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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-178
District Docket No. XIV-05-517E

IN THE MATTER OF
FRANK L. ARMOUR
AN ATTORNEY AT LAW

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Decision

Argued: September 21, 2006

Decided: October 31, 2006

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

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), based on respondent's guilty plea to one count of possession of child pornography.

Respondent was admitted to the New Jersey bar in 1966. He has no history of discipline. According to the report of the New Jersey Lawyers' Fund for Client Protection ("CPF"),

respondent has been retired from the practice of law since March 2006.

Respondent, the former general counsel for the Newark Housing Authority, was charged in a one-count indictment with the fourth-degree crime of endangering the welfare of children, in violation of N.J.S.A. 2C:24-4b(5)(b).¹ Respondent viewed more than fifty images of child pornography, including images of prepubescent children involved in sexual acts with adults.

In January 2006, respondent pleaded guilty to the charge, after he was denied entry into the pretrial intervention program. He admitted that, in January 2004, he had viewed the images on the internet on his government-owned computer, while at work. Respondent entered the plea in exchange for a probationary sentence.

In March 2006, the court sentenced respondent to eighteen months' probation and a \$500 fine. The court imposed additional costs and penalties totaling \$155, and a \$2.00 per month' probation fee. As conditions of his probation, respondent was

¹ N.J.S.A. 2C:24-4b(5)(b) provides: "[a]ny person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree."

required to continue counseling, have no unsupervised contact with children under the age of sixteen, and have no access to a computer with internet service.

The OAE recommended the imposition of a six-month suspension.

Respondent submitted a letter to us, dated June 28, 2006, in which he did not oppose the OAE's recommendation. Respondent stated, that since he is retired from the practice of law, he did not believe it necessary to challenge the proposed six-month suspension.

Upon a de novo review of the record, we determine to grant the OAE's motion for final discipline.

Respondent pleaded guilty to one count of endangering the welfare of children. 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 conviction 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). The sole remaining issue is the appropriate discipline. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in disciplinary matters based on the commission of a crime depends on a number of

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 is not related to the practice of law. In re Kinnear, 105 N.J. 391, 395 (1987).

In New Jersey, attorneys guilty of child pornography offenses have been suspended for periods ranging from six months to three years. In In re McBroom, 158 N.J. 258 (1999), the attorney pleaded guilty to violating 18 U.S.C.A. 2252(a)(4), a federal statute prohibiting possession of child pornography obtained through interstate commerce. McBroom downloaded from the internet images of minors engaged in sexually explicit conduct. He received a two-year suspension, retroactive to the date of his temporary suspension.

In 2003, the Court disciplined three attorneys guilty of child pornography offenses. In In re Rosanelli, 176 N.J. 275 (2003), the attorney acknowledged possessing twenty-three pictures of children engaged in various sexual acts. Rosanelli pleaded guilty to an accusation charging him with the fourth-degree crime of endangering the welfare of a child. He was

admitted into the pre-trial intervention program. He was suspended for six months.

In In re Peck, 177 N.J. 249 (2003), the attorney was sentenced to a fifteen-month prison term after he pleaded guilty to one count of possession of child pornography, in violation of 18 U.S.C.A. 2252(1)(4)(B). Peck admitted possession of at least three magazines depicting minors engaged in sexually explicit conduct. He received a "time-served" suspension of twenty-one months.

Finally, in In re Kennedy, 177 N.J. 517 (2003), the attorney pleaded guilty to the fourth-degree crime of endangering the welfare of a child and admitted that he had downloaded from the internet several hundred images depicting children engaged in sexual acts. Kennedy was placed on probation for three years. He received a six-month suspension.

In In re Fink, 181 N.J. 350 (2004), the Court imposed a three-year suspension on an attorney who was disbarred in the State of Delaware, based on his criminal conviction for fifteen counts of felony possession of child pornography and fifteen counts of unlawful dealing in child pornography. He was sentenced to a prison term of six years. The Court conditioned his eligibility for reinstatement in New Jersey on his reinstatement in Delaware, where a disbarred attorney may seek

reinstatement five years after the effective date of disbarment. Although Fink's consensual disbarment in Delaware was based solely on his conviction for child pornography, he consented to disbarment in the face of additional charges of knowing misappropriation of client funds.

More recently, in November 2005, the Court, in a strikingly similar case, imposed a six-month suspension on an attorney who pleaded guilty to possession of child pornography. In re Haldusiewicz, 185 N.J. 278 (2005). The attorney, who was a deputy attorney general at the time of his offense, admitted downloading images of child pornography on his office computer. He was sentenced to three years' probation, and was fined \$1,500.

The OAE urged us to impose a six-month suspension. In the OAE's view, the facts of the within matter are most akin to those in Rosanelli, Kennedy, and Haldusiewicz, where the attorneys pleaded guilty to the same offense as respondent, and received six-month suspensions. We agree. We see no reason to vary from precedent in this case. We, therefore, determine that a six-month suspension is appropriate discipline in this matter.

Member Lolla dissented, voting for a two-year suspension. Members Boylan, Stanton, and Wissinger did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

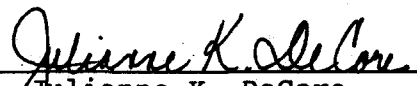
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Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Two-year Suspension	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh		X				
Boylan						X
Frost		X				
Lolla			X			
Neuwirth		X				
Stanton						X
Wissinger						X
Total:		5	1			3


Julianne K. DeCore
Chief Counsel