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**STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 12-C-17847
)	
ARTURO FERNANDO SHAW GUTIERREZ,)	AMENDED RECOMMENDATION
)	OF SUMMARY DISBARMENT
A Member of the State Bar, No. 232276.)	
_____)	

On September 26, 2018, the Office of Chief Trial Counsel of the State Bar (OCTC) filed a request for summary disbarment based on Arturo Fernando Shaw Gutierrez's felony convictions. On October 2, 2018, Gutierrez requested that OCTC's request be stayed pending the resolution of a petition for writ of habeas corpus that he filed on September 24, 2018. On October 9, 2018, OCTC filed its opposition to Gutierrez's request, contending that, notwithstanding his pending petition, Gutierrez's felony convictions were final. On October 17, 2018, Gutierrez filed a request that his response to OCTC's opposition be filed under seal, and, in his response, he argued that his convictions would be overturned if his petition was successful, which would affect the finality of his felony convictions for disciplinary purposes. On November 14, 2018, we granted Gutierrez's request to file his response under seal, and issued an order directing OCTC to respond to Gutierrez's contention regarding finality. OCTC filed its response to our order on November 16, 2018, asserting that Gutierrez's convictions are final. On November 30, 2018, Gutierrez filed a "Reply to State Bar's Response to 11/14/18 Order."

After due consideration of the arguments by the parties, we deny Gutierrez's request for a stay, finding that his convictions are final for disciplinary purposes. We recommend that Gutierrez be summarily disbarred.

On February 6, 2015, Gutierrez was convicted of four criminal counts: (1) Penal Code sections 664 and 288, subdivision (c)(1) (attempted lewd act on a child 14 or 15 years of age), a felony; (2) Penal Code section 288.3, subdivision (a) (luring of a child with intent to commit specified crime), a felony; (3) Penal Code section 288.4, subdivision (a) (arranging to meet a minor for lewd purpose), a misdemeanor; and (4) Penal Code section 288.4, subdivision (b) (meeting a minor to commit lewd conduct), a felony. OCTC transmitted evidence of Gutierrez's convictions on April 24, 2015. On May 15, 2015, we ordered that Gutierrez be placed on interim suspension, effective June 8, 2015, pending the final disposition of his proceeding. On September 26, 2018, OCTC transmitted evidence that the opinion of the Court of Appeal in his proceeding became final by remittitur on April 26, 2018. Therefore, the convictions are final. (Cal. Rules of Court, rule 9.10(a).)

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 both criteria for summary disbarment.

First, three of Gutierrez's convictions are felonies.¹ Penal Code section 664 provides for punishment of imprisonment in state prison for one, two, or three years, with attempt being punished by one-half the term of imprisonment as provided in section 288, subdivision (c)(1). Next, Penal Code section 288.3, subdivision (a), provides for punishment the term prescribed for

¹ A fourth conviction, his violation of Penal Code section 288.4, subdivision (a), is a misdemeanor and has not been relied upon in making our recommendation.

an attempt to commit the intended offense. For this violation, the intended offense is Penal Code section 288, a lewd act upon a child; therefore, the term for imprisonment in state prison is up to one and one-half years. Finally, Penal Code section 288.4, subdivision (b), provides for punishment of imprisonment in state prison for up to four years. As these criminal convictions are punishable by imprisonment in state prison, they are felonies. (Pen. Code, sec. 17(a).)

Second, all three of Gutierrez's felony convictions involve moral turpitude. (*In re Lesansky* (2001) 25 Cal.4th 11, 17 [intention to satisfy sexual desire with a child "necessarily involves moral turpitude for purposes of attorney discipline"]; *In re Fahey* (1973) 8 Cal.3d 842, 849 [conviction of a serious sexual offense establishes "moral turpitude on its face"].) A conviction of a serious sexual offense involves moral turpitude because the offense is "one of depravity, contrary to the accepted and customary rule of right and duty between man and man." (*In re Boyd* (1957) 48 Cal.2d 69, 70.) Accordingly, Gutierrez's felony convictions qualify him for summary disbarment.

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 Arturo Fernando Shaw Gutierrez, State Bar number 232276, be disbarred from the practice of law in this state. We also recommend that he be ordered to comply with California Rules of Court, rule 9.20 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 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.

PURCELL

Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 January 24, 2019, I deposited a true copy of the following document(s):

AMENDED RECOMMENDATION OF SUMMARY DISBARMENT
FILED JANUARY 24, 2019

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

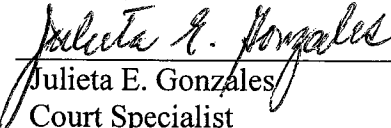
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTURO F S GUTIERREZ
GUTIERREZ, CURTIS, GUTIERREZ
1000 TOWN CENTER DR STE 300
OXNARD, CA 93036 - 1117

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

Kevin B. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 24, 2019.



Julieta E. Gonzales
Court Specialist
State Bar Court