

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case No. **09-C-11828-RAP**  
)  
**SEAN PATRICK MARTIN,** )  
)  
**Member No. 217842,** ) **DECISION AND ORDER OF INACTIVE**  
) **ENROLLMENT**  
)  
A Member of the State Bar. )  
)  
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**I. Introduction**

This contested conviction referral proceeding is based upon the conviction of respondent **Sean Patrick Martin** of misdemeanor violations of Penal Code sections 261.5 subdivision (b) and section 664 (attempted unlawful sexual intercourse with a person less than 18 years of age).<sup>1</sup>

After having thoroughly reviewed the record, the court finds that the facts and circumstances surrounding respondent's conviction of Penal Code sections 261.5 subdivision (b) and 664 involves moral turpitude and recommends that respondent be disbarred from the practice of law.

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<sup>1</sup> Penal Code section 664 is a general attempt statute, which sets forth the punishment for every person who attempts to commit a crime (where no provision is made by law for the punishment of those attempts), but fails, or is prevented or intercepted in its perpetration.

## **II. Procedural History**

On March 13, 2009, respondent pled nolo contendere to violating Penal Code sections 664 and 261.5, a misdemeanor offense (attempting to engage in unlawful sexual intercourse with a person under the age of 18), and was convicted on that same date of the violations.

On November 17, 2009, the Review Department of the State Bar Court issued an order, referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding respondent's criminal violations involved moral turpitude or other misconduct warranting discipline.

On December 29, 2009, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. Respondent filed a response on January 13, 2010. (Rules Proc. of State Bar, rule 601.)

Trial was held on June 23 and 24, 2010. Respondent was represented by Attorney Ellen A. Pansky. Deputy Trial Counsel Ashood Mooradian represented the Office of the Chief Trial Counsel of the State Bar of California (State Bar).

This matter was submitted for decision on June 24, 2010.

## **III. Findings of Fact and Conclusions of Law**

Respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; and *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.) However, “[w]hether those acts amount to professional misconduct . . . is a conclusion that can only be reached by an examination of the facts and circumstances

surrounding the conviction.” (*In the Matter of Respondent O, supra*, 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6.)

**A. Credibility Determinations**

The following witnesses testified at trial: Mark Moromisato, Shana Martin, Sander N. Olsen, Richard Sandor, M.D., Jennifer Stanley, and Amber Wyatt,

After carefully considering, *inter alia*, each witness’s demeanor while testifying; the manner in which each witness testified; the character of each witness’s testimony; each witness’s interest in the outcome in this proceeding, if any; and each witness’s capacity to perceive, recollect, and communicate the matters on which he or she testified, the court finds the testimony of each of the witnesses, with the exception of respondent’s testimony, to be credible. At times, as discussed *post*, respondent’s testimony lacked credibility.

**B. Jurisdiction**

Respondent was admitted to the practice of law in California on December 7, 2001, and has been a member of the State Bar at all times since.

**C. Stipulation as to Facts**

The parties filed the following stipulation as to facts on June 23, 2010, and the court approves the stipulation (Rules Proc. of State Bar, rules 132 and 135.)

Respondent was admitted to the practice of law in the State of California on December 7, 2001, was a member at all times pertinent to these charges, and is currently an inactive member of the State Bar of California, having voluntarily placed himself on inactive status effective, February 8, 2010.

In July 2008, respondent was working as a trial attorney for an Orange County civil litigation firm (the Law Firm).

During the term of respondent's employment, the Law Firm provided respondent with a computer and an internet connection to perform his job duties.

Respondent brought his personal laptop to the Law Firm office and connected to the internet using the Law Firm's wireless internet connection, which was not monitored and did not deny access to certain categories of websites or record the websites visited by its users.

In July 2008, Yahoo! was a free online web search tool, which included other features, such as chat rooms and also permitted users to send and receive private messages to other Yahoo! users using an instant message tool called Yahoo! Messenger.

On Monday, July 21, 2008, at approximately 2:29 p.m., using his personal laptop while at his office and taking a break from work, respondent, using the user name "ocguy00," entered a Yahoo! chat room entitled "Adult — California — Room #3."

Once in the "Adult — California — Room #3" chat room, respondent viewed the list of user names of persons that were currently "logged into" the chat room. Respondent then clicked on several screen names in succession attempting to initiate a one-on-one chat or "instant message" (IM) with those persons. The only user to reply to respondent's IMs was the person identified by the user name "luvlymarisa14."

On July 21, 2008, respondent was 37 years old.

On Tuesday, July 22, 2008, respondent, while in his office at the Law Firm, had another IM chat with the person with the user name "luvlymarisa14."

During the July 22, 2008 IM chat, respondent agreed to meet the person with the user name "luvlymarisa14."

On July 22, 2008, at approximately 2:00 pm, respondent arrived at the Starbucks location, as previously agreed with the person with the user name "luvlymarisa14," and was immediately arrested by officers from the Torrance Police Department.

On July 22, 2008, respondent was wearing clothing and driving the vehicle he described to the person with the user name "lulymarisal4" to permit her to identify respondent.

On July 22, 2008, respondent's vehicle was impounded and towed, and respondent was transported to the Torrance Police Department for booking.

On July 22, 2008, during the booking process, respondent was read his Miranda warning rights and stated that he understood his rights. The arresting officer asked respondent if he knew why he was arrested. Respondent answered "no." Respondent added that he was there to get a cup of coffee. The arresting officer then asked respondent where he lived, to which respondent replied "Orange." The arresting officer asked respondent if he was currently working in Torrance. Respondent replied "no." Then, the arresting officer asked respondent if he drove all the way to Torrance for a cup of coffee. At that point, respondent asked to telephone his attorney and the interview was terminated.

After the interview was terminated, the arresting officer asked respondent if he had any questions for the police. Respondent replied that he wanted to know if the police could contact a district attorney and plead the case immediately.

Respondent was initially charged with violating Penal Code section 288.4 (attending an arranged meeting with a minor with the intent to commit a sexual offense).

On December 23, 2008, the District Attorney of the County of Los Angeles filed an information in Los Angeles Superior Court, entitled *People v. Sean Patrick Martin*, case number YA072631. The information charged respondent with violating Penal Code section 288.4(b), a felony, as Count 1. Respondent appeared with counsel and pled not guilty.

On March 13, 2009, the District Attorney made a motion to amend the information by interlineation to add Penal Code section 664-261.5(b) (Attempting to Engage in Unlawful Sexual

Intercourse with a Person under 18 years of Age), a misdemeanor, as Count 2. Respondent, appeared with counsel and pled nolo contendere to Count 2.

On March 24, 2009, the court ordered Count 1 dismissed as per the plea bargain and then pronounced its sentence as to Count 2.

The court then suspended imposition of the sentence and ordered that respondent be placed on three years' summary probation on the following terms and conditions:

- Serve 270 days in Los Angeles County Jail, less one day credit;
- Complete 14 days of CalTrans at the rate of at least one eight hour day per week;
- Complete a 52-week Sex Offender Treatment Program;
- Stay away from all minors except those biologically related to respondent.  
If respondent is around minors, an adult must be present;
- No internet use except for employment;
- No use of chat rooms of any kind;
- Pay \$100 restitution fine pursuant to Penal Code section 1202.4(b), a \$30 criminal conviction assessment fine, and a \$300 "Victims of Sex Crimes Fund" fine, all payable to the court clerk on or before March 24, 2010;
- Provide BUCCAL Swab samples, a right thumb print, full palm print, blood and other biological samples as required by Penal Code section 296 for law enforcement identification; and
- Obey all rules and regulations of the probation department.

**D. Additional Findings of Fact and Circumstances Surrounding Respondent's Conviction**

The evidence in this matter, shows that respondent was informed that the individual identified by the username, "luvlymarisa14" (Marisa) was a 13-year-old minor.<sup>2</sup> A review of the record, including the exhibits admitted into evidence, further reveals that the purpose of respondent's July 21 and 22, 2008 internet chats was to arrange a meeting that would culminate in a sexual encounter with the 13-year-old Marisa.

Respondent's claim at trial that a picture of Marisa wearing a bikini justifies his conclusion that she appeared to be 19 or 20 years old is without merit. The record shows that it was within three minutes after initiating his first internet chat with Marisa on July 21, 2008, that respondent was informed that she was not yet 14 years old. (Exh. 1, p. 1.) Marisa reiterated that she was not quite 14 years old when, approximately 15 minutes into their chat, she messaged him, "i will be 14 next month." (Exh. 1, p. 2.) Finally, respondent asked Marisa, "hey, when's you're birthday?" When Marisa responded that it was August 14, respondent replied, "you'll be 14 on the 14<sup>th</sup>?" Marisa responded in the affirmative.<sup>3</sup> (Exh. 1, p. 12.) Although respondent may have been enticed by Marisa's photograph, the evidence reveals that he had been made fully aware by the individual with whom he was communicating that Marisa was a 13-year-old minor.

Respondent's July 22<sup>nd</sup> communications with Marisa were sexually explicit and graphic. Despite having been informed that Marisa was a 13 year old, respondent's July 22<sup>nd</sup> communications with Marisa are replete with direct references to the fact that he found Marisa sexually attractive, that he was sexually aroused, and that he desired to have a sexual encounter with Marisa. The July 22, 2008 internet chat room transcript (Exh. 2) clearly shows that

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<sup>2</sup> The communications sent to respondent from the individual identified by the username, "luvlymarisa 14" and referred to as Marisa in this decision, were in fact sent by a police detective with the Torrance Police Department, assigned to the Juvenile Section, Sex Crimes Unit, I.C.A.C. (Internet Crimes Against Children).

<sup>3</sup> Any excerpts from respondent's chats are exact quotations (i.e., errors in the original).

respondent intended to travel to meet Marisa for a sexual tryst, not simply to talk. He explicitly asked Marisa if she had ever had sex and if she ever had engaged in foreplay, which he then went on to describe in graphic terms. (Exh. 2, pp. 6-8.)

Respondent testified that the after Marisa texted him that she did not want to get pregnant, he took that to mean she did not want to have sex. However, respondent's testimony that he traveled to meet Marisa just to talk to her is belied by the July 22<sup>nd</sup> chat room transcript. The transcript shows that it was at 12:13:09 p.m. that Marisa communicated that she did not want to get pregnant. (Exh. 2.) Respondent, however, continued to text Marisa concerning a sexual encounter. At approximately 1:02 p.m. he asked Marisa if she would want to have sex. Marisa asked respondent if he would be "gentl," to which respondent replied, "of course." Taken in its entirety, the July 22, 2008 chat room transcript provides clear and convincing evidence of the fact that respondent did not believe that Marisa was declining a sexual encounter after stating that she did not want to get pregnant. The facts and circumstances surrounding respondent's conduct provide clear and convincing evidence that respondent drove to the coffee shop in Torrance, where he was to meet Marisa, for the purpose of engaging in a sexual encounter with her.

Richard Sandor, M.D. (Dr. Sandor) testified in this proceeding on behalf of respondent. Dr. Sandor explained that respondent has had a long history of compulsive sexual activity, including masturbation and pornography. After his marriage, it became clear to respondent that his self-oriented sexual activity was a serious problem, affecting his relationship with his wife. Respondent would attempt to put a stop to his behavior, going through periods of abstinence and relapse, which according to Dr. Sandor is typical of addictive disorders. Respondent was in a period of avoiding pornography during the time of his internet chats with Marisa.

According to Dr. Sandor, respondent described having been under a great deal of emotional distress. Respondent's wife was having difficulties getting pregnant and had undergone several medical procedures to aid in conception. The couple suffered three miscarriages within a one-year period. The third miscarriage occurred on July 10, 2008. Respondent described trying to be emotionally strong for his wife. But, respondent's work also caused stress to him and his family. In addition to working long hours and being away from home trying cases, respondent was unhappy at work because he believed he was denied a promotion that had been promised by his law firm. Respondent's outlet for his emotional distress and stress was pornography and masturbation.

Dr. Sandor testified that when he asked respondent about his state of mind in deciding to meet with a girl who had said she was 13 years old, respondent explained that when he agreed to meet her, he was not thinking about what she said her age was. Rather, as respondent explained, he was looking at her picture and thinking that she looked like an adult woman. Dr. Sandor further testified that respondent's rationale did not excuse his behavior. In his testimony, the doctor opined that respondent is a sex addict and that respondent's prognosis for full recovery from his addictive disorder is good. Dr. Sandor stated that respondent is currently taking appropriate steps toward resolving his addictive disorder by dedicating himself to a 12-step program in Sex Addicts Anonymous in addition to his court-ordered program.

Dr. Sandor explained that his diagnosis that respondent is a sexual addict is based on his experience treating approximately 10,000 addicts, of whom about 5% had a pure sexual addiction. Although respondent has only been treated for his addiction for about one year, Dr. Sandor also opined that respondent was on the road to recovery and that as long as he continues in his 12-step program, has a stable family situation, and abstains from pornography and other addictions, he should be able to practice law without being a danger to the public.

Dr. Sandor admitted, however, that at present the DSM-IV (i.e., the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders) does not recognize a classification for sexual addiction as a mental disorder and further acknowledged that there is controversy in the medical community as to whether sexual addiction is, in fact, a disorder.

Dr. Sandor also acknowledged that he only met with respondent on one occasion for one 90-minute meeting in January 2010, and has not met with respondent since that time. Thus, the court finds Dr. Sandor's medical opinions in relation to respondent somewhat less than clear and convincing.

#### **E. Conclusions of Law**

As set forth, *ante*, the Review Department of the State Bar Court issued an order, referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding respondent's criminal violations involved moral turpitude or other misconduct warranting discipline.

The term moral turpitude is defined broadly. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815, fn. 3.) An act of moral turpitude is any "act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [Citation.]" (*In re Craig* (1938) 12 Cal.2d 93, 97.) "Although an evil intent is not necessary for moral turpitude [citations], some level of guilty knowledge or [moral culpability] is required. [Citation.]" (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384.)

As the Supreme Court stated (2001) 25 Cal.4th 11, 16:

[W]e can provide this guidance: Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to

fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession.

At minimum, respondent's chat room discussions with Marisa and his attempt to meet with Marisa for the purpose of engaging in a sexual encounter with a 13-year old involves a serious breach of a duty owed to another or to society and a flagrant disrespect for the law or for societal norms. By his commission of an attempt to engage in unlawful sexual intercourse with a person less than 18 years of age, respondent demonstrated a readiness to engage in a serious sexual offense that if accomplished likely would have resulted in harm to a child.

Here, respondent's wrongdoing, much like that of the attorney in *In re Lesansky*, ". . . showed such a serious breach of the duties of respect and care that all adults owe to all children, and it showed such a flagrant disrespect for the law and for societal norms that continuation of [respondent's] State Bar membership would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky, supra*, 25 Cal.4th 11, 17.)

Thus, based on clear and convincing evidence, the court concludes that the facts and circumstances surrounding respondent's criminal conviction for attempting to engage in unlawful sexual intercourse with a person less than 18 years of age involved moral turpitude.

#### **IV. Level of Discipline**

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b) and (e).)<sup>4</sup>

##### **A. Mitigation**

Although respondent has no prior record of discipline, his misconduct took place six and

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<sup>4</sup>All further references to standards are to this source.

one-half years after he was admitted to the practice of law. Thus, respondent's discipline-free practice, at the time of his misconduct in 2008, is given only slight weight as a mitigating factor. (*In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44; Standard 1.2(e)(i).)

Respondent presented competent medical evidence that at the time of his misconduct he was suffering from extreme emotional difficulties, which caused or contributed to his misconduct. However, the fact that respondent was suffering from emotional difficulties that caused or contributed to his misconduct does not constitute a mitigating circumstance, since he did not also establish that he has overcome his emotional difficulties. (See, *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 150; (Std. 1.2(e)(iv).)

Respondent's stipulation as to facts and conclusions of law displays candor and cooperation with the State Bar during the disciplinary proceeding. (Std. 1.2(e)(v).)

Respondent presented the testimony of five witnesses, two of whom are attorneys licensed to practice law in California. All testified to respondent's good character. The witnesses also attested to his honesty and dedication to his family. They were familiar with the facts and circumstances surrounding respondent's conviction and testified that respondent was deeply remorseful for his misconduct. The witnesses also believed that respondent acted in an aberrational manner, that he has learned from the experience, and that he would never repeat such misconduct again.

However, all of the witnesses were of the opinion that respondent had traveled to see Marisa to "talk" with her, not for a sexual encounter. The witnesses based that opinion in large part upon their discussions with respondent about the facts of his misconduct. Although the court accepts the testimony of the witnesses, its mitigating value is greatly undermined and diminished as the witnesses were not aware of the full extent of respondent's misconduct. (See,

*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 538.)

Respondent also presented the declarations of seven witnesses who attested to his good character. The declarants stated that respondent is a good family man, who should be able to continue to practice law. (Std. 1.2(e)(vi).)

Respondent's conviction is conclusive proof that he committed all acts necessary to constitute the offense of which he was convicted—attempted unlawful sexual intercourse with a person less than 18 years of age. By failing to acknowledge that his true intent in traveling to Torrance was to have sexual intercourse with a person under the age of 18 years old, and not simply to “talk,” respondent has not accepted full responsibility for his misconduct. Thus, respondent is not entitled to receive mitigating credit for remorse and recognition of wrongdoing. (Std. 1.2(e)(vii).)

## **B. Aggravation**

The State Bar failed to establish any aggravating factor by clear and convincing evidence. (Std. 1.2(b).)

## **V. Discussion**

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

The applicable standards provide a broad range of sanctions ranging from actual suspension to disbarment. (Stds. 1.6, 2.3, 3.2 and 3.4.)

Standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the

purposes of imposing disciplinary sanctions.

Standard 3.2 provides: “Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime’s commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.”

The State Bar urges that respondent be disbarred under standard 3.2, which pertains to the disciplinary sanction to be imposed for conviction of a crime involving moral turpitude. Respondent urges that respondent’s criminal conviction falls under standard 3.4, which pertains to the disciplinary sanction to be imposed for conviction of a crime not involving moral turpitude.

The court recognizes that “disbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude.” (*In re Crooks, supra*, (1990) 51 Cal.3d 1090, 1101.) But, “in the final analysis, as the Supreme Court has made clear, our consideration of the Standards cannot yield a recommendation which, on the record, is arbitrary or rigid [citation], or about which ‘grave doubts’ exist as to the recommendation’s propriety. [Citation.] Moreover, the weight to be accorded the Standards will depend on the degree to which they are apt to the case at bench.” (*In the Matter of Oheb, supra*, 4 Cal. State Bar Ct. Rptr. 920, 940.)

Here, respondent took affirmative steps to engage in sex with a minor and was convicted of two criminal statutes for attempted unlawful sexual intercourse with a minor, a very serious offense. The facts and circumstances surrounding respondent’s criminal conviction clearly

involved an act or acts of moral turpitude. Accordingly, the proper standard that governs this matter is standard 3.2., which, as noted, *ante*, calls for disbarment.

Standard 3.2, further provides that only if the most compelling mitigating circumstances clearly predominate shall a lesser discipline than disbarment be imposed. In this matter, however, the mitigating circumstances are not sufficiently compelling; nor do they clearly predominate. They do not rise to a level that could justify a sanction short of disbarment.

Thus, having considered the evidence, the standards and other relevant law, and after balancing all relevant factors, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent.

## **VI. Discipline Recommendations**

### **A. Discipline**

Accordingly, the court hereby recommends that respondent **Sean P. Martin** be disbarred from the practice of law in California, and that his name be stricken from the roll of attorneys in this State.

### **B. California Rules of Court, Rule 9.20**

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.<sup>5</sup>

### **C. Costs**

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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<sup>5</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

## **VII. Order of Involuntary Inactive Enrollment**

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: September 15, 2010.

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**RICHARD A. PLATEL**  
Judge of the State Bar Court