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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 05-064  
District Docket No. XIV-05-009E

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IN THE MATTER OF :  
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JOSEPH J. HALDUSIEWICZ :  
 :  
AN ATTORNEY AT LAW :  
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Decision

Argued: April 21, 2005

Decided: July 7, 2005

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

Respondent appeared pro se.

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 conviction for one count of fourth degree endangering the welfare of a child (possession of child pornography).

Respondent was admitted to the New Jersey bar in 1983. He has no history of discipline. During the time in question,

respondent was employed as a Deputy Attorney General with the New Jersey Department of Law and Public Safety, Division of Law.

On May 22, 2003, respondent appeared before the Honorable Harold W. Fullilove, J.S.C., and pleaded guilty to a one-count accusation charging him with the fourth degree crime of endangering the welfare of a child (possession of child pornography), a violation of N.J.S.A. 2C:24-4(b)(5)(b). During the plea hearing, the following factual basis for the plea was elicited by Judge Fullilove:

The Court: Sir, you're charged in count one of this accusation that on or about or before August 8, 2002 you did endanger the welfare of a child by possessing certain objects. What -- what happened sir, what did you do?

The Defendant: Your Honor, I was downloading images of teenagers engaging in sexual acts and I downloaded that off the Internet and I viewed that on my computer -- my work computer.

The Court: And you're satisfied, sir, that the - the images you downloaded were in fact people under the age of 18?

The Defendant: Yes Your Honor.

The Court: Mr. Moskowitz, are you satisfied with the factual basis?

Mr. Moskowitz: The State is satisfied Your Honor.

The Court: The guilty plea will be entered.

[OAEbEx.B at 8-9.]<sup>1</sup>

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<sup>1</sup> OAEb refers to the brief filed by the OAE.

A more detailed recitation of the facts is contained in the pre-sentence report:<sup>2</sup>

On August 1, 2002, Deputy Attorney General Joseph Haldusiewicz was terminated from the NJ Department of Law and Public Safety, Division of Law for misuse of his internet privilege. An administrative investigation by the Division of Law revealed that Mr. Haldusiewicz had accessed unauthorized websites. A review of internet access logs revealed questionable sites with names that indicated that they may contain adult and/or child pornography.

Mr. Haldusiewicz had access to two State of NJ computers. One was a desktop computer that was located in his office at the Division of Law, 124 Halsey St., Newark, NJ. The other was a shared computer with internet access at the Board of Public Utilities in Newark.

The defendant was among a group of employees that shared a computer for research at the BPU. In June 2002, it was discovered that an unknown employee used this computer to access unauthorized pornographic sites. Mr. Haldusiewicz had access to the computer at this time. After the computer was found to contain pornography, it was deleted by the Information Technology staff.

Mr. Haldusiewicz was using the shared computer when a BPU employee walked into the office. The defendant appeared 'pale and surprised' and immediately shut down the computer with the power button instead of doing a proper shutdown.

The Division of Law IT staff maintains internet access logs for each employee. A review of the logs for Mr. Haldusiewicz's desktop computer

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<sup>2</sup> Although the pre-sentence report is confidential, the OAE included the quoted information in its brief. Respondent filed a brief with us, in which he did not object to the inclusion of this information. We, therefore, deemed respondent to have waived the confidentiality of this portion of the pre-sentence report.

revealed that unauthorized pornography sites were accessed.

On August 1, 2002, Mr. Haldusiewicz was terminated at his office. During the termination interview, the defendant stated that he had a 'compulsion' and that he knew it was only a matter of time until he was caught.

On that date, State Investigator Ronald Szymanski of the Division of Criminal Justice, Computer Analysis and Technology Unit advised the IT staff to secure the desktop computer until he could obtain a search warrant. S.I. Szymanski also requested that Mr. Haldusiewicz's computer access be blocked and removed.

On August 6, 2002, the Division of Law IT staff provided S.I. Szymanski with a print out of the internet access log for Joseph Haldusiewicz for the period of July 15, 2002 to July 24, 2002. S.I. Szymanski found 77 websites that had names that suggested child pornography. S.I. Szymanski used an undercover internet account to access selected websites from the log. His search resulted in ten sites that appear to contain child pornography. S.I. Szymanski did not access all of the websites because of the numerous suspected sites that he found.

In January 2003, S.I. Szymanski conducted a forensic examination of the desktop computer from Joseph Haldusiewicz's office. S.I. Szymanski found a total of 996 images of suspected child pornography on the computer before the examination was terminated. The examination also revealed that numerous websites containing names suggesting child pornography were accessed with the computer. S.I. Szymanski also observed numerous homosexual and adult pornographic images during the examination. S.I. Szymanski terminated the examination because of the volume of suspected child pornography found, but stated that if the examination was continued more would be found.

[Adult Presentence Report 2-3.]

On July 18, 2003, Judge Fullilove sentenced respondent to a three-year term of probation. The court also imposed a fine of \$1,500 and total costs of \$157, and further ordered that respondent have no unsupervised contact with children under the age of sixteen. Respondent was also directed to continue psychological treatment.

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

Respondent pleaded guilty to one count of endangering the welfare of a child. 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 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). The sole issue to be determined is the quantum of discipline to be imposed. 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 was not related to the practice of law. In re Kinnear, 105 N.J. 391, 395 (1987).

In New Jersey, attorneys who have pleaded to or been found guilty of child pornography offenses have been suspended for periods ranging from six months to two years. In In re McBroom, 158 N.J. 258 (1999), the attorney pleaded guilty to a violation of 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 imposed discipline on three attorneys involved in child pornography. In In re Rosanelli, 176 N.J. 275 (2003), the attorney acknowledged possessing twenty-three pictures of children engaged in various sexual acts and pleaded guilty to an accusation charging him with the fourth degree crime of endangering the welfare of a child. Rosanelli 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.

More recently, 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. The attorney was sentenced to a prison term of six years. The Court conditioned his eligibility for reinstatement in New Jersey on 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.

The OAE urged us to impose a one-year suspension. In the OAE's view, the facts of this matter are most akin to those in Rosanelli and Kennedy, where the attorneys pleaded guilty to the

same offense as respondent, and received six-month suspensions. In this matter, however, the OAE deemed more severe discipline to be appropriate because respondent was a deputy attorney general at the time of his offense.

In his brief to us, respondent argued that he should not be more severely disciplined because he was a deputy attorney general. Respondent pointed out that his crime was like that of Kennedy and Rosanelli, and that, like those attorneys, he had a previously unblemished disciplinary history. Unlike Kennedy and Rosanelli, however, who were engaged in private practice, since being admitted to the bar respondent had served the citizens of New Jersey as a public employee. Respondent argued that, if he is to be treated differently because he was a public employee, as urged by the OAE, then we should consider that, because of his status as a public employee, he was terminated for his offense, with detrimental effect on his pension and health benefits. Respondent noted that he will have to seek employment in private practice in his limited area of specialization or seek other public legal or non-legal employment, which, he claims, will be difficult to obtain because of his age. Respondent further stated that

[b]ased upon the above, Respondent should not be treated differently than attorneys in private practice and thereby receive an additional six month suspension as OAE urges simply because he was a deputy attorney general at the time of the offense. All attorneys are officers of the



courts, not just those in public sector practice. All should be treated the same and held to the same measure of discipline for the same offense. To do otherwise would be arbitrary, discriminatory and patently unfair.

[RB at 3.]<sup>3</sup>

Respondent attached to his brief two psychological reports stating that he posed little danger to the community and is unlikely to commit similar offenses in the future. Respondent urged us to impose a six-month suspension, retroactive to August 1, 2002, the date his employment was terminated.

We are unable to agree with the OAE's position that discipline should be "enhanced" because of respondent's (former) position as a deputy attorney general. We do not believe we should create two levels of discipline, one for the private bar, another for state employees, for the same offense. It is true that, in the past, attorneys who held positions of public trust and were guilty of unethical conduct received enhanced levels of discipline because of their violation of that trust. That, however, should not be the case here. Respondent's misconduct had no bearing on his work as a deputy attorney general. This is not a case where an attorney accepted a bribe or used his public position for his personal advancement. Although respondent's misconduct occurred in his workplace, it did not

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<sup>3</sup> Rb refers to respondent's brief to us.

involve his duties as a public servant. We find it unnecessary and unfair to increase the level of discipline for respondent simply because he was a state employee. We also believe that the difficulty respondent will have in establishing a new professional career at this point in his life, and forfeiture of his pension and other benefits, should be considered in mitigation. We, therefore, determine that a six-month suspension, as imposed in the similar cases cited above, is significant discipline and sufficient discipline, for respondent's misconduct under all the circumstances. We further determine that respondent's suspension not be retroactive, as requested, but prospective.

Two members, Ruth Jean Lolla and Spencer Wissinger, III, filed a dissenting opinion, believing that respondent should receive a two-year suspension. Member Reginald Stanton, Esq. also disagreed with the majority's view, believing that respondent's public employee position warrants a one-year suspension, for the reasons expressed by the OAE.

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

Disciplinary Review Board  
Mary J. Maudsley, Chair

By: Julianne K. DeCore

Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Joseph J. Haldusiewicz  
Docket No. DRB 05-064

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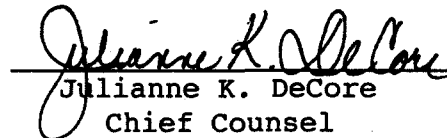
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Argued: April 21, 2005

Decided: July 7, 2005

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Two-year suspension	One-year suspension	Did not participate
Maudsley		X			
O'Shaughnessy		X			
Boylan		X			
Holmes		X			
Lolla			X		
Neuwirth		X			
Pashman		X			
Stanton				X	
Wissinger			x		
Total:		6	2	1	

  
Julianne K. DeCore  
Chief Counsel