

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-280
District Docket No. XIV-07-209E

IN THE MATTER OF
MICHAEL B. SOSNOWSKI
AN ATTORNEY AT LAW

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Corrected Decision

Argued: January 17, 2008

Decided: March 19, 2008

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

Respondent, who is incarcerated, did not appear.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's guilty plea in New Hampshire to felony possession of child pornography, in violation of 18 U.S.C.A. §2252A(a)(5)(B). The OAE recommended disbarment. We agree with that recommendation.

Respondent was admitted to the New Jersey bar in 1986. He has no prior discipline. On May 1, 2007, he was temporarily suspended in New Jersey as a result of his New Hampshire conviction.

On January 22, 2007, pursuant to a plea agreement with federal authorities, respondent pleaded guilty to a one-count information (complaint) in the United States District Court for the District of New Hampshire, charging him with possession of child pornography.

On May 17, 2007, the district court sentenced respondent to thirty-seven months in prison and five years of supervised release, and also imposed a \$100 assessment. Respondent is currently incarcerated at a federal penitentiary in Loretto, Pennsylvania. He is scheduled for release on November 25, 2009.

The facts underlying respondent's guilty plea are found in the transcript of respondent's January 22, 2007 plea hearing.

According to the plea, in May 2005, a minor child who was using a children's bathroom in respondent's New Bedford, New Hampshire house, discovered a small hidden camera there. Respondent's then-wife called the police, who investigated the finding. When the police interviewed respondent, he admitted

possessing child pornography on two computers and several CDs at home.

Based on respondent's admissions, the computers and CDs were seized and submitted to the FBI for analysis. The FBI found sixty-seven still images of child pornography and eight sexually explicit video files involving children engaged in sexual acts and exposing their genitals.

The plea contains no other information about the camera(s) found in the home. However, at sentencing, it was revealed that respondent, in addition to surreptitiously placing a camera in a children's bathroom, had also hidden one in a child's bedroom. Objecting to a lenient sentence, the prosecutor reminded the court that respondent had failed to inform his provider of sex-offender treatment about hidden cameras in his house:

[T]he argument is that the Court should rely [] heavily upon the therapy that has taken place. In reviewing the report of Dr. Ball, I think it's important to note that nowhere in there does it mention that Dr. Ball was ever advised or informed of all of the conduct in this matter. That is, it seems to be based on the fact that he's facing one charge for collecting child pornography.

If the Court reviews the offense conduct or related conduct, beginning with paragraph six, you will note the investigation started because of hidden cameras in the bedroom of [a child] and the bathroom used by [children]. That

doesn't seem to have been revealed to this treatment provider at all, and I think that's very important conduct to know that this was not simply, as she believes, just the urge to keep collecting on the computer and storing away, but in fact some other very disturbing behavior. Couple that with - there was never a found bail violation but [respondent] stipulate[d] to a bail violation, which included not truthful conduct with the probation officer.

[ExE10-8 to 11-4.]¹

Following a review of the record, we determine to grant the OAE's motion for final discipline.

Respondent pleaded guilty to one count of felony possession of child pornography, in violation of 18 U.S.C.A. §2252A(a)(5)(B).

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea to felony possession of child pornography constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline to be imposed remains

¹ "ExE" refers to an exhibit to the OAE's brief in support of the motion for final discipline.

at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46. Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

The fact that respondent's offenses were not directly related to the practice of law does not negate the need for discipline. Whether related to the practice of law or not, even a minor violation of the law tends to lessen public confidence in the bar. In re Addonizio, 95 N.J. 121, 124 (1984).

In cases involving sexual misconduct, discipline has ranged from a reprimand to disbarment. Reprimand cases include In re Gilligan, 147 N.J. 268 (1997) (attorney convicted of lewdness when he exposed and fondled his genitals for sexual gratification in front of three individuals, two of whom were children under the age of thirteen) and In re Pierce, 139 N.J.

533 (1995) (attorney convicted of lewdness after he exposed his genitals to a twelve-year old girl).

Attorneys in the following cases were suspended: In re Herman, 108 N.J. 66 (1987) (three-month suspension for attorney who pleaded guilty to second-degree sexual assault after he touched the buttocks of a ten-year old boy); In re Ferraiolo, 170 N.J. 600 (2002) (one-year suspension for attorney who pleaded guilty to the third-degree offense of 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 Gernert, 147 N.J. 289 (1997) (one-year suspension for attorney who pleaded guilty to the petty disorderly offense of harassment by offensive touching; the victim was the attorney's teenage client); and In re Ruddy, 130 N.J. 85 (1992) (two-year suspension for attorney who pleaded guilty to four counts of third-degree endangering the welfare of a child after he fondled several young boys).

The most serious cases involving sexual misconduct have resulted in disbarment: In re Wright, 152 N.J. 35 (1997) (attorney was convicted of aggravated sexual assault: the

attorney did not dispute his daughter's statement to police that he had digitally penetrated her vaginal area); In re Palmer, 147 N.J. 312 (1997) (attorney pleaded guilty to seven counts of third-degree aggravated criminal sexual contact and one count of fourth-degree criminal sexual contact); and In re X, 120 N.J. 459 (1990) (attorney pleaded guilty to three counts of second degree sexual assault; the victims were his three daughters).

Recently, the Court has taken an increasingly harsh view of attorneys engaged in this type of perverted behavior.

In In re Cunningham, 192 N.J. 219 (2007), the Court disbarred an attorney in a case that was factually identical to Ferraiolo, supra, 170 N.J. 600, which resulted in a one-year suspension. Both Ferraiolo and Cunningham were convicted of attempted endangering the welfare of a child, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:24-4a, by attempting to lure children (who were actually undercover law enforcement officers) into meetings for sex. The only distinguishing factors between the two cases were minor: 1) Ferraiolo completed an arrangement to meet his victim, while Cunningham had only presented an invitation to the "boy" to meet him in New York and 2) Cunningham's target was even younger than Ferraiolo's (by two years). Noting that the Court was taking

an increasingly dim view of pedophiles, a five-member majority of this Board voted to suspend Cunningham for two years. Three members voted for a one-year suspension, based on the precedent in Ferraiolo, and one member voted for disbarment. The Supreme Court disbarred Cunningham without issuing an opinion.

We find that this case is at least as serious as Cunningham, and worthy of disbarment because, in addition to possessing numerous pieces of child pornography, respondent used hidden cameras, placed in the children's bathroom in his home and in a child's bedroom. In short, he spied on children in his own house for deviant gratification. While it is not clear from the record that the cameras recorded, as opposed to monitored, the activities in the rooms in question, we are equally appalled by either scenario.

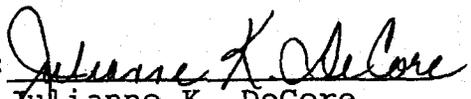
There is no New Jersey discipline case directly on point for the disbarment sanction we seek in this case, but it fits the Court's pronouncement in In re Templeton, 99 N.J. 365, 376 (1985), that "disbarment is reserved for the case in which the misconduct of an attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." We find that this respondent

is such a disgrace to the bar that he must be disbarred. We so recommend to the Court.

Chair O'Shaughnessy, and Members Lolla, Baugh, and Neuwirth did not participate.

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
Louis Pashman, Vice-Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

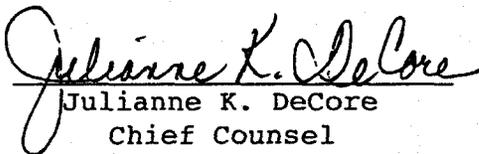
In the Matter of M. B. S.
Docket No. DRB 07-280

Argued: January 17, 2008

Decided: March 19, 2008

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy						X
Pashman	X					
Baugh						X
Boylan	X					
Frost	X					
Lolla						X
Neuwirth						X
Stanton	X					
Wissinger	X					
Total:	5					4


Julianne K. DeCore
Chief Counsel