SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-357

IN THE MATTER OF

DONALD ROSANELLI

AN ATTORNEY AT LAW

Decision

Argued: November 21, 2002

Decided: January 24, 2003

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Robert J. DeGroot 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 stipulation signed by the Office of Attorney Ethics ("OAE") and respondent.

Respondent was admitted to the New Jersey bar in 1981. Although he has no disciplinary history, he has been ineligible to practice law since September 24, 2001, according to the records of the New Jersey Lawyers' Fund for Client Protection. He maintains a law office in Newark, Essex County, New Jersey.

* * *

On January 19, 2001 respondent was charged in Bergen County with a violation of *N.J.S.A.* 2C:24-4b(5)(b), endangering the welfare of a child by possessing a photographic depiction of a child engaged in a sexual act, a crime of the fourth degree. The criminal complaint filed against respondent alleged that he possessed twenty-eight pages containing twenty-three pictures of children engaged in various sexual acts. On October 18, 2001 he pleaded guilty to the accusation and was admitted into the pre-trial intervention program.

For purposes of the criminal and disciplinary proceedings, respondent was examined by Daniel P. Greenfield, M.D., a psychiatrist. Dr. Greenfield's March 26, 2002 report was included as Exhibit 4 to the OAE's investigative report and was incorporated in the stipulation by reference. That report describes respondent's account of the events as follows:

I'm on the internet, January or February, 2000, with adult pornography, chat rooms, trading pictures. Answer references to child pornography, one site, non-sexual with young kids, eleven- to- seventeen years old. I joined with a credit card for one month and downloaded about a thousand pictures. The idea of child pornography was titillating. I found sites and chat rooms. I was into child pornography, excluding pictures.

That became the vehicle for transfer of child pornography. I was listed to receive copies and accumulated a lot of pictures. I was turned on by the illicit process, the pictures didn't excite me that much. About eight months I hung on, and also took downloads. I then periodically cleaned the house.

Gary White, my friend, was a cancer patient at Hackensack University Medical Center [HUMC], who stayed with me for about eight months. I was in the apartment. I was gone one day, and Gary looked for a phone book while I was gone. The pictures slid out. Later he called me and said 'we've gotta talk.' I was mortified and shocked that he had found the pictures.

He told me that I needed help and to go to the police for intervention. I said 'no,' that would destroy my career and my life. He said 'no,' I've spoken with them. They won't prosecute. I said 'no,' and he said 'either you go or I go.'

I said 'Go with me.' I was concerned about my thirty-year relationship with a good friend. I couldn't destory [sic] the twenty-eight pictures or throw out the computer, and say that Gary lied. I was awake all night. I drove with the pictures and computer myself to the Hackensack Police Department, and Gary was permitted to leave. I was questioned for the next eight hours, and told by them that I would be prosecuted.

They booked me and released me on my own recognizance. I signed a release, got a computer, was transported to the police station. There was no newspaper coverage. The police were concerned that I would become suicidal.

According to Dr. Greenfield's report, in 1988, at the age of thirty-seven, respondent admitted that he was an alcoholic and began attending AA meetings. Dr. Greenfield concluded that, although respondent suffered from depression and alcohol abuse, the appropriate treatment that he continues to receive reinforced the view that respondent is not likely to engage in similar misconduct in the future. In February 2001 respondent began treatment with Patricia Sermabeikian, LCSW. As the date of Dr. Greenfield's report, March 26, 2002, respondent was having weekly therapy sessions with Sermabeikian, who also submitted a report indicating that respondent did not present a risk to his clients, to children or to the community. Melvin Rand, a psychologist who, at the request of the Bergen County Prosecutor's Office, evaluated respondent in connection with the criminal proceeding, ruled out "serious sexual psychopathology" and did not oppose respondent's entry into the pre-trial intervention program.

The OAE urged us to suspend respondent for six months, distinguishing this case from *In re McBroom*, 158 *N.J.* 258 (1999), where a two-year suspension was imposed for similar conduct.

* * *

Respondent's guilty plea to a criminal offense and his admissions in the stipulation established a violation of *RPC* 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer). The primary issue for us to determine is the quantum of discipline.

In cases involving sexual misconduct, the discipline has ranged from a reprimand to disbarment. Reprimand cases include *In re Gilligan*, 147 *N.J.* 268 (1997) (attorney was convicted of lewdness when he exposed and fondled his 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) (attorney was convicted of lewdness after he exposed his genitals to a twelve-year old girl). Attorneys in the following cases were suspended: *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).

In *McBroom, supra,* 158 *N.J.* 258, the attorney pleaded guilty to a violation of 18 *U.S.C.A.* 2252(a)(4), possession of child pornography. In that case, the attorney downloaded from the Internet images of minors engaged in sexually explicit conduct. He was sentenced in federal court to a term of six months' imprisonment, followed by home confinement for a period of two months. The record contained evidence that McBroom 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, retroactive 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. *See, In re Musto,* 152 *N.J.* 165, 178 (1997); *In re Hasbrouck*, 140 *N.J.* 162 (1995); *In re Kinnear*, 105 *N.J.* 391, 395 (1987); *In re Litwin*, 104 *N.J.* 361, 366 (1986).

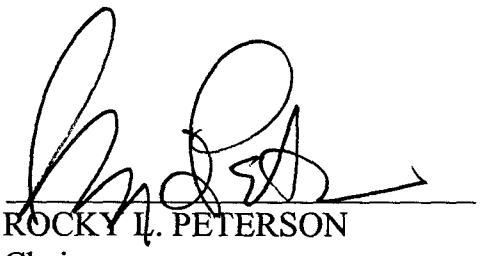
Unquestionably, respondent's misconduct in this matter was very serious. In our view, however, because his actions were limited to possession of pornographic materials, they were not as serious as those of the attorneys who had direct contact with their victims and placed them in fear. Moreover, respondent's misconduct was less egregious than that of Ferraiolo, who received a one-year suspension for arranging to meet an individual whom he believed to be a fourteen-year old boy, for purposes of engaging in sexual acts. By no means do we mean to trivialize respondent's transgressions. Nonetheless, we cannot overlook the circumstance that, unlike the attorneys in some of the cases previously discussed, 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-one years.

We recently considered a similar case in which 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). *In the Matter of James I. Peck*

IV, Docket No. DRB 02-342 (2003). We determined to suspend that attorney for one year. Here, respondent introduced reports from three professionals, all of whom agreed that he was not a risk to children or the general community. As noted above, the psychologist retained by the Bergen County Prosecutor's Office did not oppose respondent's entry into the pre-trial intervention program. In contrast, the attorney in *Peck* did not offer reports by any mental health professional, in mitigation of his conduct. Moreover, unlike respondent, who was admitted into the pre-trial intervention program, Peck was not only sentenced in accordance with federal sentencing guidelines, but the judge specifically denied his request for a downward departure.

Based on the foregoing, four members determined to suspend respondent for six months. Three members dissented, voting to suspend him for two years. Those members filed a separate dissenting decision. 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 Donald S. Rosanelli
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Disposition: Six-month suspension

Members	*Disbar*	*Six-month Suspension*	*Reprimand*	*Two-year Suspension*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson		X					
Maudsley							X
Boylan		X					
Brody		X					
Lolla				X			
O'Shaughnessy							X
Pashman		X					
Schwartz				X			
Wissinger				X			
Total:		4		3			2

Robyn M. Hill 2/3/03
Robyn M. Hill
Chief Counsel