SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-345
District Docket No. XIV-07-197E

IN THE MATTER OF	
SHANNON L. GARRAHAN	
AN ATTORNEY AT LAW	

Decision

Argued: January 17, 2008

Decided: March 19, 2008

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

Salvatore Alfano 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 motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's criminal conviction for drug possession. The OAE recommended a three-month suspension. For the reasons detailed below, we determine to impose a censure, with conditions.

Respondent was admitted to the New Jersey bar in 1996. She has no prior discipline.

On April 25, 2007, pursuant to a plea agreement with Ohio authorities, respondent pleaded guilty to a four-count information (complaint) in the Preble County Court of Common Pleas, charging her with two counts of attempt, pursuant to Ohio Rev. Code 2923.02(A), as it relates to aggravated possession of drugs, fourth-degree felonies (each carrying a maximum penalty of eighteen months in prison and a $5,000 fine), two counts of possession of drugs, third-degree misdemeanors (one carrying a maximum sixty days in prison and a $500 fine, the other a $100 fine), and possession of drug paraphernalia, a fourth-degree misdemeanor (carrying a maximum thirty days in prison and a $250 fine).

The facts underlying the guilty plea are contained in a police report of the incident. On January 3, 2007, respondent was traveling alone, returning from California, when an Ohio State Trooper observed her making an improper lane change. He pulled the vehicle over. Sometime later, a police dog "*indicated to [her] vehicle*" for the presence of drugs, prompting a search. According to the report,

> [w]hile searching the vehicle, a suit case was found in the right rear seat area that contained several bottles containing pills. Only two bottles had her name on

> them, one had a guy's name, one had the name peeled off with only oxycotin remaining on the bottle, then 5 other bottles with no labels at all. There were 2½ pills located in her purse and another bag in the rear seat area that contained a black bag and paraphernalia.[1]
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> [OAEbExA9.]

All told, the search yielded 104 40mg Oxycotin tablets, 144 Percocets, 89 Diazapam (valium) tablets, an unspecified quantity of Fioricet (a barbiturate), marijuana (4 grams), and hashish (1 gram). Confiscated drug paraphernalia included two packs of rolling papers, three "roach" clips, matches, two packs of brass screens for pipes, a plastic marijuana grinder, a rolling machine, a glass bottle and six baggies with marijuana residue, four smoking pipes, and pieces from seven other pipes.

Respondent entered her guilty plea with the understanding that she would be permitted to enroll in an "intervention in lieu of conviction" program.[2] In lieu of sentencing, the court ordered a two-year period of intervention, during which time

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[1] "OAEb" refers to the OAE's brief in support of the motion for final discipline.

[2] This program is the Ohio equivalent of New Jersey's pretrial intervention program (PTI).

respondent was required to "comply with standard conditions of community control, pay court costs, and obtain treatment".

The case was then stayed, pending respondent's completion of the program. As seen below, at the time of the OAE's motion for final discipline, respondent had complied with all ongoing requirements and had been promised an early release from the two-year intervention.

The OAE urged us to suspend respondent for three months.

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

Respondent pleaded guilty to possession of CDS and drug paraphernalia, constituting two fourth-degree felonies, two third-degree misdemeanors, and a fourth-degree misdemeanor, under Ohio law. Instead of being sentenced, she was enrolled in a program similar to our PTI.

The existence of a criminal record is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Only the quantum of discipline remains at issue. R. 1:20-13(c)(2)(ii); 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." Id. at 445-46. That a respondent's offenses do not relate directly to the practice of law does not negate the need for discipline. Even a minor violation of the law tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 95 N.J. 121, 124 (1984).

For purposes of assessing discipline in this matter, cases involving the possession of cocaine, another common Schedule II controlled dangerous substance (CDS), are helpful. Attorneys convicted of possession of cocaine for personal use typically receive three-month suspensions. See, e.g., In re McKeon, 185 N.J. 247 (2005); In re Avriqian, 175 N.J. 452 (2003); In re Foushee, 156 N.J. 553 (1999); In re Benjamin, 135 N.J. 461 (1994); In re Karwell, 131 N.J. 396 (1993); and In re Nixon, 122 N.J. 290 (1991).

In two instances, the Court has imposed discipline less than a three-month suspension. In In re Filomeno, 190 N.J. 579 (2007), after we recommended a suspended three-month suspension, the Court imposed a censure. In that case, after a large scale investigation of illegal narcotics activity in Passaic County, Clifton police arrested Filomeno for possession of cocaine and

possession of drug paraphernalia. He was charged by accusation with a single count of conspiracy to possess cocaine. Without entering a guilty plea, Filomeno was admitted into PTI for a one-year term, with various conditions. Filomeno had no ethics history. We, and later the Court, were swayed by the great strides that Filomeno had made in his rehabilitation, including his early release from PTI and his attendance at 415 meetings in that process. Filomeno was also instrumental in re-establishing the New Jersey Lawyers Concerned for Lawyers Program meetings in Bergen County, acted as a "very distinctive and helpful role model," from which other participants in that program profited, and expressed deep regret for his conduct.

In In re Zem, 142 N.J. 638 (1995), the Court imposed a reprimand on a young attorney who used cocaine for a period of two months to attempt to cope with the death of her mother and her brother. During that period, one of the attorney's long-time friends encouraged her to try a little cocaine to calm her down. Although she initially declined those offers, she ultimately succumbed to the friend's assurances that the drug would make her feel better. Following her arrest, a substance abuse evaluation concluded that she did not need any further assistance, drug treatment, or rehabilitation. Other mitigating factors were the attorney'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.

Respondent has presented considerable mitigation in her materials to us. They include a November 2, 2007 letter brief by her new attorney, Salvatore Alfano. Counsel argues that respondent's case is similar to the Filomeno censure case, and, thus, warrants similar treatment.[3]

Counsel pointed out that respondent's swift acceptance of responsibility for her conduct led to her guilty plea and a speedy resolution of the criminal matter, and that she is due to be given an early release from Ohio's two-year intervention program, after just one year.

In addition, counsel noted that, as in Filomeno, respondent reported her conduct to New Jersey ethics authorities, and is truly remorseful for her infractions. Respondent stated:

> I am truly sorry for the incident, which brings me before this Board. The practice of law means everything to me and I am

[3] Relying on the OAE's copy of our decision in Filomeno, which called for a suspended three-month suspension, Alfano argued for that discipline for his client. It is reasonable to conclude that Alfano was unaware, when preparing his brief to us, that the Court in Filomeno had later determined to impose only a censure.

> embarrassed and ashamed that I engaged in conduct that reflects adversely on my fitness to practice law. I am completely remorseful for my conduct, especially since I feel that the practice of law is the one exceptional thing I have accomplished in my life. I never wanted to display a disregard for the law or bring disrepute to the legal profession.
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> [Rb2¶4.][4]

Immediately upon her return to New Jersey, on January 5, 2007, respondent enrolled in an outpatient rehabilitation program at Barnert Hospital in Paterson, which she successfully completed in June 2007. Also in January 2007, she enrolled in Narcotics and Alcohol Anonymous, attending ninety meetings in the first ninety days.

In July 2007, respondent learned about the New Jersey Lawyers' Assistance Program. She began attending their meetings regularly, in addition to NA/AA meetings.

Respondent's drug counselor from Barnert Hospital, Alexander Franchino, also furnished a certification, stating that respondent had successfully completed that hospital's program, was drug-free, and was very committed to her

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[4] "Rb" denotes respondent's brief to us. This passage is drawn from respondent's certification, attached to her brief.

sobriety. Franchino January 5, 2007 intake evaluation of respondent states that

> [respondent] shows a previous history of inpatient/rehabilitation substance abuse treatment as an adolescent. Upon completion of rehabilitation, [she] showed a very positive response to recovery and was able to remain abstinent from both alcohol and all mood changing substances for about seven years.
> A specific emotionally traumatic event in 1996 resulted in a relapse and some dysfunctional behavior(s). She freely admits to using Cannibis, Oxycotin and alcohol on a episodic basis over these past ten years.
> The legal infraction in Ohio has been a therapeutic wake up call for [respondent] and at this time she is motivated to address her relapse issues.
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> [January 5, 2007 letter from Alexander Franchino to Louis Esposito, Esq.]

Respondent offered but a glimpse into the extent or causes of her drug problem, stating only that "there is a history of drug and alcohol abuse in my family. In fact, I lost my mother to drug and alcohol abuse when I was fifteen years old". The record does not disclose what "mood altering" drugs respondent abused as an adolescent, or the 1996 incident to which Franchino referred, an incident, that lured respondent back into drug abuse, after a seven-year abstinence.

Attached to respondent's certification were several compelling letters from friends and fellow lawyers, all of whom attested to her fortitude, honesty, and character. It appears from those letters that respondent's license to practice law did not come easily to her. After graduating from high school, respondent worked her way through college and then law school, paying for all of it herself.

Respondent also offered in mitigation that, despite her drug problem, her clients came first and that no client or client-matter was ever affected by her drug use.

Finally, in further mitigation, respondent has had no other run-ins with ethics authorities in her prior ten years at the bar.

Arguing for leniency, respondent acknowledged that she has likely missed her opportunity to request an "accelerated suspension," having consulted soon after her arrest with an attorney who failed to advise her of its availability then. Respondent was referring to the process first implemented in In re Schaffer, 40 N.J. 148 (1995), where the Court suspended the attorney's three-month suspension, after it created an accelerated-suspension mechanism for New Jersey attorneys who admit or plead guilty to possession of CDS, have promptly and successfully achieved rehabilitation, and have "recognized the

continuing need to remain drug-free and maintain sobriety." Id. at 159-60. Under such circumstances, the attorney may, on his or her own initiative and with his or her agreement, "seek a prompt suspension to coincide with entry into a rehabilitation program." Id. at 160.

Despite suspending the suspension in Schaffer, the Court reinforced its adherence to the view that "a suspended suspension constitutes an exceptional form of discipline," id. at 158, and that an active period of suspension remains the proper measure of discipline for possession of CDS, regardless of the attorney's quick action to achieve sobriety and his or her successful rehabilitation. Id. at 161. The Court's sole reason for its decision to suspend the suspension was a recognition that Schaffer

> could not have anticipated the feasibility of obtaining, and never had a realistic opportunity to seek, an early suspension, which we now authorize. Because this case serves as the vehicle for our announcement of a rule that would otherwise have benefited respondent, fairness dictates that we refrain from imposing a suspension on him at this time. Accordingly, and only for the reasons expressed herein, we . . . impose on respondent a three-month suspension from the practice of law and direct that the suspension be suspended.
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> [Ibid.]

After Schaffer, attorneys are charged with the knowledge that an accelerated suspension is available to them in circumstances such as those present here and that the presumptive discipline for possession of CDS has remained a three-month suspension. Respondent is correct that the time within which to request an accelerated suspension has now passed.

In accordance with established precedent, the baseline for respondent's misconduct is a three-month suspension. The sheer number and variety of drugs and drug paraphernalia that turned up in her belongings bespeak a long and highly ordered dedication to drug use. Those circumstances, if they stood alone, would have made leniency unpalatable to us. However, we find respondent's actions comparable to those in Filomeno, including her expeditious, dogged, and successful efforts to overcome her addictions. In addition, respondent would have had a comparable number of AA/NA "under her belt," in parity with Filomeno, had she not been so quick to admit the criminal charges against her and take responsibility for her actions. Of course, her swift decision to fall in line should not now count against her.

In view of the foregoing, we find that, here, as in Filomeno, a censure sufficiently addresses the nature of

respondents misdeeds, as counterbalanced by the compelling circumstances outlined above. In addition, we require respondent to continue her drug and alcohol treatment for a period of one year, or until discharged.

Chair O'Shaughnessy, and Members Lolla, Baugh, and Neuwirth 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
Lous Pashman, Vice-Chair
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Shannon L. Garrahan
Docket No. DRB 07-345

Argued: January 17, 2008

Decided: March 19, 2008

Disposition: Censure

Members	Disbar	Suspension	Censure	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			4

Julianne K. DeCore
Chief Counsel