old child. In that matter, the Court emphasized aggravating factors that are not present in this case, including the "the nature and severity of [Walter's] conduct, the physical presence of the child, and his position of power over and responsibility for the child." Moreover, the Court found that Walter had "demonstrated that he [was] willing to take advantage of his power for his own benefit" and lacked remorse, failed to accept responsibility, and engaged in repeated acts of misconduct toward the child. Here, although respondent did engage in repeated acts of online masturbation in the view of minors, the record supports the conclusion that he has exhibited

remorse and accepted responsibility for his misconduct. He also was not in a position of power or responsibility over his victims.

As the Court found in contrasting Legato and Kenyon with Walter, these Members also find "a significant distinction between online and personal physical contact," the latter of which clearly would require disbarment under New Jersey precedent.

Finally, these members see numerous, clear distinctions between the facts of this case and the facts of the most recent cases in which attorneys were disbarred for sexual misconduct – Nilsen, Gillen, Toman, and Shapiro[9] – who either attempted to meet with putative or real underage victims or abused their power and influence over the victim and the victim's parent in order to pursue their criminal sexual desires.

Vice-Chair Boyer and Member Rodriguez were further influenced by the following factors in concluding that an indeterminate suspension, rather than disbarment, is the appropriate sanction in this case:

a. Unlike the attorneys in the other cases discussed in the opinion, respondent did not actively target underage

[9] As previously mentioned, Shapiro consented to disbarment while the Board's recommendation for his disbarment was pending before the Court.

females with whom to interact and did not make any effort to initiate an in-person meeting. The evidence of record is that he went onto a website promoted as being for persons 18 and older and masturbated while randomly matched females on the site observed him. Under these circumstances it cannot be said that he affirmatively sought to target or induce underage females.

b. As found by the sentencing judge, respondent, who had no prior criminal or disciplinary record, appears to be a good candidate for rehabilitation and does not appear to pose a threat as a repeat offender.

Moreover, Vice-Chair Boyer and Member Rodriguez respectfully disagree with the assertion by certain Members of the Board supporting disbarment that "respondent's preference for graphic child pornography – the possession of which he was convicted for – only serves to confirm his conscious choice of those he desired to masturbate in front of online – female children," as unsupported by the evidence of record. First, as indicated above, the evidence of record is that respondent could not "choose," rather his online partners were randomly assigned from a pool of what was advertised to be adults. The

interaction that formed the basis of his guilty plea and conviction was with a teenage girl who went onto an adult site without any prompting or inducement by respondent. Secondly, the psychological evaluation that formed the basis of the sentencing judge's recommendation specifically addressed the question of whether respondent had an attraction to minors and found that "there was no definitive evidence Mr. Rave has an attraction to minors, felt driven or compelled to view child pornography or have teenage girls watch him masturbate. Based on all the available information, Mr. Rave's offending behavior was due to poor judgment."

Based upon that finding, respondent was not sentenced as an offender under the purview of the New Jersey Sex Offender Act and received a sentence more lenient than most of the attorneys in the reported cases discussed in this decision.

Members Recommending Disbarment

The Members recommending disbarment conclude that, under the precedent of Legato and the cases which followed, respondent's misconduct on Omegle – standing alone – warrants his disbarment. Like the disbarred attorney in Walter, respondent admittedly "masturbated in front of the girl for his own

sexual pleasure" and was convicted for a completed crime based on his engagement with an actual child. Thus, he had contact with an "actual minor," implicating the Court's guidance that "actual harm or contact to an actual minor . . . would require disbarment." Moreover, based on the credible evidence in the record, he admittedly exposed himself and masturbated in front of three additional minors, who were identified by law enforcement during the underlying criminal investigation, and he engaged in this activity over a period that, in his estimation, lasted about two months.

Stated differently, respondent completed the illegal sexual acts that he sought to undertake. In recommending disbarment in Gillen and Nilsen, a majority of our Members found significant that the attorneys had appeared for meetings with their putative underage victims. Similarly, in Shapiro, our majority accorded substantial weight to the attorney's overt act of arranging a formal meeting with his third putative victim and his admission that, at the time of his arrest, he was on his way to that meeting. Here, in the view of the Members recommending disbarment, respondent not only took an overt act toward engaging in sexual activity with a minor but accomplished the purpose for which he engaged with others on Omegle, at times with individuals whom he knew or should have known were minors.

In the view of these Members, given the current and ever-evolving state of technology, the fact that respondent satisfied his sexual urges by masturbating in view of minors using a live, online video feed, as opposed to doing so within a child's physical line of site, does not make disbarment any less appropriate. Like the attorney in Walter, he committed a criminal offense against an actual child; also like Walter, he masturbated in front of a minor on multiple occasions (albeit with four different minors, as opposed to the sole child targeted by Walter).

This is the first case, following the Court's clarification in Cohen of the stern discipline warranted for child sexual abuse, in which the attorney chose his victims randomly, without obtaining confirmation (or putative confirmation) that they were children. The Members recommending disbarment determined that respondent's misconduct is nevertheless comparable to that of the attorneys who have been disbarred in the post-Cohen cases, insofar as he engaged in the equivalent of willful blindness, repeatedly satisfying himself sexually online without regard for the age of the individual whom he enlisted for this purpose. Respondent could have taken steps to ensure that he limited his activities to consenting adults. Instead, he took advantage of the anonymity provided by random pairing with other users of a website that a reasonable user could easily

identify as accessible to adolescents, even if the site purportedly placed some limits on their access; on multiple occasions, while using this website, he masturbated, while visible on live video feed, during one-on-one chats; and ultimately, he engaged in this activity with a minor. Contrary to the high standards expected of the legal profession, he displayed extraordinary recklessness regarding the dictates of the law and utter indifference to whether his sexual activity involved minors. He then pleaded guilty to fourth-degree criminal sexual contact with a minor, in violation of N.J.S.A. 2C:14-3(b).

To summarize, in the view of these Members, respondent's conviction for criminal sexual contact alone warrants disbarment.

Respondent, however, committed additional, egregious criminal conduct – possessing images and videos depicting the sexual exploitation or abuse of a child, including vaginal penetration and oral sex. As the Court stressed in Cohen, the possession of such items is a grave "offense against society and the child victims involved in the creation and dissemination" of these materials. Moreover, "[c]hild pornography, in particular, revictimizes the children involved with each viewing of the same image or video."

Moreover, in determining to recommend respondent's disbarment, Chair Gallipoli and Member Hoberman reject respondent's post-guilty plea attempt to

minimize his crimes by claiming that he accessed Omegle to find women who would watch him masturbate, but that he never intended to seek out minors and believed that, because the site advertised as an adult site, it never occurred to him that minors might be using it. Member Hoberman notes that respondent's preference for graphic child pornography – the possession of which he was convicted for – only serves to confirm his conscious choice of those he desired to masturbate in front of online – female children.

Notably, as Dr. D'Urso – who was retained by respondent as part of his defense case – reported, respondent admitted that "he exposed himself to the minors on the videos on his computer on multiple occasions," over an approximately two-month period. He acknowledged that "the minors in the videos he engaged were between 13 and 17 years old;" "denied that they were prepubertal;" and "denied any attempts at meeting underage victims." According to Dr. D'Urso, once respondent's "consumption of certain pornographic images became satiated, he would look for different images leading to his involvement in child erotica and pornography. [His] preference for minors was at the post pubertal latency and adolescent levels."

The Members recommending disbarment acknowledge that the instant case of possession of child pornography does not include the aggravating factors

that the Court weighed in imposing an indeterminate suspension in Cohen. However, the Court made clear in Cohen that, in the future, attorneys who engaged in possession of child pornography could anticipate stringent discipline. Thus, at a minimum – and considering the nature and number of items found in respondent's possession – Cohen supports a lengthy term of suspension solely for respondent's admitted possession of such materials.

In the view of these Members, in combination, respondent's two distinct modes of child sexual exploitation merit nothing less than disbarment. As set forth most recently in Shapiro, these Members remain resolute that when 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," the attorney should be disbarred. Templeton, 99 N.J. at 376.

Pursuant to R. 1:20-13(c)(2), the Disciplinary Review Board and the Court may consider, in mitigation, "relevant evidence . . . that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter." Here, in mitigation, respondent has engaged in ongoing treatment efforts, including individual counseling and participation in SLAA. His therapist reported, in November 2023, that he was benefitting from treatment and was

able to "delay gratification" and "refrain from impulsivity." Also in relevant mitigation, respondent has expressed remorse for his actions. Further, his criminal conduct did not warrant the imposition of PSL. Finally, this is his first attorney discipline matter in twenty-eight years at the bar.

Regarding potential aggravating factors, the record does not provide information about specific harms to identified minors in a manner that would permit these Members to weigh such harm in aggravation.[10] Also, because these Members' earlier analysis of respondent's recklessness in using Omegle was based, in part, on evidence that he also masturbated during video chats with three other minors (in addition to the minor identified as his victim in his guilty plea), it would be improperly duplicative to weigh evidence of these incidents in aggravation. Thus, there are no aggravating factors to consider independent of respondent's misconduct.

[10] Regarding A.H. – the victim of respondent's conviction based on his conduct on Omegle – the record provides nothing more than her age. Regarding all four minors (A.H. and three others) who were seen on respondent's Omegle videos, the record states only that when they were interviewed by the Morris County Prosecutor's Office, they "varied in their reports on remembering or viewing [respondent] masturbate." Regarding the minors who were portrayed in the child pornography in respondent's possession, the record does not reflect whether investigators identified or interviewed them.

Given the gravity of respondent's misconduct, the mitigating factors do not alter the conclusion reached by these Members – that disbarment is the only appropriate quantum of discipline.

Conclusion

As set forth above, we unanimously determine that respondent violated the Rules of Professional Conduct. However, we are unable to reach a consensus among the eight participating Members regarding the appropriate quantum of discipline. As set forth above, four Members voted to recommend an indeterminate suspension and four Members voted to recommend disbarment.

Member Rivera was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael T. Rave
Docket No. DRB 23-218

Argued: January 18, 2024

Decided: March 20, 2024

Disposition: Other

Members	Disbar	Indeterminate Suspension	Absent
Gallipoli	X		
Boyer		X	
Campelo		X	
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou		X	
Rivera			X
Rodriguez		X	
Total:	4	4	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel