***People v. Brian M. Reed Benight*. 16PDJ032. December 8, 2016.**

A hearing board suspended Brian M. Reed Benight (attorney registration number 45729) for two years, effective January 12, 2017. To be reinstated, Benight will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

Through an anonymous text on an online application, Benight volunteered to fulfill a teenage girl's request for alcohol. When Benight and the adolescent met, Respondent sexually assaulted her, groping her breasts and vaginal area over her clothes without her consent. Benight eventually pleaded guilty to unlawful sexual contact, a class-one misdemeanor. Benight thus violated Colo. RPC 8.4(b) (it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).

Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** BRIAN M. REED BENIGHT	Case Number: **16PDJ032**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

Through an anonymous text on an online application, Brian M. Reed Benight ("Respondent") volunteered to fulfill a teenage girl's request for alcohol. When Respondent and the fifteen-year-old met, Respondent sexually assaulted her, groping her breasts and vaginal area over her clothes without her consent. Respondent eventually pleaded guilty to unlawful sexual contact, a class-one misdemeanor. This misconduct warrants a two-year suspension.

I. PROCEDURAL HISTORY

On April 6, 2016, Erin R. Kristofco, Office of Attorney Regulation Counsel ("the People"), filed a complaint against Respondent with Presiding Disciplinary Judge William R. Lucero ("the PDJ"). Through his counsel, Nancy L. Cohen, Respondent answered on April 27, 2016.

On June 1, 2016, the PDJ granted a motion for a judicial determination. In that order, the PDJ directed the Arvada Police Department to give the People subpoenaed video evidence, and designated that video evidence as confidential.

Respondent filed "Respondent's Motion to Amend His Answer to the Complaint" and "Respondent's Amended Answer to the Complaint" on September 8, 2016. At a prehearing conference on September 19, 2016, Respondent's counsel asked the PDJ to accept the amended answer, in which Respondent admits many of the complaint's allegations as well as the charged rule violation. His counsel also requested that the PDJ convert the disciplinary hearing to one solely on the sanctions. Given that the parties disagreed on some facts underlying the rule violation, the PDJ denied Respondent's motion to convert the hearing to one on sanctions, reasoning that the People were entitled to latitude in presenting their case

in the manner they deemed most fitting. The PDJ did, however, accept Respondent's offer to admit to the charged rule violation.

At the September hearing, the PDJ, along with attorneys David A. Helmer and Sisto J. Mazza, presided as members of the Hearing Board. Kristofco represented the People, and Respondent attended with Cohen. During the hearing, the Hearing Board considered stipulated exhibit S1, the People's exhibits 1-3, and Respondent's exhibits A and C.[1] The Hearing Board heard testimony from the victim J.F. (a juvenile), Officer Kevin Lewis, and Respondent.

After the hearing, the PDJ granted the parties' motion to suppress highly sensitive and private information disclosed in the disciplinary hearing by J.F. relating to her father.

II. FACTS AND RULE VIOLATIONS[2]

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on May 28, 2013, under attorney registration number 45729. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[3]

On the afternoon of November 24, 2014, J.F., a fifteen-year-old at the time, posted an anonymous text on an online application called Whisper, requesting that someone buy her alcohol. As J.F. explained, Whisper allows people to make untraceable, anonymous posts; the text of the post remains on the application until the user logs off, when the text disappears and cannot be recovered. Respondent, a thirty-one-year-old lawyer who had married just three months earlier, answered J.F.'s Whisper post and volunteered to buy her alcohol.

Respondent testified that although he knew buying alcohol for a minor was "wrong and illegal," he stepped forward because he wanted to be like "that cool adult" who helped him procure alcohol as an adolescent. "I was in a very weird mental state," he recalled.

Both J.F. and Respondent testified that there was mention of an exchange of her panties for the alcohol.[4] J.F. also requested that Respondent send his picture to her so that she could form a judgment about him, but he did not. The two arranged to meet around 12:30 p.m. the next day, in a parking lot behind the Target store in Arvada. Respondent told

[1] Exhibits 2, 3, and A are **SUPPRESSED**. Exhibit C, a Google map, was shown to J.F., who used a green highlighter and a pen to mark certain locations on that map.

[2] The findings of fact here are drawn from testimony at the disciplinary hearing, unless otherwise noted.

[3] *See* C.R.C.P. 251.1(b).

[4] J.F. testified that Respondent proposed to give her alcohol if she provided him with sexy pictures and her panties in return. Respondent disagreed, insisting that J.F. offered him first marijuana and then her panties in exchange for alcohol; he testified that he declined the first offer but demurred as to the second, saying only that they could discuss the matter when they met. We need not resolve this dispute, as we consider these facts immaterial to our findings.

J.F. to arrive alone. J.F. gave Respondent her cell phone number so that they could be in contact.

Respondent, who serves as the sole in-house attorney for a construction company in Littleton, went to work the next morning. At mid-day he left his office, stopped at a liquor store to buy vodka, and then drove to Arvada to meet J.F. He backed into a parking space by a tree behind Target, near the loading docks, where the parking spots are somewhat secluded.[5]

J.F. was inside Target with her friend when she received a text from Respondent. The two teenagers exited Target and walked to the back of the lot. J.F. testified that she brought $25.00 with her, thinking that she could simply pay Respondent for the vodka rather than give him pictures or panties.

She approached Respondent's truck, while her friend milled around in the area. Respondent asked her name, and he told her his name. He said she was beautiful. Then he showed her the bottle and asked her to get into his truck, offering to take the keys out of the ignition so she could be sure he would not drive away. She declined. He repeated his request, she said, and asked her to get in the backseat to remove her panties. Again she refused. He opened his door and swung his legs out of the vehicle so his feet rested on the ground, while he tried to coax her into the truck.

His persistence led J.F. to believe that "things were getting a little bit too far," so she pulled out her cell phone and positioned it in such a way to make Respondent think that she was texting. Instead, she said, she pulled up Snapchat, another online application that, among other things, allows users to make a video, write a caption for the video, and text or post the video instantaneously. J.F. explained that she wanted to surreptitiously record Respondent so that "if anything happened" to her, she would "have a record of what he looked like." She captured a three- or four-second video of Respondent, which shows his hands reaching out to her, grabbing her sweatshirt, and pulling her toward him.[6] She immediately posted the video, which she captioned "Help me."

When Respondent pulled J.F. toward him, he saw her friend wandering around near the passenger side of the truck. Without J.F.'s consent, Respondent then touched J.F.'s breasts and her vaginal area over the top of her clothes. J.F. testified that she felt "scared" and she "froze."[7] She remembered being afraid that Respondent might "put" her in his car and drive away. She stepped back from Respondent just as her friend approached. According to J.F., Respondent then shut his car door, gave her the bottle, and drove away.

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[5] *See* Ex. C (showing where Respondent parked, as marked with a "V" by J.F. at the hearing).

[6] *See* Ex. 3.

[7] J.F. also testified that Respondent began rubbing his penis over the top of his clothes, which he denied. Instead, he maintained, he was merely "scratching" or "adjusting himself." Again, we decline to resolve this factual dispute, as its resolution is irrelevant to our findings.

Respondent remembers it differently: he says he then offered to give both adolescents a ride back to the front of the Target store, but they rejected the offer and he left.

J.F. and her friend returned to J.F.'s house. Soon after, Officer Kevin Lewis arrived, having been dispatched to check on J.F. after one of her friends saw her posted video and grew concerned. J.F. told Lewis that while she was in Target's front parking lot, Respondent pulled up, rolled down his window, and grabbed her shirt to pull her toward him while touching his penis over his pants.[8] Lewis continued to investigate.

Sometime that evening, Respondent texted J.F.—inadvertently, he said—asking, "What happened to you today?" She responded, "Who is this?" He replied, "Sorry wrong number." She texted back "ok." Around 8:30 that night, Lewis called Respondent to ask whether he had been in contact with a juvenile that day. According to Lewis, Respondent said that he did not recall talking to a juvenile. Lewis testified that Respondent was "not at all forthcoming" and soon asked to call Lewis back. About three hours later, Respondent's lawyer contacted Lewis. Respondent turned himself in and was arrested that night.

On April 27, 2015, Respondent pleaded guilty to unlawful sexual contact, a class-one misdemeanor under C.R.S. section 18-3-404(1).[9] The elements of that offense are: 1) that the defendant; 2) in the State of Colorado, at or about the place charged; 3) knowingly subjected a victim, not his spouse, to any sexual contact; and 4) the defendant knew that the victim did not consent.[10] He was sentenced on June 22, 2015, to twelve days in jail (served on weekends), four years of probation, and mandatory registration as a sex offender.[11] He was ordered to pay $4,603.50.[12] As part of his probation, Respondent must attend treatment, submit to polygraph tests, refrain from using alcohol or other substances, and continue to work.[13]

Respondent explained that with his sentence comes many restrictions and requirements. He will remain on the sex offender registry for at least ten years after his probation ends. He must submit to quarterly residence checks. He cannot have any contact with minors, including the children of family members. If he wishes to invite anyone to his home, he must first disclose to the visitor his terms of probation, obtain the visitor's contact information, and secure the visitor's signature to memorialize his disclosure. His probation officer then calls the visitor. He must strictly adhere to safety plans that he develops in conjunction with his treatment providers. Those safety plans are designed to help him account for risk factors by outlining where he is permitted to go and when, and enumerating

[8] J.F. sat through two additional interviews with the police. She eventually told officers that she and Respondent had arranged an exchange of alcohol through Whisper, and that Respondent touched her without her consent. Lewis noted at the disciplinary hearing that it is "common with kids" to decline to report assaults or to minimize the harm they suffered for fear of "get[ting] in trouble."

[9] *See* Ex. 1.

[10] *See* Ex. 1.

[11] Ex. S1.

[12] Ex. S1.

[13] Ex. S1.

other limitations, including whether he is required to be accompanied by his wife. His general movement safety plan allows him to go to work, though it does not require him to tell his employer about the safety plan. To the contrary, he said, he is under no obligation to disclose to his employer his status as a sex offender, and he has not done so.

Based on J.F.'s credible testimony, and as Respondent has stipulated, we find that Respondent violated Colo. RPC 8.4(b), which provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.[14]

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[15] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[16] When imposing a sanction after a finding of lawyer misconduct, a hearing board must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

ABA *Standard* 3.0 – Duty, Mental State, and Injury

Duty: Respondent flouted his duty to the public to maintain personal integrity when he sexually violated a minor. He also repudiated his duties to the public and the legal system to uphold the law when he committed this act of criminal misconduct, which was "in total disregard of the fundamental elements of moral standards that the public has a right to expect of a lawyer."[17]

Mental State: Respondent acted with intent.[18] He responded to J.F.'s posting and arranged the meeting, then waited almost a full day before executing his plan, all for his own sexual gratification.

Injury: Respondent shamed himself and his family. He also brought disgrace on the profession and contributed to a degraded public perception of the bar. But Respondent's actions most seriously affected J.F. He violated the privacy of her body, destroyed her sense of safety and trust, debased her, and made her feel "uncomfortable" and "weird" around grown men. As J.F. testified, now if she wants something she wonders what she has to "do in return."

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[14] His misconduct also violated C.R.C.P. 251.5(b), which provides that any criminal act reflecting adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer constitutes grounds for discipline.
[15] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[16] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).
[17] *People v. Grenemyer*, 745 P.2d 1027, 1030 (Colo. 1987).
[18] ABA *Standards* § IV, Definitions ("'Intent' is the conscious objective or purpose to accomplish a particular result.").

ABA *Standards* 4.0-7.0 – Presumptive Sanction

ABA *Standard* 5.12 establishes suspension as the presumptive sanction for here. That standard applies when a lawyer knowingly engages in criminal conduct that seriously adversely reflects on the lawyer's fitness to practice law, when the criminal conduct does not involve elements of dishonesty, fraud, deceit, or misrepresentation.[19]

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that may justify an increase in the degree of the sanction to be imposed, while mitigating circumstances include any factors that may warrant a reduction in the severity of the sanction.[20] We apply three aggravating factors, all of which we weigh heavily, and three mitigating factors, two of moderate import and one of little import.

Aggravating Factors

Dishonest or Selfish Motive – 9.22(b): We do not find that Respondent acted dishonestly. But we do find that he selfishly pursued his own sexual gratification without concern for the trauma that J.F. might suffer, and even though he recognized that his behavior was both illegal and morally wrong. We consider this a significant factor in aggravation.[21]

Vulnerability of the Victim – 9.22(h): J.F. was fifteen years old when Respondent sexually assaulted her. Respondent attempted to use his leverage as an adult—his access to alcohol—as a bargaining chip to satisfy his sexual urges. When J.F. did not cooperate with his instructions, he used physical coercion to violate her. This, too, is a substantial factor in aggravation.

Illegal Conduct – 9.22(k): Not only did Respondent sexually assault a teenager without her consent, he also gave her alcohol, which is a separate, chargeable criminal offense. We weigh this factor heavily in aggravation.

Mitigating Factors

Absence of Prior Disciplinary Record – 9.32(a): Respondent advocates for application of this mitigator. He was admitted to the bar in May 2013 and sexually assaulted J.F. in

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[19] Sexual assault has been deemed a "crime of moral turpitude." *People v. Bertagnolli*, 922 P.2d 935, 937 (Colo. 1996). In *Grenemyer*, where a lawyer sexually assaulted a minor, the Colorado Supreme Court applied ABA *Standard* 5.12, implicitly acknowledging that such criminal conduct seriously adversely reflects on a lawyer's fitness to practice law. 745 P.2d at 1029.

[20] *See* ABA *Standards* 9.21 & 9.31.

[21] *See In re Day*, 173 P.3d 915, 927 (Wash. 2007) (finding that "conviction for a crime that involves touching for the purposes of sexual gratification, such as child molestation, demonstrates a selfish motive and the hearing officer erred in not finding that it was an aggravating factor").

November 2014. That he had not run afoul of the ethical rules in the eighteen months before his misconduct occurred merits only a little mitigating import in our view.[22]

Personal or Emotional Problems – 9.32(c): Respondent asks that we consider two personal or emotional problems to justify a reduction in the severity of the sanction: first, that at the time of his misconduct he was rattled by his parents' announcement of their separation after thirty years of marriage; and second, that at the time of his misconduct he was suffering from uncontrolled diabetes, which may have had some effect on his judgment. We decline to accord these circumstances any credit in mitigation. Respondent presented no evidence about these problems save for his own testimony, which failed to credibly link the problems to his misconduct.[23]

Timely Good Faith Effort to Make Restitution or Rectify Consequences of Misconduct – 9.32(d): Respondent urges us to apply this factor because he is complying with the terms of his probation and has, as a court-ordered requirement, made payments to the victim assistance fund. But ABA *Standard* 9.4(a) states that forced or compelled restitution is neither aggravating nor mitigating, so we do not consider Respondent's compliance with his probationary conditions in mitigation under this rubric.

Cooperative Attitude Toward Proceedings – 9.32(e): Respondent states that we should consider his cooperation in this proceeding by offering to admit to the charged rule violation, thus helping to conserve prosecutorial and judicial resources. But because his offer was a legal strategy designed to redound to his own benefit[24]—and because the judgment of conviction conclusively establishes Respondent's commission of the crime[25]—we do not consider this factor in mitigation.

Remorse – 9.32(l): We believe, based on Respondent's manner, demeanor, and testimony, that he feels true remorse for the effect that his actions have had on J.F. He testified that he "deeply regret[s]" his decisions, his thought processes, and his actions, and he wishes that he could personally apologize to J.F. for what he has put her through. We give this factor some weight in our analysis.

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[22] We also will not grant Respondent mitigating credit for his inexperience in the legal profession, as greater or lesser experience would not have made his conduct more or less likely. *In re Hickox*, 57 P.3d 403, 407 (Colo. 2002).

[23] *See In re Cimino*, 3 P.3d 398, 402 (Colo. 2000) (finding that the presence of personal or emotional problems was not a significant factor in the case because "[t]here was no evidence that Cimino's personal problems had anything to do with his [misconduct]"); *In re Hicks*, 214 P.3d 897, 904 (Wash. 2009) ("We first address the personal or emotional problems mitigator. This court "require[s] a connection between the asserted problem and the misconduct.")

[24] Order Re: Prehr'g Conference (Sept. 20, 2016) (noting Respondent's counsel argued that, in a hearing on the sanctions, the People should not be permitted to introduce new evidence of Respondent's rule violations if that evidence did not form the basis of their charges in their complaint).

[25] C.R.C.P. 251.20(a).

Imposition of Other Penalties or Sanctions – 9.32(k): Respondent has paid some restitution, has served some jail time during weekends, remains on probation, and must register as a sex offender. This is a mitigating factor that deserves moderate weight.

Analysis Under ABA *Standards* and Case Law

The Colorado Supreme Court has directed hearing board members to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[26] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[27] Though prior cases are helpful by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis. The Colorado Supreme Court has suggested that cases predating the 1999 revision to this state's disciplinary system carry less precedential weight than more recent cases.[28]

The parties differ as to the appropriate sanction to be imposed. Emphasizing the need for consistency in disciplinary matters, the People seek a served suspension of one year and one day, citing Colorado Supreme Court cases, hearing board decisions, and even conditional admissions of misconduct in support of their request. Because neither hearing board decisions nor conditional admissions of misconduct are precedential,[29] we focus here on the Colorado Supreme Court cases discussed by the People.

In *People v. Martin*, a lawyer behaved in a sexually aggressive manner toward his client, who was intimidated and humiliated by his treatment of her, and he pleaded guilty to third-degree sexual assault.[30] Because this conduct was mitigated by an absence of prior discipline, the presence of personal or emotional problems, evidence of good character or reputation, and the imposition of other penalties or sanctions, the respondent was suspended for one year and one day.[31] In *People v. Lowery*, a lawyer who sexually harassed three law firm employees was likewise suspended for a year and a day, where mitigating circumstances predominated.[32] Some members of the *Lowery* court, however, concluded that a more severe sanction, including disbarment, was warranted.[33] A suspension of one year and one day was also imposed in *People v. Crossman*, where a lawyer solicited sexual favors in exchange for legal fees.[34] Finally, the People point to *People v. Brailsford*, in which a

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[26] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[27] *Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[28] *Id.*
[29] *See In re Roose,* 69 P.3d 43, 48 (Colo. 2003) (stating that only the Colorado Supreme Court "has the power to determine the law of this jurisdiction as applied in disciplinary proceedings").
[30] 897 P.2d 802, 803 (Colo. 1995).
[31] *Id.* at 804.
[32] 894 P.2d 758, 760-61 (Colo. 1995).
[33] *Id.* at 761.
[34] 850 P.2d 708, 710-11 (Colo. 1993).

lawyer used physical force to sexually assault his wife and thereafter pleaded guilty to a class-one misdemeanor charge.[35] Noting that the actual nature of the conduct at issue is more significant than its statutory label for disciplinary purposes, the Colorado Supreme Court determined that the lawyer's conduct was "highly serious" and that sexual assault is "a grave offense for lawyer discipline purposes."[36] The *Brailsford* court determined that suspension for one year and one day was appropriate, considering the presence of at least five mitigating factors and just two aggravating factors.[37]

Respondent, meanwhile, emphasizes that the primary purpose of our disciplinary system is not punishment, but protection of the public.[38] He argues, to that end, that the public is already protected here because he must register as a sex offender and must strictly adhere to his probationary conditions. Thus, he reckons, a fully stayed suspension of nine months, coupled with a three-year period of probation, is appropriate.

Respondent draws parallels between his case and *People v. Graham*, in which an attorney sexually assaulted a seventeen-year-old after serving her alcohol, and then pleaded no contest to third-degree sexual assault, a class-one misdemeanor.[39] In the disciplinary matter, the parties stipulated to a three- to six-month served suspension, where significant issues of fact, including whether the victim initially welcomed the sexual contact, were contested.[40] The parties also stipulated that five mitigating factors preponderated over the one aggravating factor.[41] That disparity, taken in conjunction with the victim's unwillingness to participate in the proceedings and with testimony from Graham's treating psychologist that he was not at high risk to repeat such behavior, swayed the Colorado Supreme Court to accept the parties' stipulation to a six-month suspension, with conditions.[42]

We also look to several other cases that we consider more factually analogous to the matter before us. In *People v. Grenemyer*, an attorney was convicted of two class-four felony counts of sexual assault on a child younger than fifteen years of age.[43] Grenemyer was sentenced to four years imprisonment, but at the time of his disciplinary hearing he was free on bond pending appeal.[44] Both parties in that matter claimed that the presumptive sanction—suspension—was established by ABA *Standard* 5.12, and the hearing panel recommended a three-year suspension, considering the one mitigating factor and two

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[35] 933 P.2d 592, 593, 595 (Colo. 1997).
[36] *Id.* at 595-96 (quotation omitted).
[37] *Id.* at 595-96.
[38] *See People v. Marmon*, 903 P.2d 651, 655 (Colo. 1995).
[39] 933 P.2d 1321, 1322 (Colo. 1997).
[40] *Id.*
[41] *Id.* at 1322-23.
[42] *Id.* at 1323.
[43] 745 P.2d at 1027-28. The elements of that offense, save for the age of the child in question, mirror the facts here. Those elements were: that the defendant knowingly subjected another who was not his spouse to sexual contact, where the victim was less than fifteen years of age and the defendant was at least four years older than the victim. *Id.* at 1027 n.1.
[44] *Id.* at 1028. Grenemyer also testified that he had been acquitted in Denver County of sexual assault charges, based on allegations made by the same child. *Id.* at 1030.

aggravating factors.[45] The Colorado Supreme Court declined to follow that recommendation and instead disbarred Grenemyer, explaining that "the great weight of authority elsewhere [makes] clear that an attorney may be disbarred for conduct indicative of moral unfitness, whether such conduct be relative to the profession or otherwise."[46] Of note, the *Grenemyer* court found that Grenemyer's "actions not only reflect on the legal profession as a whole; they also represent a crime in which the impact on the underage victim cannot be overlooked."[47]

In re Day addressed the proper sanction for a Washington lawyer who touched the genitals of a sleeping eleven-year old boy—Day's former client in a criminal matter.[48] Day was convicted of first-degree child molestation.[49] The hearing officer found that Day had acted intentionally but concluded that ABA *Standard* 5.12—calling for suspension—properly applied.[50] Nevertheless, the hearing officer recommended disbarment.[51] The Washington Supreme Court affirmed the hearing officer's reliance on ABA *Standard* 5.12, yet it upheld the sanction of disbarment, labeling Day's act of molesting his former client, a minor, as one of "moral turpitude" that casts a "serious reflection on the dignity of the court and on the reputation of the profession."[52]

Finally, we consider *Iowa Supreme Court Board of Professional Ethics and Conduct v. Blazek*.[53] In that case, Blazek, a lawyer, sexually assaulted his eleven-year-old nephew by fondling the boy's bare buttocks and genitals.[54] He pleaded guilty to a federal felony charge of knowingly engaging in sexual contact with a child under twelve, and he was sentenced to one year in prison followed by three years of supervised release, to include registration as a sex offender.[55] The Iowa Supreme Court rejected the hearing board's recommended three-year suspension and instead suspended Blazek indefinitely, with no possibility of reinstatement for two years.[56] The *Blazek* court justified its downward deviation from the recommended sanction—and from another Iowa case in which an attorney was disbarred after his conviction for committing lascivious acts with an eleven-year-old boy[57]—by highlighting Blazek's genuine remorse, his commitment to immediate and ongoing

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[45] *Id.* at 1028-29.
[46] *Id.* at 1030-31 (quotations and citations omitted).
[47] *Id*. at 1030; *see also People v. Dawson*, 894 P.2d 756, 757 (Colo. 1995) (accepting a stipulation to disbarment of a Colorado attorney for sexual contact with a client and for attempted sexual assault on a seventeen-year-old high school student working as a filing clerk in his firm, and holding that such behavior "reflect[s] so seriously and adversely on the respondent's future ability to ever [again] practice law").
[48] 173 P.3d at 918.
[49] *Id.*
[50] *Id.* at 920.
[51] *Id.*
[52] *Id.* at 925, 928.
[53] 590 N.W.2d 501 (Iowa 1999).
[54] *Id*. at 502.
[55] *Id.*
[56] *Id.* at 504.
[57] *See Cmte. on Prof'l Ethics & Conduct v. Lindaman*, 449 N.W.2d 341, 342 (Iowa 1989).

psychological treatment, and a clinical psychologist's testimony that Blazek was situated on the "'safe end' of the reoffense scale."[58]

We now turn to the parties' arguments. First, based on the authorities canvassed above, we determine without hesitation that Respondent's proposed sanction of a fully stayed suspension is entirely out of step with established case law. Even *Graham*, which Respondent cites as support, is distinguishable: there, the Colorado Supreme Court approved a stipulation for a *served* six-month suspension, with conditions. It was swayed by the unwillingness of the minor victim to participate in the proceeding, the many mitigating factors, and the testimony of a treating psychologist, which assuaged concerns about Graham's rehabilitation. Here, though, the People do not stipulate to a sanction of less than one year, the aggravators outweigh the mitigators, the minor victim participated in the proceedings (and we have accepted her testimony as credible), and we received no testimony from treatment specialists about Respondent's risk of reoffending.

We also find that Respondent's underlying rationale for a fully stayed suspension—that the public has already been protected through his probationary conditions as a registered sex offender, and thus a served suspension of any length would not increase public protection—leads to the unreasonable conclusion that lawyers who face penalties for criminal convictions need not be meaningfully disciplined in this system. We recognize that our primary task is to protect the public, not to punish Respondent,[59] and we also understand that Respondent will be subject to stringent restrictions on his freedom of movement and association during the time he is registered as a sex offender.[60] We believe, however, that public protection here cannot be achieved only through the prophylactic measures put in place by the criminal justice system; those measures must also be paired with a consistent message about the standards to which lawyers are held. In cases involving sexual assault on a child, the Colorado Supreme Court has identified public perception—and, as a corollary, confidence in this system—as an appropriate consideration. For instance, the *Grenemyer* court imposed disbarment, reasoning that any other sanction "would unduly depreciate the seriousness of the respondent's misconduct in the eyes of both the public and the legal profession."[61]

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[58] *Blazek*, 590 N.W.2d at 502-04.

[59] *See People v. Richardson*, 820 P.2d 1120, 1121 (Colo. 1991).

[60] Respondent suggests that the Hearing Board need not be concerned about his contact with the public while he practices law, as he works in a construction company with little in-person customer contact. But we have no guarantee that Respondent will remain as in-house counsel during his probation, and the fact that he used his position of authority to try to persuade J.F. to engage with him sexually gives us great pause about whether he can be trusted in a traditional lawyer-client relationship, which inherently places the lawyer in a position of authority.

[61] 745 P.2d at 1031 (quotations omitted); *see also in re Lesansky*, 17 P.3d 764, 768 (Cal. 2001) ("Petitioner's attempt to commit a lewd or lascivious act on a child who was 14 or 15 years old and at least 10 years younger than himself was such a serious breach of the duties of respect and care that all adults owe to all children, and it showed such a flagrant disrespect for the law and for societal norms, that continuation of petitioner's State Bar membership would be likely to undermine public confidence in and respect for the legal profession."); *In re Hudgins*, 540 N.E.2d 1200, 1203 (Ind. 1989) (finding, where an attorney was convicted of a Class-A misdemeanor for child molesting and sentenced to a one-year suspended sentence with probation, that "[t]he impact of this

Next, examining the People's authorities, we conclude that their proposed sanction of a one-year-and-one-day suspension is founded on factually different cases. In *Martin*, *Lowery*, *Crossman*, and *Brailsford*, extensive mitigating factors outweighed the applicable aggravating factors. That is not the case here. Even more salient, each of those cases involved sexual assault of adults. That, too, is not the case here. Indeed, while those assaults by no means should be viewed as anything other than serious offenses, the Colorado Supreme Court has treated sexual assault of a minor as particularly grievous misconduct that demands "the severest discipline."[62] Thus, we cannot conclude that a suspension of one year and one day is the proper sanction for Respondent's misconduct.

The case law that we have located, both from within this jurisdiction and without, identifies a lengthy suspension as fitting here. Though we do not have at our disposal the facts describing the actual nature of the conduct in *Grenemyer*, we consider Respondent's conduct to be not as egregious as that in *Grenemyer*, which led to two felony counts of sexual assault on a child who was younger than fifteen. Likewise, we adjudge the misconduct in *Day* to be more serious than Respondent's: in *Day*, the victim was younger—eleven years old—and had a preexisting relationship of trust with Day, who had formerly represented the boy. We reach the same conclusion regarding *Blazek*, where the lawyer sexually assaulted a eleven-year-old family member. But unlike *Blazek*, no overwhelming mitigation here warrants a marked reduction in the severity of discipline.

We also observe that, save for *Day*, all the cases discussed above are relatively old, predating the 1999 revision to this state's disciplinary system. And *Day,* a 2007 case, acknowledged recent increases "in the severity of criminal sanctions related to sex crimes against children," as reflected in both case law and statutes.[63] The *Day* court opined that "[g]reater societal awareness of sexual crimes against children and the resulting abuse of trust are arguably justifiable reasons for increasing presumptive sanctions for attorneys who engage in such misconduct."[64]

Here, Respondent intentionally inflicted harm on a minor for his own sexual gratification—the type of misconduct that has been deemed a crime of moral turpitude by many courts. The mitigating factors are outweighed by those in aggravation. And established precedent suggests that, at a minimum, a lengthy served suspension—in line with "changing societal attitudes toward sexual assault crimes"[65]—is warranted. With these considerations in mind, we conclude that Respondent should be suspended for two years.

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illegal, lurid conduct on the integrity of the legal profession and on the public's perception of Respondent's moral fitness as an officer of this Court convinces us that the strongest sanction available [disbarment] should be imposed").

[62] *Grenemyer*, 745 P.2d at 1029.

[63] *Day*, 173 P.3d at 922.

[64] *Id*.

[65] *Id.*

IV. CONCLUSION

With promises of alcohol, Respondent arranged to meet a fifteen-year-old girl. When they met, he groped her breasts and her vaginal area (over her clothing) without her consent. This behavior is criminal, immoral, and inimical to the legal profession's fundamental obligation to act with integrity and dignity. Lawyers, as officers of the court, must live within the bounds of the law. If members of the bar fail to meet these basic standards, they must be held accountable; otherwise we, as lawyers, cannot expect the public to voluntarily comply with the same requirements. Thus, to protect the public—but also to promote confidence in the bar and to maintain high professional standards—we suspend Respondent's license to practice law for two years.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **BRIAN M. REED BENIGHT**, attorney registration number **45729**, is **SUSPENDED FOR TWO YEARS**. The suspension will take effect upon issuance of an "Order and Notice of Suspension."[66]

2. To the extent applicable, Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.

3. Within fourteen days of issuance of the "Order and Notice of Suspension," Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the PDJ setting forth pending matters and attesting, *inter alia*, to notification of clients and other jurisdictions where the attorney is licensed.

4. The parties **MUST** file any posthearing motion or application for stay pending appeal with the Hearing Board **on or before Thursday, December 29, 2016**. Any response thereto **MUST** be filed within seven days.

5. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a statement of costs **on or before Thursday, December 22, 2016**. Any response thereto **MUST** be filed within seven days.

[66] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

DATED THIS 8th DAY OF DECEMBER, 2016.

Original Signature on File
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original Signature on File
DAVID A. HELMER
HEARING BOARD MEMBER

Original Signature on File
SISTO J. MAZZA
HEARING BOARD MEMBER

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Hearing Board Members David A. Helmer Sisto J. Mazza	Via Email
Christopher T. Ryan Colorado Supreme Court	Via Hand Delivery