

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 94-158

---

IN THE MATTER OF :  
JAMES J. PIERCE, :  
AN ATTORNEY AT LAW :

---

Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: July 20, 1994

Decided: October 29, 1994

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was heard by the Board on July 20, 1994, on a Motion for Final Discipline filed by the Office of Attorney Ethics (OAE), based on respondent's criminal conviction of lewdness, a disorderly persons offense under N.J.S.A. 2C:14-4.

Respondent was admitted to the New Jersey bar in 1971 and practices law in Ocean County.

On September 1, 1991, at about noon on Sunday of Labor Day weekend, a twelve-year old girl was walking alone in her neighborhood, collecting donations for jackets for the Pop Warner cheerleaders. Respondent, who also lived in the area, approached her and beckoned her to his car, saying he had money for her. She

walked toward the passenger door of the car and stretched out her arm with the donation can. He stared and held her glance and hesitated before dropping in the donation. She noticed he was not wearing any clothes.

A few minutes later, he stopped in front of a house where the girl had just received a donation. The same interaction occurred. The girl stated that, after the first time, "it didn't really click to my mind," but after the second time she was very confused and scared, especially since he asked whether she would mind if he came back again. She testified that she saw his genital area and specifically his penis.

She then went to a friend's grandmother's house to report the incident. From there, she went home and told her mother, who reported the events to the police. The girl described the car, which was similar to her parents' car. Later that day, she identified respondent and his car at the police station.

Respondent's wife heard about the incident, located the girl's home and went there. She talked to the girl for about twenty to twenty-five minutes while her parents were not home, disputing the allegations that her husband had no clothes on, saying that the girl's claim was ridiculous, explaining that her husband was a lawyer and adding that they had a good family, and would be embarrassed by the incident.

Respondent explained, in municipal court, his occasional driving with no apparent apparel: after swimming at a local creek or beach, he would sit in the car, slide his wet swim trunks down

to his feet and put his towel over himself. However, he insisted that he had not removed his clothes on the date in question, because he had decided it was too chilly to swim.

#### CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt. R.1:20-6(c)(1). Disorderly persons offenses are specifically included. R.1:20-6(c)(2)(i). Accordingly, there is no need to make an independent examination of the underlying facts to ascertain guilt. "That respondent's activity did not arise from a lawyer-client relationship, that his behavior was not related to the practice of law or that this offense was not committed in his professional capacity is immaterial." In re Leahey, 118 N.J. 578, 581 (1990). The only issue to be determined is the extent of the final discipline to be imposed. R.1:20-6(c)(2)(ii).

Although this specific offense has not been the subject of discipline, discipline has been previously imposed for criminal sexual misconduct. See, e.g., In re Addonizio, 95 N.J. 121 (1984) (three-month suspension following conviction of fourth-degree sexual assault on young boy where the event was considered to be isolated, unlikely to recur and arose indirectly from an attorney-client relationship); In re Ruddy, 130 N.J. 185 (1992) (two-year suspension for fondling of several boys, which conduct resulted in conviction of endangering the welfare of children, a crime of the

third degree); In re Herman, 108 N.J. 66, 70 (1987) (three year suspension for touching the buttocks of a ten-year-old boy; conviction of second degree sexual assault; In re X, 120 N.J. 459 (1990) (attorney disbarred following conviction on charges of incestuous relationship with all three of his daughters).

Non-criminal sexual misconduct has also resulted in discipline. See In re Liebowitz, 104 N.J. 175, 176-177 (1985) (public reprimand for improperly touching client); In re Rea, 128 N.J. 544 (1992) (public reprimand for engaging in sexual relationship with assigned client with psychological problems).

Here, there was no bodily contact, only eye contact. The two events transpired within minutes, just a few minutes apart. The twelve-year-old was not physically restrained by respondent and was free to walk away, as she eventually did. Nevertheless, the Board cannot ignore the possibility that respondent's despicable misconduct victimized a young girl.

In light of the foregoing, a four-member majority of the Board recommends that respondent receive a public reprimand. Two members would have imposed a three-month suspension. One member recused himself. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 10/29/94

By: Elizabeth L. Buff  
Elizabeth L. Buff  
Vice-Chair  
Disciplinary Review Board