

Filed December 12, 2008

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of

JEFFREY RAY NIELSEN

A Member of the State Bar.

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04-C-10166

**RECOMMENDATION OF
SUMMARY DISBARMENT**

The State Bar's request for recommendation of summary disbarment, filed on August 19, 2008, is granted. On August 28, 2008, we filed an order to show cause on or before September 19, 2008, directing respondent, Jeffrey Ray Nielsen, State Bar No. 202862, to show why we should not recommend his summary disbarment to the Supreme Court. Respondent did not file a response.

On December 5, 2007, respondent pled guilty to one count of participating in an act of oral copulation with a person who is under the age of 16 in violation of Penal Code section 288a, subdivision (b)(2). Respondent's accepted guilty plea is a conviction under the State Bar Act. (Bus. & Prof. Code § 6101, subd. (e).) As a result of respondent's conviction we placed him on interim suspension effective January 17, 2008, and he has remained on interim suspension since that time. As the time period for filing an appeal from his conviction has expired and respondent has not filed a notice of appeal, his conviction is now final. (California Rules of Court, rule 9.10(a).)

Respondent's conviction is conclusive proof that he committed the crime. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) The record of conviction establishes that respondent's conviction meets the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c), as amended effective January 1, 1997. First, the offense of which respondent was convicted is a felony. (Pen. Code § 288a, subd. (b)(1); Bus. & Prof. Code § 6102, subd. (b).) Second, the offense involves moral turpitude per se. Penal Code section 288a, subdivision (b)(2), provides that "any person over the age of 21 years who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony." "In the attorney discipline context, the terms 'moral turpitude' includes 'particular crimes that are extremely repugnant to accepted moral standards such as . . . serious sexual offenses [citation]. [Citation.]" (*In re Lesansky* (2001) 25 Cal.4th 11, 17.) The Supreme Court has determined that the offense of committing a lewd act on "a child of the age of 14 or 15 years" when the attorney is "at least 10 years younger than the child" in violation of Penal Code section 288, subdivision (c)(1), involves moral turpitude. (*Ibid.*) Section 288a, subdivision (b)(1) is similar to section 288, subdivision (c)(1) because it is a sexual offense involving a person under 16 and there is an age differential aimed at protecting minors from the sexual misconduct of adults. (See *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1225 [section 288a is a statute directed at protecting minors from sexual exploitation; *People v. Paz* (2000) 80 Cal.App.4th 293, 297 [section 288 enacted to protect "infants, children and those in their early teens from sexual exploitation by adults"].)

We therefore recommend that respondent, Jeffrey Ray Nielsen, State Bar No. 202862, be summarily disbarred from the practice of law in this state. We also recommend that respondent be ordered to comply with rule 9.20 of the California Rules of Court and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 45 days, respectively, after the

effective date of the Supreme Court's order. Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code, section 6086.10, and that such costs be enforceable both as provided in Business and Professions Code, section 6140.7 and as a money judgment.

Presiding Judge