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STATE BAR COURT  
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**STATE BAR COURT OF CALIFORNIA  
REVIEW DEPARTMENT**

In the Matter of )  
ERIC MICHAEL BORGERSON )  
A Member of the State Bar, No. 177943. )  
\_\_\_\_\_ )  
Case No.: 08-C-12600  
RECOMMENDATION OF SUMMARY  
DISBARMENT

On June 25, 2008, respondent Eric Michael Borgerson pled guilty to a felony violation of title 18 United States Code section 2252A(a)(2) (certain activities relating to material constituting or containing child pornography). On November 2, 2010, the State Bar filed a motion asking us to reconsider our prior orders classifying Borgerson's crime as one for which there is probable cause to believe it involves moral turpitude and denying its motion for summary disbarment. Upon reconsideration, we find that Borgerson's conviction for distributing child pornography is a felony that inherently involves moral turpitude and therefore we recommend that he be summarily disbarred.

**I. Procedural History**

This case has an unusual history, including Borgerson's attempt to resign with charges pending in August 2008, which significantly delayed the processing of this conviction matter. Following Borgerson's guilty plea, we placed him on interim suspension as a result of the felony violation, effective October 13, 2008. In December 2008, after receiving evidence that



Borgerson's conviction was final, we denied the State Bar's request for summary disbarment and classified Borgerson's crime as one for which there is probable cause to believe involves moral turpitude. In January 2009, we referred the matter to the hearing department to consider the facts and circumstances surrounding the conviction for purposes of determining discipline. The matter was subsequently abated in the hearing department pending the Supreme Court's action on Borgerson's resignation.

On October 27, 2010, the Supreme Court declined to accept Borgerson's resignation and ordered that this underlying disciplinary matter proceed without further delay. On November 2, 2010, the State Bar filed a motion, asking us to reconsider our 2008 order denying its motion for summary disbarment. Although we denied the State Bar's motion for reconsideration as untimely, on our own motion, we ordered the parties to brief several issues to resolve whether Borgerson's violation under title 18 United States Code section 2252A(a)(2) meets the criteria for summary disbarment.

## **II. Borgerson's Violation Satisfies Summary Disbarment Requirements**

After a judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude." (Bus. & Prof. Code, § 6102, subd. (c).) The record of conviction establishes that Borgerson's conviction meets the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c), as it is a felony that inherently involves moral turpitude.

Title 18 United States Code section 2252A(a)(2) is a divisible statute that defines two separate offenses – receipt *or* distribution of child pornography.<sup>1</sup> “When a statute is divisible into several crimes, some of which may involve moral turpitude and some not, it is appropriate to examine the ‘record of conviction’ to determine which part applies to the defendant. [Citation.]” (*Carty v. Ashcroft* (9<sup>th</sup> Cir. 2005) 395 F.3d 1081, 1084.) Examination of a record of conviction for this purpose may include consideration of the “ ‘charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.’ ” (*Omari v. Gonzales* (5<sup>th</sup> Cir. 2005) 419 F.3d 303, 308, citing *Shepard v. United States* (2005) 544 U.S. 13, 16 [125 S.Ct. 1254, 1257].) Based on the plea agreement, Borgerson pled to *distributing* video files containing child pornography that he knew contained depictions of *actual minors* engaged in sexually explicit conduct.

In order to convict under title 18 United States Code section 2252A(a)(2), the government is required to prove that “the defendant knowingly [distributed] materials that contained images of child pornography that were transported in interstate or foreign commerce or were produced using material that had been transported in interstate or foreign commerce by computer or other means. [Citations.]” (*U.S. v. Brobst* (9<sup>th</sup> Cir. 2009) 558 F.3d 982, 998-999.) “[T]he use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child.” (*New York v. Ferber* (1982) 458 U.S. 747, 758 [102 S.Ct. 3348, 3355].) “The distribution of [child pornography] is intrinsically related to the sexual

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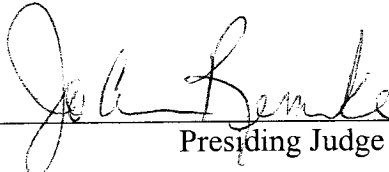
<sup>1</sup> Under this section, it is a felony offense for “Any person who – [¶] . . . [¶](2) knowingly receives or distributes – [¶] (A) any child pornography that has been mailed, or using any facility or interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or [¶] (B) any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer . . . .” In addition to actual minors engaging in sexually explicit conduct, child pornography under this statute may include digital, computer, or computer-generated images indistinguishable from actual minors engaging in sexually explicit conduct. (18 U.S.C. § 2256(8).)

abuse of children . . . .” (*Id.* at p. 759.) Circulation of the visual depiction of a child’s sexual abuse exacerbates the harm to the child. (*Ibid.*) The Supreme Court recognizes the distinction between simple possession and distribution when determining whether a crime involves moral turpitude. For example, “while simple possession of heroin does not necessarily involve moral turpitude [citations], possession for sale does – though the trait involved is not dishonesty but, rather, the intent to corrupt others.” (*People v. Castro* (1985) 38 Cal.3d 301, 317.) Because Borgerson’s knowing distribution of child pornography evinces an intent to corrupt others and exacerbates the harm to victims of child sexual abuse, we find it necessarily involves moral turpitude.

### III. Recommendation

When an attorney's conviction meets the requirements of Business and Professions Code section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Eric Michael Borgerson, State Bar number 177943, be summarily disbarred from the practice of law in this state. We also recommend that he be ordered to comply with rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 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 section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

  
\_\_\_\_\_  
Presiding Judge

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 20, 2011, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED APRIL 20, 2011.

in a sealed envelope for collection and mailing on that date as follows:

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ERIC M. BORGERSON
1 CAROLYN CT
ARABI, LA 70032

ERIC M. BORGERSON
C/O GENE FAURIE JR.
1 CAROLYN CT
ARABI, LA 70032

- [ ] by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- [ ] by overnight mail at , California, addressed as follows:

- [ ] by fax transmission, at fax number . No error was reported by the fax machine that I used.

- [ ] By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Maria J. Oropeza, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 20, 2011.

[Signature]
Milagro del R. Salmeron
Case Administrator
State Bar Court