

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-117
District Docket No. XIV-05-0584E

IN THE MATTER OF
VINCENT N. SIMONE
AN ATTORNEY AT LAW

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Decision

Argued: June 18, 2009

Decided: September 3, 2009

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Michael L. Testa appeared on behalf of respondent.

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

This matter came before us on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent stipulated to violating RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer) for his arrest for possession of crack cocaine.

Respondent, through his counsel, filed a motion to supplement the record with a brief and documents relating to his rehabilitation. We determined to grant respondent's motion.

The OAE recommended either a censure or a three-month suspension. For the reasons expressed below, we determine that a censure is adequate discipline for this respondent.

Respondent was admitted to the New Jersey bar in 1981. He maintains a law practice in North Wildwood, New Jersey. He has no history of discipline.

On October 4, 2005, while driving in Broward County, Florida, respondent was stopped by the police for failing to stop at a stop sign. He was the only occupant of the vehicle. After he consented to its search, the officer found, next to the driver's seat, what appeared to be crack cocaine. The rock-like substance tested positive for cocaine.

Respondent was arrested. A subsequent search uncovered in respondent's wallet what appeared to be crack cocaine. That substance also tested positive for cocaine.

Respondent was charged with possession of a controlled dangerous substance ("CDS") (crack cocaine), which, in New Jersey is a third degree crime (N.J.S.A. 2C:35-10(a)(1)).

Following respondent's release from custody, on October 5, 2005, he enrolled at the Cove Counseling Group, an in-patient rehabilitation center in Ft. Lauderdale, Florida. He was released from the center on November 3, 2005. Subsequently, with the consent of the prosecutor, respondent was admitted into the

Broward County Drug Court Program, which is equivalent to New Jersey's Pre-Trial Intervention Program ("PTI"). After respondent successfully completed the program, a June 11, 2007 court order dismissed the criminal charges against him.

Respondent admitted that his conduct violated RPC 8.4(b) (criminal act that reflects adversely on an attorney's honesty, trustworthiness, and fitness as a lawyer).

The stipulation listed as mitigation respondent's cooperation with the OAE and prompt notification of his arrest to that office.

Attached to the stipulation are three letters from respondent to the OAE, two of which relate to his drug rehabilitation. The first letter, dated February 6, 2007, described the drug court program, which consisted of three phases. The first phase required a stay at a rehabilitation center. The second phase mandated individual counseling sessions twice a week and drug screening twice a month. According to respondent, he was in the second phase for one year, at the conclusion of which he successfully completed the requirements. In January 2007, he was transferred to phase three, which required counseling once a week and monthly drug screening. Respondent stated that, in addition to these requirements, he also attended at least ten or twelve "AA" meetings each week. He

also submitted to additional drug screening each month to guarantee that he was drug-free and planned to do so for the duration of his participation in the program, which he anticipated would be for another year.

Respondent added that, when he appeared before the drug court, in January 2007, the judge believed that he was doing so well with his recovery that he could inspire others. The judge requested that respondent speak at the March 2007 Broward County Drug Court graduation. Respondent did so.

By letter dated July 25, 2007, respondent notified the OAE that the charges against him had been dismissed and that he had successfully completed the three phases of the program. He enclosed copies of the lab reports from his drug screens since April 2006 and noted that he would continue to submit to bi-monthly drug screening to ensure that he remained drug-free. He also enclosed copies of his monthly progress reports; noted that he successfully completed his counseling program and continued to meet with his counselor once a month on a "private basis"; offered to submit his monthly reports beginning in July 2007; and forwarded the monthly progress reports that he had sent to his probation officer outlining his progress in the program (none of these documents were attached to the stipulation).

Before us, respondent moved to supplement the record with copies of his drug screens for the period that he was in drug court; copies of monthly progress reports prepared by his therapist; copies of written monthly reports that respondent submitted to the Broward County Probation Department; a report from Dr. Joseph Perry, Ph.D., ABPP, a clinical and forensic psychologist; and respondent's brief in support of a reprimand or a censure.

Respondent's certification in support of a reprimand provided some background about his life and described his rehabilitation efforts. He recounted the shame he endured from his arrest and noted that, as "a younger man," he had developed an alcohol problem. He joined Alcoholics Anonymous ("AA") and has not had a drink since June 1996.

In 2002, respondent lost his mother, his only living relative. Afterwards, his life became very lonely. He developed "a tendency" to feel sorry for himself. According to respondent, that combination made him susceptible to drug use.

Through respondent's in-patient rehabilitation, he learned that sobriety is paramount in his life and also learned the tools for recovery, which he employs every day: belief in a power greater than himself, daily attendance at meetings,

service work for AA and for other recovering individuals, and the "Twelve Step Program of Spiritual Recovery."

In January 2006, respondent entered "drug court," requiring him to complete phases I through III. Phase II required that he attend counseling sessions twice a week, submit two drug screens per month, submit a monthly progress report, and attend at least five AA/NA meetings per week. Respondent satisfied the requirements in New Jersey, with compliance monitored by the Broward County Probation Department. Phase III requirements were less stringent.

Respondent was an "All-Star" (he abided by all of the programs requirements) each month that he was in the drug court program. He exceeded the program's requirements by attending many more AA meetings than were required. He continues to attend the meetings and maintains a log of all the meetings he attends, including AA, Narcotics Anonymous ("NA"), and Overeaters Anonymous. He has attended "almost 1,900 meetings in the approximately 1,300 days since November 3, 2005," when he left the rehabilitation center.

Respondent noted that, in In re Filomeno, 190 N.J. 579 (2007), the attorney was released from PTI early, while he, respondent, elected to do the opposite, that is, remain in the drug

court program for eighteen months so that he could achieve a firm foundation for his recovery.

In May 2008, respondent moved to Florida to begin a new career. In February 2008, he began working with Inspirations for You and Families, a juvenile facility, first on a part-time basis and then, in August 2008, on a full-time basis. He became an assistant counselor. In May 2009, he was "named as a full-time Substance Abuse Counselor," managing his own caseload. He plans to take an examination, in September 2009, to become a certified addiction specialist. He hopes to take another examination, in September 2010, to become a certified addiction counselor. Both positions require course work, clinical training, and working with substance abuse clients.

Respondent wants to resume his legal career, however, and is currently "of counsel" to the law office of David Stefankiewicz (an attorney with an office in North Wildwood, New Jersey), for whom he periodically performs legal work.

Exhibit B to respondent's certification is a letter from Christopher Walsh, the owner and president of the Cove Center for Recovery in Ft. Lauderdale, Florida. Walsh detailed the progress that respondent made during his stay at the Cove Center, from October 2005 to November 2005, and opined that respondent should remain clean and sober.

Over the next few years following respondent's release from the Cove Center, Walsh stayed in touch with respondent, who periodically visited Florida. In the summer of 2007, respondent contacted Walsh and indicated that he wanted to take a break from practicing law to enter the field of addiction recovery. Although Walsh had no position available at the time, he was determined to find respondent a place because of his skill and talent in that area.

According to Walsh, respondent began as a "tech-court" liaison between Cove clients and the courts. He was hard-working and enthusiastic and developed an excellent rapport with the presiding drug court judge.

In May 2009, Walsh and his administrative staff unanimously determined to promote respondent to a substance-abuse counselor, even though respondent did not yet have the proper certifications. The Cove's CEO signed off on respondent's work. Walsh emphasized that respondent received the promotion because of his character and work ethic.

Respondent also submitted a letter from a Dr. Perry who, on May 22, 2009, evaluated him in light of his ethics matter. Perry concluded that respondent was not experiencing symptoms of anxiety, depression, bipolar disorder, schizophrenia, borderline personality disorder, antisocial behavior disorder, or aggressiveness.

Respondent's scores on the alcohol and drug-abuse scales were far below those that would indicate problems.

Based on his evaluation, Perry felt no need to recommend respondent for any type of treatment. In his opinion, respondent appeared to have made a positive recovery over an extended period.

Respondent's counsel's brief in support of a reprimand or censure noted that, while respondent was completing the drug court program, he temporarily removed himself from the practice of law "for at least several years."

Therefore, counsel argued, respondent "already imposed a punishment on himself. He voluntarily absented himself from the practice of law. Three and one-half years have elapsed since his arrest." Counsel added that, at this juncture, an actual suspension would serve little or no salutary purpose.

Counsel likened respondent's recovery to that of attorney Filomeno, highlighting respondent's "remarkable and truly impressive efforts" toward rehabilitation, which, in counsel's view, capture "not just the letter, but the very spirit of Filomeno." Moreover, he argued, as in Filomeno, an active period of suspension would "serve no purpose other than to undermine his extraordinary efforts toward rehabilitation."

Counsel noted that, in In re Schaffer, 149 N.J. 148, 159 (1995), the Court emphasized that imposing discipline after recovery

could very well "engender special hardship because it may itself jeopardize that recovery, undermine rehabilitation, and incite relapse." Comparing respondent's circumstances to Schaffer's, counsel suggested that respondent's were more compelling and, that, therefore, only a reprimand was required. Counsel pointed out that respondent not only successfully completed the drug court program, but was an "all-star" every month; he attended bi-weekly individual drug counseling for close to one year, attended weekly individual drug counseling for another six months, and submitted two drug screens per month for sixteen months; expressed deep remorse and shame for his conduct; continues to attend "many" AA meetings; "has already imposed a form of punishment on himself, and has done so by working in the field of drug rehabilitation," and is making amends for his errant behavior.

Following a full review of the record, we are satisfied that it contains clear and convincing evidence that respondent's conduct was unethical.

Respondent stipulated to violating RPC 8.4(b) by possessing CDS, crack cocaine. Therefore, the only issue left for determination is the proper quantum of discipline for his offense.

More than twenty years ago, the Court warned members of the bar that even a single instance of possession of cocaine will

ordinarily call for a suspension. In re McLaughlin, 105 N.J. 457 (1987). In McLaughlin, three individuals who, at the time of their offense were serving as law secretaries to members of the Judiciary, were (publicly) reprimanded for use of small amounts of cocaine. The Court noted that it imposed a (public) reprimand because it was a case of first impression, but that, in the future, similar conduct would be met with a suspension from the practice of law. Id. at 462.

Since McLaughlin, attorneys convicted of cocaine possession for personal use, or other similar drugs, have typically served three-month suspensions. See, e.g., In re Holland, 194 N.J. 165 (2008) (possession of cocaine); In re Sarmiento, 194 N.J. 164 (2008) (possession of CDS, ecstasy); In re McKeon, 185 N.J. 247 (2005) (possession of cocaine); In re Avrigian, 175 N.J. 452 (2003) (possession of cocaine); In re Kervick, 174 N.J. 377 (2002) (possession of cocaine, use of CDS, and possession of drug paraphernalia); In re Ahrens, 167 N.J. 601 (2001) (possession of cocaine, marijuana, and narcotics paraphernalia); In re Foushee, 156 N.J. 553 (1999) (possession of cocaine; prior three-year suspension); In re Lisa, 152 N.J. 455 (1998) (attorney admitted being under the influence of cocaine, having unlawful, constructive possession of cocaine, and possessing drug paraphernalia; prior admonition for recordkeeping violations); In re Schaffer, supra, 140

N.J. 148 (attorney found guilty of possession of cocaine, being under the influence of cocaine, and possession of drug-related paraphernalia; the attorney achieved rehabilitation prior to the consideration of his ethics offense; the Court created an accelerated suspension mechanism to immediately follow the commission of the offense and to coincide with rehabilitation); In re Benjamin, 135 N.J. 461 (1994) (possession of cocaine and marijuana); In re Karwell, 131 N.J. 396 (1993) (the attorney possessed small amounts of marijuana, cocaine, and drug paraphernalia, but engaged in efforts to combat his dependency); In re Shepphard, 126 N.J. 210 (1991) (the attorney pleaded guilty to two disorderly persons' offenses: possession of under fifty grams of marijuana, and failure to deliver CDS (cocaine) to a law enforcement officer); and In re Nixon, 122 N.J. 290 (1991) (the attorney was indicted for the third degree crime of possession of CDS (cocaine); the attorney was admitted into PTI, whereupon the indictment was dismissed). But see In re Filomeno, supra, 190 N.J. 579 (censure for attorney charged by accusation with a single count of conspiracy to possess cocaine; no guilty plea was entered; attorney was admitted into PTI with various conditions) and In re Zem, 142 N.J. 638 (1995) (reprimand for an attorney who used small amounts of cocaine; compelling mitigation considered).

As the above cases demonstrate, the Court's departure from the standard three-month suspension has been very limited. In Filomeno, we believed that the appropriate form of discipline for the attorney was a suspended three-month suspension. Our decision cited numerous mitigating circumstances: the attorney's swift action toward rehabilitation; his attendance at 415 meetings in that process; his instrumental role in re-establishing the meetings for the New Jersey Lawyers Concerned for Lawyers Program in Bergen County, at which he was a "very distinctive and helpful role model," from whom other participants in that program profited; his conclusion of the PTI program three months early because of his commitment and diligence in exceeding its terms; and his expression of deep regret for his conduct. The Court viewed the attorney's conduct more leniently than we did and determined that a censure was the more appropriate degree of discipline.

In Zem, the Court reprimanded a young attorney who used cocaine for a period of only two months, in an attempt to cope with the death of her mother and her brother.¹ During this period, one of Zem's long-time friends visited her at home, brought her food, and encouraged her to get out of the house. The friend

¹ This case was decided before the Court instituted the censure as a form of discipline in attorney disciplinary cases.

tried to persuade Zem to try a little cocaine to "calm her down." Initially, Zem declined the offers. Eventually, however, she "succumbed" to the friend's assurances that the drug would "perk [her] up . . . lift her spirits a little and just make [her] feel a little better."

After Zem was arrested and admitted into PTI, she was evaluated at Fair Oaks Hospital for her drug use. The evaluation concluded that she did not need any further assistance, drug treatment, or any sort of rehabilitation.

Further mitigating factors included Zem's genuine regret for her behavior, which was deemed aberrational; her embarrassment over the incidents; the resolution of her personal problems, and her successful endeavors to move forward with her life.

In light of these exceptional circumstances, we believed that a three-month suspended suspension was the proper discipline for Zem, but the Court disagreed; it imposed a reprimand instead.

Thus, since the Court's 1987 announcement in McLaughlin that, in the future, possession of a CDS would be met with a suspension, only two attorneys have received less than a three-month suspension, Zem and Filomeno. In addition, one attorney, Schaffer, received a suspended three-month suspension. In all three cases, the circumstances presented were truly compelling.

In 2008, we considered a possession-of-cocaine matter that, in our view, merited a suspended three-month suspension. In re Holland, supra, 194 N.J. 165. Our review of the record uncovered no mitigating factors that we deemed as extraordinary as those present in Zem and Filomeno. However, we gave great weight to certain material circumstances: the attorney was not a drug user; the cocaine found in her possession was for someone else's use; and her judgment was impaired by alcohol use when she was found in possession of cocaine. In addition, the attorney had made great efforts towards her impressive recovery from alcohol addiction.

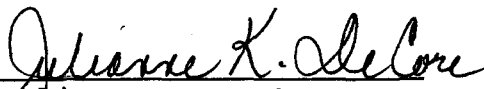
Given those circumstances, we did not believe that either a censure (Filomeno) or a reprimand (Zem) was warranted for Holland, but was of the view that a three-month suspended suspension would accomplish several important purposes. It continued to send the message to the bar that cocaine possession or consumption presumptively deserves a suspension and it recognized the special circumstances presented: that Holland was not a cocaine user and that alcohol abuse, an addiction from which she recovered, affected her judgment when she decided to purchase it for the use of an individual with whom she was "involved." The Court, however, disagreed. Without stating its reasons, it imposed an active three-month suspension.

Here, in light of respondent's great strides at rehabilitation and commitment to help other recovering addicts, we find that his circumstances are as compelling as Filomeno's and, in our view, call for a censure.

We also determine to require respondent to continue with periodic drug screening, to be monitored by the OAE, and to continue attendance at AA/NA meetings.

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
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

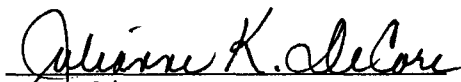
In the Matter of Vincent N. Simone
Docket No. DRB 09-117

Argued: June 18, 2009

Decided: September 3, 2009

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			


Julianne K. DeCore
Chief Counsel