SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-291

IN THE MATTER OF

JOHN J. MC LOUGHLIN, JR.

AN ATTORNEY AT LAW

Decision

Argued: November 20, 2003

Decided: January 13, 2004

Marina S. Peck appeared on behalf of the Office of Attorney Ethics.

Peter N. Gilbreth 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 disciplinary stipulation pursuant to R.1:20-15(f), between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted that his conduct violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

Respondent was admitted to the New Jersey bar in 1986. He maintains a law office in Brick, New Jersey. He has no history of discipline.

The following facts were gleaned from the disciplinary stipulation and attached exhibits.

On the evening of August 20, 2002, respondent and a female companion drove to Elizabeth, New Jersey, to purchase cocaine for personal consumption. At respondent's direction, his companion got out of the car to purchase the cocaine with respondent's money. After the transaction was completed respondent's companion reentered the vehicle, which then proceeded down the street. Unbeknownst to the two, the transaction had been observed by Elizabeth police officers. Shortly thereafter, the officers stopped respondent's vehicle. As the police approached the vehicle, respondent swallowed some of the cocaine. The officers observed respondent's companion drop the vial with the remaining cocaine as she exited respondent's vehicle. The vial was seized, analyzed, and confirmed to be .1 gram of cocaine.

Respondent admitted that the cocaine was for his personal use. He was criminally charged for his conduct. On March 6, 2003, respondent was admitted into the Union County Pretrial Intervention Program ("PTI") for a twelve-month period.

The Court has consistently imposed three-month suspensions on attorneys who have unlawfully possessed controlled dangerous substances for personal use. Based on the Court's uniform disposition of such matters, the OAE advocated the imposition of a three-month suspension here. The OAE relied on the following cases: In re Benjamin, 135 N.J. 461 (1994) (three-month suspension for the attorney's unlawful possession of cocaine and marijuana); In re Schaffer, 140 N.J. 148 (1995) (three-month suspension for possession of cocaine and drug paraphernalia and being under the influence of cocaine); In re Sheppard, 126 N.J. 210 (1991) (three-month suspension for possession of under fifty grams of marijuana and for failure to turn over cocaine to a police officer); and In re Nixon, 122 N.J. 290 (1991) (three-month suspension for possession of cocaine and fewer than fifty grams of marijuana).

In recommending a three-month suspension, the OAE noted that there were no mitigating factors that would warrant a departure from the "bright-line" rule set forth in Schaffer. In Schaffer, the Court reiterated its position that a three-month suspension is the standard discipline for possessory offenses.

Respondent's counsel argued that a departure from Schaffer is warranted in this matter because of respondent's commitment to rehabilitation (he pursued an intensive outpatient program to deal with his cocaine difficulties and submitted a letter from his substance abuse counselor); the amount of cocaine for which he was convicted was minimal (.1 gram) and was for personal use; and there were no aggravating factors beyond those discussed by the OAE.

In relevant part, the counselor's February 2003 letter stated that over the last two years, respondent admitted that he drank twice a week, sporadically attended Alcoholic Anonymous meetings, and over the past several years used cocaine periodically, if available. The letter also stated that respondent admitted substance use and abuse, a family history of alcoholism, concerns about his own predisposition to alcoholism/addiction, and legal issues arising from his use of the drug.

As to respondent's progress, the counselor stated that, among other things, respondent has been drug and alcohol free since August 21, 2002; urine screens have tested negative since August 2002; he attends three to five Alcoholic Anonymous/Narcotics Anonymous meetings each week; faithfully attends weekly individual counseling sessions; has implemented a relapse prevention plan that is updated regularly; and was scheduled to begin participating in Men's Continuing Recovery Group in March 2003.

At our November 20, 2003 hearing, respondent made a motion to supplement the record to include current information about his rehabilitation and letters relating to his character and

fitness. We determined to grant the motion. Respondent's submissions documented the steps he has taken towards recovery, including attending individual and group counseling sessions with certified drug and alcohol therapists. One submission underscored that respondent is ethical and moral and that his addiction, a disease, is a health problem to be treated, not punished.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

It is undisputed that respondent was criminally charged with possession of cocaine, a violation of RPC 8.4(b), and that he was admitted into PTI. According to respondent's attorney, he has not violated PTI, and the PTI program should be completed on March 6, 2004.

Although respondent's counsel urges us to impose less than a three-month suspension, both prior to and after Schaffer, the Court has consistently imposed such a term of suspension in cases involving minor cocaine offenses. See In re Kervick, 174 N.J. 377 (2002) (possession of cocaine and completion of PTI); In re Paul, 173 N.J. 23 (2002) (possession of 1.83 grams of cocaine and completion of PTI); In re Ahrens, 167 N.J. 601 (2001) (possession of cocaine, marijuana and drug paraphernalia); In re Radler, 164 N.J 550 (2000) (possession of 1.9 grams of cocaine, three valium pills, and drug paraphernalia); In re Foushee, 156 N.J. 553 (1999) (possession of cocaine); In re Lisa, 152 N.J. 455 (1998) (under the influence of and possession of .73 grams of cocaine and drug paraphernalia); In re Epps, 148 N.J. 83 (1997) (possession of fewer than 20 grams of cocaine); In re Jay, 148 N.J. 79 (1997) (possession of cocaine, marijuana, and drug paraphernalia); and In re Palazzo, 143 N.J. 300 (1996) (possession of cocaine).

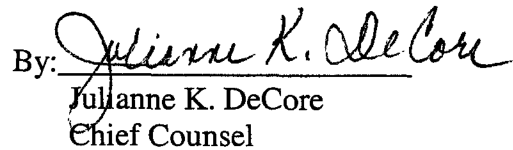
Moreover, in In re Schaffer, supra, 140 N.J. at 157, the Court reiterated its position "that drug addiction that gives rise to criminal and ethics offenses should not be considered mitigation."

Respondent has not presented any mitigating circumstances that would warrant a departure from the discipline that has been imposed by the Court over the years. Although the amount of cocaine in respondent's possession was minimal, he had ingested some of it prior to his arrest. In addition, his counselor's letter made it clear that it was not respondent's first time using the drug; in fact he used it periodically and was concerned about his predisposition to addiction. Even though respondent's substance abuse counselor painted a picture of an individual trying to remedy his addiction problems, based on the mandates of the existing case law, we voted to impose a three-month suspension. Three members did not participate.

We further determined to require respondent to submit, prior to reinstatement, proof of fitness to practice law, as attested to by a mental health professional approved by the OAE. We also determined to require respondent to submit to drug testing, for a one-year period, to be implemented by the OAE.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel