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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-250
District Docket No. XIV-06-041E

IN THE MATTER OF
STEVEN C. CUNNINGHAM
AN ATTORNEY AT LAW

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Corrected Decision

Argued: November 16, 2006

Decided: December 21, 2006

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

Respondent waived appearance for oral argument.

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

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's criminal conviction 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. The OAE seeks a one-year suspension. We determine that a two-year suspension is the more appropriate level of discipline.

Respondent was admitted to the New Jersey bar in 1999. He has no prior discipline.¹

On December 13, 2005, respondent pleaded guilty to a one-count accusation charging him with third-degree 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.

The facts underlying respondent's guilty plea are as follows.

During September and October 2004, on three separate occasions, respondent engaged an individual, whom he believed to be a twelve year-old boy, in internet "chat."² The child was actually a Passaic County detective posing as a twelve year-old boy, in an undercover internet operation. Respondent conducted the illicit communications from his home computer in Jersey City, through his America Online internet account.

During two of the conversations, respondent described, in lurid detail, certain sexual acts that he hoped to perform on

¹ The report from the Lawyers' Fund for Client Protection indicates that respondent voluntarily resigned from the practice of law in New Jersey, without prejudice, on March 31, 2006. He is still actively licensed in New York, but that state has not yet taken any disciplinary action against him.

² "Chat" is a two-way text-messaging method of communication, via the internet.

the boy. He also described sex acts that he hoped to teach the boy to perform on him, inviting the child to "get together in New York".³ Respondent said that he never finalized an arrangement to meet the boy, but did not recall why he had not done so.

On June 1, 2006, respondent was sentenced to parole supervision for life and was required to register, under Megan's Law, as a sex offender. In addition, the court imposed certain fines and required him to undergo sex-offender therapy. The court also forbade him from having any unsupervised contact with anyone under the age of eighteen and from accessing the internet anywhere but at his workplace (the ACLU in New York), and then only for work-related purposes.

At respondent's sentencing hearing, the judge stated:

[Respondent] is 39 years old. He pled guilty to attempting to endanger the welfare of the [sic] child. This was an internet case in which he had sexually explicit exchanges with what he believed was a 12-year old boy. This was an undercover agent.

³ This reference to New York, made by respondent's attorney, is at odds with the actual text of the AOL messages, which appear in an attachment to the pre-sentence report, namely, the detective's February 24, 2005 memorandum to the Internet Crimes Unit, at pages 3 and 4, where respondent urged the boy to come to his apartment in Jersey City.

His jail credit is 2/24/05, which is one day. He has no prior record. He denies the use of any illicit drugs, and uses alcohol socially according to him.

He was married a number of years ago. His marriage broke up when — where his marriage broke up. I'll leave it at that. He indicated that he realized if he was feeling some attraction to juveniles, he went on the internet. He indicated that he did not want to act out in real life, but went on the internet.

He indicated he was suffering depression during this period. His parents had died in 2004. The Avenel report, which gave me a lot of concern when I read it, he was certainly cooperative, indicated the following: 'Based upon the information elicited during the present examination, it was apparent that [respondent's] repetitive inappropriate sexual behavior was performed compulsively. He acknowledged experiencing feelings of sexual attraction toward men of many ages, including underage males.'

[Ex.D9-3 to 12.]

The judge also noted that the Avenel (sex-offender) report reflected respondent's apparent commitment to psychotherapy, and his recognition that he was a repetitive, compulsive type offender. The judge believed, however, that respondent could be treated on an outpatient basis. She warned respondent:

The prosecutor is willing to recommend a non-custodial [sentence] here. I gave this sentence a lot of thought given that [respondent] has been deemed to be compulsive and repetitive.

Sir, I'm just going to indicate to you again, if there's any deviation from anything you're supposed to do, you're in prison, do you understand that?

[Ex.D11-1 to 8.]

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

Respondent pleaded guilty and was convicted of one count of attempted endangering the welfare of a child, admitting that he had, on several occasions, engaged in sexually explicit internet conversations with an undercover Passaic County detective, whom he believed to be a twelve year-old boy. Respondent has been sentenced to lifetime probation, having been found to be a compulsive, repetitive offender. He was required to register as a sex-offender under Megan's Law.

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 third-degree attempted endangering the welfare of a child 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 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).

In cases involving sexual misconduct, the 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 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 endangering the welfare of a child after he fondled several young boys).

Several cases involving sexual misconduct have resulted in disbarment: In re Wright, 152 N.J. 35 (1997) (aggravated sexual assault); In re Palmer, 147 N.J. 312 (1997) (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) (three counts of second-degree sexual assault; the victims were his three daughters).

This case is most similar to Ferraiolo, supra, 170 N.J. 600. That attorney was charged with and convicted of the same crime as respondent: attempted endangering the welfare of a child through internet communication, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:24-4a. Both Ferraiolo and respondent sought to meet

their young male victims. In fact, respondent's target was even younger than Ferraiolo's (by two years).

Although this case is close to Ferraiolo factually, a five-member majority voted to suspend respondent for two years, concluding that, as societal standards evolve, so does our attitude toward this sort of criminal behavior, and that predatory conduct directed at our young children requires more serious discipline. Members Pashman, Boylan, and Baugh, find the Ferraiolo precedent controlling, and voted for a one-year suspension. Member Baugh would issue a cautionary statement, however, that such misconduct will be met with more severe discipline in the future. Member Stanton voted for disbarment, believing that an attorney who seeks to meet a twelve-year old boy in a secluded area for sex poses a very dangerous threat to juveniles and is unfit to practice law.

We also 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
William O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

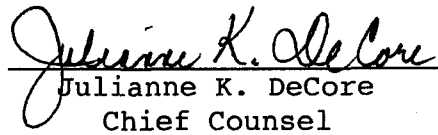
In the Matter of Steven C. Cunningham
Docket No. DRB 06-250

Argued: November 16, 2006

Decided: December 19, 2006

Disposition: Two-year suspension

Members	Two-year Suspension	One-year Suspension	Disbar	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	3	1			


Julianne K. DeCore
Chief Counsel