

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-342

IN THE MATTER OF
JAMES I. PECK, IV
AN ATTORNEY AT LAW

Decision

Argued: November 21, 2002

Decided: January 8, 2003

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

Dennis A. Cipriano appeared on behalf of respondent.

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

This matter was before us based on a motion for final discipline filed by the Office of Attorney Ethics (“OAE”), following respondent’s guilty plea to one count of possession of child pornography, in violation of 18 *U.S.C.A.* 2252(a)(4)(B). Because the pornographic

materials had been mailed from New York to New Jersey, respondent was charged with a violation of federal law.

Respondent was admitted to the New Jersey bar in 1974. He was temporarily suspended by the Court on October 25, 2001, following his guilty plea. *In re Peck*, 170 N.J. 4 (2001). That suspension continues to date. He has no other disciplinary history

On November 10, 1998 an indictment was issued charging respondent with knowing and willful possession of more than three items containing visual depictions which had been produced using materials which had been shipped and transported in interstate and foreign commerce, the production of which visual depictions involved the use of minors engaging in sexually explicit conduct and which visual depictions were of such conduct.” On August 31, 2001 respondent pleaded guilty in United States District Court to the charge contained in the indictment, admitting that he knowingly possessed at least three magazines depicting minors engaged in sexually explicit conduct. On April 22, 2002 respondent was sentenced to a fifteen-month prison term, to be followed by a three-year term of probation.

Relying on *In re McBroom*, 158 N.J. 258 (1999), the OAE urged us to impose a two-year suspension, retroactive to October 25, 2001, the date of respondent’s temporary suspension.

* * *

Following a review of the full record, we determined to grant the OAE’s motion for final discipline.

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 one count of possession of child pornography constituted 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 level of discipline 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 though an attorney's offense was not related to the practice of law. *In re Kinnear*, 105 *N.J.* 391 (1987).

In cases involving sexual misconduct by attorneys, the discipline has ranged from a reprimand to disbarment. Reprimand cases include *In re Gilligan*, 147 *N.J.* 268 (1997) (conviction of lewdness for exposing and fondling 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) (conviction of lewdness for exposing genitals to a twelve-year old girl). Suspension cases include *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 attorney who pleaded guilty to the petty disorderly offense of harassment by offensive touching; the victim was the attorney’s teenage client); *In re Ruddy*, 130 N.J. 85 (1992) (two-year suspension for attorney who pleaded guilty to four counts of third-degree endangering the welfare of a child, after he fondled several young boys); *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). The most serious cases involving sexual misconduct have resulted in disbarment. *In re Wright*, 152 N.J. 35 (1997) (attorney was convicted of aggravated sexual assault); *In re Palmer*, 147 N.J. 312 (1997) (attorney pleaded guilty to seven counts of third degree aggravated criminal sexual contact and one count of fourth degree criminal sexual contact); *In re X*, 120 N.J. 459 (1990) (attorney pleaded guilty to three counts of second degree sexual assault; the victims were his three daughters).

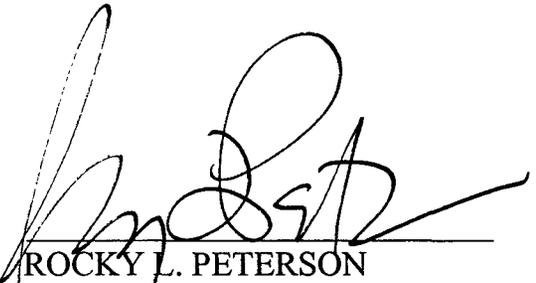
Conduct more analogous to that of respondent’s occurred in *McBroom, supra*, 158 N.J. 258, where the attorney pleaded guilty to a violation of 18 U.S.C.A. 2252(a)(4), the same statute involved here. McBroom downloaded from the internet images of minors engaged in sexually explicit conduct. The record contained evidence that he had been sexually abused as a child; that he was addicted to alcohol and cocaine; and that he was obsessed with pornography. McBroom was suspended for two years, retroactively to the date of his

temporary suspension. At the time that the order of suspension was entered, McBroom had already been temporarily suspended for more than three years. In effect, thus, the suspension was for “time served.” In issuing our decision in *McBroom*, we did not intend to proclaim a “bright-line” rule that an attorney’s possession of child pornography will invariably result in a two-year suspension. Each case is fact-sensitive and must be decided on its own merits.

Respondent’s misconduct in this matter was serious. In our view, however, because his actions were limited to possession of pornographic materials, it was not as serious as that of the attorneys who had direct contact with their victims and placed those victims in fear. By no means do we intend to trivialize respondent’s transgressions. We recognize that his actions were harmful to children, in that he perpetuated the child pornography trade. Nonetheless, we cannot ignore that, unlike the attorneys in some of the above cases, respondent did not expose himself to children or inappropriately touch them. His wrongdoing, while reprehensible and criminal, was passive in nature. We also took into account respondent’s previously unblemished legal career of twenty-eight years.

Based on the foregoing, a four-member majority determined to suspend respondent for one year, retroactively to October 25, 2001, the date of his temporary suspension in New Jersey. Three members dissented: two voted for a two-year suspension and one voted for a three-year suspension. In the view of the dissenting members, more severe discipline is warranted for respondent’s perpetuation of the child pornography industry, which exploits and demeans children. Two members did not participate.

We further required respondent to reimburse the Disciplinary Oversight Committee
for administrative costs.

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of James I. Peck, IV
Docket No. DRB 02-342

Argued: November 21, 2002

Decided: January 8, 2003

Disposition: One year suspension

<i>Members</i>	<i>Disbar</i>	<i>One-year Suspension</i>	<i>Reprimand</i>	<i>Two-year suspension</i>	<i>Dismiss</i>	<i>Three-year suspension</i>	<i>Did not participate</i>
<i>Peterson</i>		X					
<i>Maudsley</i>							X
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>				X			
<i>O'Shaughnessy</i>							X
<i>Pashman</i>		X					
<i>Schwartz</i>				X			
<i>Wissinger</i>						X	
Total:		4		2		1	2

Robyn M. Hill 1/13/03
Robyn M. Hill
Chief Counsel