SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-139

IN THE MATTER OF

DONALD M. FERRAIOLA

AN ATTORNEY AT LAW

Decision

Argued: June 21, 2001

Decided: October 16, 2001

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

Jeffrey B. Steinfeld 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 on a Motion for Final Discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's guilty plea to a one-count accusation charging him with "attempted endangering [of] the welfare of a child," in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:24-4.

Respondent was admitted to the New Jersey bar in 1970. He maintains an office for the practice of law in Hackensack, New Jersey. He has no disciplinary history.

In February 2000, respondent communicated on several occasions, via an internet chat room, with "Jay," who respondent believed was a fourteen year old boy. In fact, Jay was an investigator with the Bergen County prosecutor's office. Respondent told Jay that he wanted to take him to respondent's home to engage in numerous sexual acts, some of which were explicitly stated. He also "e-mailed" Jay two photographs of the body of a nude adult male that respondent claimed were photographs of himself. Respondent arranged to meet Jay on the steps of the Oradell New Jersey public library. The stated purpose of the meeting was for respondent to take Jay to his apartment to engage in sexual acts.

Respondent was arrested when he appeared for the meeting. He admitted frequenting internet chat rooms that introduced older men to younger boys. He further admitted that, in February 1999, he had also communicated online with someone that he believed was a fourteen year old boy and had arranged to meet with that person. However, respondent did not show up for the meeting. In fact, that purported boy was also an investigator with the prosecutor's office. Respondent denied having previously met with a minor for the purpose of engaging in sexual acts.

On August 14, 2000, respondent pleaded guilty to "attempted endangering [of] the welfare of a child," a third degree offense. At that time, respondent admitted that he had

gone to the Oradell library to meet Jay for the purpose of "engaging, ultimately, in sexual acts" with Jay.

Because of the nature of respondent's offense, he was evaluated at the Adult Diagnostic and Treatment Center, Avenel, New Jersey ("Avenel") prior to sentencing. The psychologist at Avenel concluded that respondent showed no evidence of "severe psychopathology or chronic criminal behaviors" and no evidence "to indicate a pattern of repetitive and compulsive sexual behaviors for statutory purposes." The psychologist's clinical impression was "of an otherwise well intentioned, law-abiding individual, with a history of recurrent periods of loneliness and mild depression, including the time period of the current offense."

Respondent was sentenced to four years' probation with psychological counseling and Megan's law reporting requirements.

* * *

Melvin Rand, Ph.D, respondent's treating psychologist, stated that respondent was "progressing very well." It was Dr. Rand's opinion that respondent presented no threat to society, that he was not likely to repeat his criminal behavior and that there was a "very positive prognosis for the future."

Respondent also presented letters from friends and colleagues that attested to his good character and that fact that he has, except for this incident, led an exemplary life.

The OAE urged that we suspend respondent for one year.

* * *

Upon a review of the full record, we determined to grant the OAE's Motion for Final Discipline.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction established 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 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.

We have not previously addressed the appropriate discipline for an attorney convicted of an attempt to endanger the welfare of a child. In In re Ruddy, 130 N.J. 95 (1992), the attorney was suspended for two years following his guilty plea to four counts of endangering the welfare of a child for fondling several young boys while a volunteer as a youth athletic

coach. The attorney in In re Gernert, 147 N.J. 289 (1997) was suspended for one year following his conviction for harassment by offensive touching, a petty disorderly persons offense, for touching the breast of a teenager. Aggravating factors included the particular vulnerability of the victim, the existence of an actual attorney-client relationship and the special status of the attorney as a municipal prosecutor. In In re Addonizio, 95 N.J. 121(1994), the attorney was suspended for three-months following his conviction of a fourth-degree criminal sexual contact with an eight-year old boy, arising indirectly from an attorney-client relationship, but not related to the practice of law. The Court took into consideration that the conduct was aberrational and not the product of a diseased mind.

In determining the appropriate discipline to be imposed, we considered the psychological reports and respondent's favorable prognosis. We also took into account the fact that respondent has enjoyed a previously unblemished thirty-year legal career, as well as the letters from his friends and colleagues attesting to his good character.

Based on the foregoing, we determined to suspend respondent for one year. Two members voted for a two-year suspension, believing that young people's increased use of the internet and the anonymity available online have heightened the danger of adults preying on minors and that such misconduct deserved enhanced discipline. One member did not participate. We unanimously determined that, prior to reinstatement, respondent is to provide proof of his psychiatric fitness to practice law, from a mental health professional approved by the OAE.

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

Dated: Oct 16 2001

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

In the Matter of Donald M. Ferraiola
Docket No. DRB 01-139

Argued: June 21, 2001

Decided: October 16, 2001

Disposition: One-year suspension

| *Members* | *Disbar* | *One-year 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:*** | | 6 | | 2 | | | 1 |

Robyn M. Hill 11/19/01
Robyn M. Hill
Chief Counsel