SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-041
District Docket No. XIV-2011-0337E

IN THE MATTER OF :
ALEXANDER RALPH DE SEVO :
AN ATTORNEY AT LAW :

Decision

Argued: June 16, 2016

Decided: November 4, 2016

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

A. John Blake 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 disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent admitted violating 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). The OAE recommends the imposition of a three-month suspension or such lesser discipline as we deem appropriate. For the reasons expressed below, we determine that a censure is warranted.

Respondent was admitted to the New Jersey bar in 1994. He maintains a solo practice in Red Bank, New Jersey and is the director of litigation at the Falcon Law Firm in Oakhurst, New Jersey.

In 2011, respondent was admonished for engaging in gross neglect, pattern of neglect, lack of diligence, and failure to communicate with a client. At the time of his misconduct, he was employed as the managing partner in one of Levinson Axelrod's offices and was responsible for approximately 130 to 150 files. Respondent mishandled three personal injury matters, which were dismissed with prejudice, and failed to communicate with one of the clients.

In imposing only an admonition, we considered that respondent had no ethics history; that, on numerous occasions, he had requested assistance with his caseload, to no avail; and, that, at the time, he was experiencing personal problems, for which he underwent counseling. In the Matter of Alexander R. De Sevo, DRB 11-175 (September 16, 2011).

On June 18, 2011, respondent was arrested in Holmdel, New Jersey for the possession of cocaine. Specifically, police were called to the Holmdel Motor Inn and encountered M.S., who informed them that she had smoked crack cocaine with her lawyer, respondent. Respondent denied that he had represented M.S. in

any matter. According to M.S., respondent had provided her with the drug, which resulted in her having a seizure.

The police's search of the hotel room that respondent and M.S. had occupied yielded a glass pipe with what appeared to be cocaine residue. Respondent was arrested for possession of a controlled dangerous substance (CDS).

On September 8, 2011, the Monmouth County Prosecutor's Office filed an accusation charging respondent with possession of CDS (cocaine), in violation of N.J.S.A. 2C:35-10a(1).

Thereafter, on October 27, 2011, the Keansburg police stopped respondent for speeding, failing to stop at a red light, and failing to use a turn signal. Initially, respondent told the officer that he could not produce his driving credentials. After the officer informed him that his car would have to be impounded, respondent produced his driver's license.

Respondent's two passengers were known to the police to be drug users. They consented to a pat down, which failed to produce any contraband. Respondent denied having "anything that he was not supposed to" and consented to a search of his vehicle, which uncovered "a burned glass pipe of the kind used to smoke crack cocaine with some residue in the seat's front pocket." Respondent's passengers denied ownership of the pipe.

Respondent was advised of his Miranda rights and was provided a consent to search form, which he declined to sign. The stipulation added that

> While standing at the rear of his vehicle, respondent had difficulty standing upright, at one point falling to the ground and having to be helped up by the police. As he also smelled of an alcoholic beverage, respondent was arrested for driving while intoxicated and possession of a controlled dangerous substance and drug paraphernalia. At the police station, respondent was administered a breathalyzer, which was negative for blood alcohol. Respondent also provided a urine sample, which tested positive for benzoylecgonine (a cocaine metabolite). And lastly, the glass pipe was submitted for analysis and tested positive for a trace of cocaine.
>
> [S3.][1]

On March 14, 2012, a Monmouth County Grand Jury returned an indictment against respondent for possession of CDS (cocaine), in violation of N.J.S.A. 2C:35-10a(1). On June 18, 2012, respondent was admitted into the pretrial intervention program for a twelve-month period, which he successfully completed, on July 8, 2013. Thus, the accusation and indictment were dismissed.

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[1] S refers to the February 2, 2014 stipulation.

According to respondent, at the time of his arrests, he was "in full-blown addiction." He stipulated that his conduct violated RPC 8.4(b).

Citing a number of cases, the OAE suggested that respondent's misconduct warrants a three-month suspension or such lesser sanction as we deem appropriate. The OAE pointed out that, typically, a three-month suspension is imposed for possession of small amounts of cocaine, but lesser discipline has been imposed where significant mitigating factors existed.

Respondent argues in his brief to us that his circumstances are comparable to those in In re Zem, 142 N.J. 638 (1995) (reprimand), where, after the attorney completed PTI, the charges against her were dismissed. By the time the disciplinary matter was heard, she was practicing law and had moved forward with her life.

Respondent contends that he, too, has moved on from his active addiction and, since the time of the charges, has taken "extraordinary measures to rehabilitate himself," including his attendance at drug rehabilitation facilities on four occasions, ranging from twenty-eight to ninety-two days (from July 2011 to February 2013); his participation in an intensive outpatient program from February 11, 2013 to May 2013; and his residence in a half-way house, and then "Oxford House" for almost two years,

where he served as an active member of the organization. He did not practice law from October 2011 to March 2013.

Respondent added that he attended ninety recovery meetings in fifty-six days and attended 138 meetings from February 8 to April 22, 2013 after his discharge from inpatient treatment; attended ninety meetings following his discharge from Oxford House; speaks at Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings and "Advanced Health" in Eatontown (a meeting associated with Lawyers Caring for Lawyers); has attended more than 1,000 recovery meetings in the past forty-one months; and continues to regularly attend NA meetings. He has a sponsor and, in turn, sponsors two men, and has been clean and sober for forty-one months.

As noted above, following respondent's arrest, he did not practice law from October 2011 to March 2013. In March 2013, he worked at his father's law office for one and one-half years and then worked for the firm of Mallon & Tranger. He was later appointed as an Assistant Public Defender in Point Pleasant, and, in January 2015, was hired by the Falcon Law Firm as director of litigation. There, he handled a number of cases, which he successfully resolved. Respondent contends that he has returned to his pre-addiction state, is a very competent trial attorney, and is a loving and supportive father. He is currently

responsible for ninety-two cases and "his life is back on track."

Respondent provided a number of letters, including one from his alcohol and drug counselor regarding his outpatient treatment, and from administrators from the facilities where he was enrolled in drug recovery programs. One such letter, dated April 24, 2012, mentioned that respondent had done exceptionally well completing the program and was offered a volunteer position, which he accepted. Another letter, dated April 17, 2013, from an addiction treatment specialist, noted that, during respondent's "engagement" with their program, he had been tested nightly for substances and the tests were all negative, that he continued to follow all treatment directions, and that he had been a positive influence on fellow members of the group.

A May 20, 2016 certification from respondent's current employer, Patrick Falcon, stated that, after observing respondent in court, Falcon contacted respondent to discuss the possibility of leading the litigation practice for his firm; that in respondent's first year with the firm, he settled twenty-three cases and was involved in two jury trials; and, that in 2016, he settled twenty-five cases, including "multiple six figure personal injury settlements," and achieved a $1.4 million verdict in a personal injury trial.

Falcon added that respondent leaves the office daily to attend NA meetings; is an important part of the law firm; is a "tremendous moral [sic] booster;" is well-liked by the entire staff; is patient, considerate, and compassionate; is genuinely interested in helping clients; and, finally, that his absence would be a tremendous loss to the firm and clients alike.

Respondent compared his rehabilitation efforts to those of the attorney in In re Schaffer, 140 N.J. 148 (1995) (three-month suspended suspension). He underscored the fact that it has been almost five years since the time of his arrest, that he has achieved the position of director of litigation at his firm, and that he is the designated trial attorney in ninety-two pending cases.

Respondent pointed out that, in Schaffer, the Court recognized the special hardship that can result if there is a substantial delay between an attorney's conviction for a drug offense, the attorney's successful rehabilitation, and the subsequent imposition of a suspension because the suspension could "jeopardize that recovery, undermine rehabilitation and incite relapse." The Court, thus, authorized an "accelerated suspension." Respondent maintained that he did not avail himself of an accelerated suspension because, at the time, he was actively dealing with his addiction.

Finally, respondent emphasized that he has turned his life around and argued that to impose a suspension almost five years after his criminal violation "would undermine the substantial rehabilitation efforts he has achieved." Thus, respondent requests that we impose either a censure or a suspended three-month suspension.

Following a full review of the stipulation, we find that it clearly and convincingly establishes that respondent's conduct was unethical. We determine that the stipulation contains sufficient facts to support a violation of RPC 8.4(b). The only issue to resolve is the appropriate quantum of discipline.

In In re McLaughlin, 105 N.J. 457 (1987), the Court imposed a reprimand for the use of small amounts of cocaine on three individuals who, at the time of their offenses, were serving as law clerks to members of the Judiciary. The Court imposed only a reprimand because it was a case of first impression. The Court cautioned, however, that, in the future, similar conduct would be met with a suspension.

For the most part, the cases that followed reinforced the Court's warning. See, e.g., In re Holland, 194 N.J. 165 (2008) (three-month suspension for possession of cocaine); In re Sarmiento, 194 N.J. 164 (2008) (three-month suspension for possession of ecstasy, a CDS); In re McKeon, 185 N.J. 247 (2005) (three-month

suspension for possession of cocaine); In re Avrigian, 175 N.J. 452 (2003) (three-month suspension for possession of cocaine); In re Kervick, 174 N.J. 377 (2002) (three-month suspension for possession of cocaine, use of a CDS, and possession of drug paraphernalia); In re Ahrens, 167 N.J. 601 (2001) (three-month suspension for possession of cocaine, marijuana, and narcotics paraphernalia); In re Foushee, 156 N.J. 553 (1999) (three-month suspension for possession of cocaine; the attorney had a prior three-year suspension); In re Lisa, 152 N.J. 455 (1998) (three-month suspension for an attorney who admitted being under the influence of cocaine; having unlawful, constructive possession of cocaine; and possessing drug paraphernalia; the attorney had a previous admonition for recordkeeping violations); In re Schaffer, supra, 140 N.J. 148 (three-month suspended suspension for attorney guilty of possession of cocaine, being under the influence of cocaine, and possession of drug-related paraphernalia; the attorney had achieved rehabilitation prior to the consideration of his ethics transgression; the Court imposed a suspended suspension only because of the attorney's obvious inability to anticipate the possibility of applying for the early-suspension mechanism announced in his case); In re Benjamin, 135 N.J. 461 (1994) (three-month suspension for attorney guilty of possession of cocaine and marijuana); In re Karwell, 131 N.J. 396 (1993) (three-month suspension imposed on attorney who possessed

small amounts of marijuana, cocaine, and drug paraphernalia); In re Sheppard, 126 N.J. 210 (1991) three-month suspension for attorney who pleaded guilty to two disorderly persons' offenses: possession of under fifty grams of marijuana, and failure to deliver a CDS (cocaine) to a law enforcement officer); and In re Nixon, 122 N.J. 290 (1991) (three-month suspension for attorney who was indicted for the third-degree crime of possession of cocaine).

The Court's departure from the standard three-month suspension has been limited. In In re Simone, 201 N.J. 10 (2009), the attorney was censured for possession of crack cocaine. We considered special circumstances, which justified a departure from the standard three-month suspension. Specifically, the attorney successfully completed inpatient treatment; attended twice weekly counseling sessions after his release from inpatient treatment, and then weekly sessions; attended ten to twelve AA meetings per week; successfully completed PTI, resulting in the dismissal of all criminal charges against him; and submitted clean drug screens to the OAE and to us; in addition, the drug court judge believed that the attorney was doing so well with his recovery that he could inspire others, and, thus, invited him to address a drug court graduation, which he accepted. In the Matter of Vincent N. Simone, DRB 09-117 (September 3, 2009) (slip op.2-6).

In In re Filomeno, 190 N.J. 579 (2007) (censure), the attorney was charged by accusation with a single count of conspiracy to possess cocaine. Without entering a guilty plea, he was admitted into PTI for a one-year term, with various conditions. The attorney's numerous mitigating circumstances included his swift action toward rehabilitation; his attendance at 415 meetings in that process; his instrumental role in re-establishing the New Jersey Lawyers Concerned for Lawyers Program meetings in Bergen County; his characterization as a "very distinctive and helpful role model," from which 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. In the Matter of Anthony Filomeno, DRB 06-091 (July 19, 2006) (slip op. at 4-5).

In In re Zem, supra, 142 N.J. 638, 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. In the Matter of Bonnie Zem, DRB 94-295 (August 11, 1995) (slip op. at 4). During this period, one of Zem's long-time friends persuaded her to try a little cocaine to "calm her down." Initially, the attorney 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." Id. at 5.

After the attorney 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 further assistance, drug treatment, or any other rehabilitation. Id. at 3.

Further mitigating factors included Zem's genuine remorse for her behavior, which was deemed aberrational, her embarrassment over the incident, the resolution of her personal problems, and her successful endeavors to move forward with her life. Id. at 6.

As noted previously, in Schaffer, supra, 140 N.J. 148, the Court created the "accelerated suspension," to accommodate an attorney who "conscientiously, promptly and successfully achieved rehabilitation, and has recognized the continuing need to remain drug-free and maintain sobriety." Id. at 160. The Court recognized that a suspension for a CDS offense remains the proper measure of discipline, but, "if possible," should be imposed "immediately following the commission of the offense so that it may coincide with any rehabilitation program and recovery efforts that are undertaken by the attorney following the commission of the underlying offense." The Court remarked

that the discipline was created so as not to undermine an attorney's rehabilitation. Ibid.

The mechanics of this accelerated suspension require an attorney to apply to the OAE for a motion for discipline by consent under R. 1:20-10(b) for an immediate suspension pending disposition of the motion. The process is to be accelerated as well for the Board's review. Ibid.

Because Schaffer could not have availed himself of the new process announced in his own case, the Court refrained from suspending him, and instead imposed a suspended three-month suspension.

In this case, respondent did not avail himself of the accelerated suspension mechanism because, at the time, he was dealing with his addiction. Because respondent has made great strides to achieve rehabilitation, has successfully and diligently returned to practice, and has moved on with his personal life, we find that the standard three-month suspension, at this juncture, would be demoralizing and could derail his rehabilitation efforts. Thus, given respondent's rehabilitation and success in his law practice, we determined that a censure is the appropriate discipline.

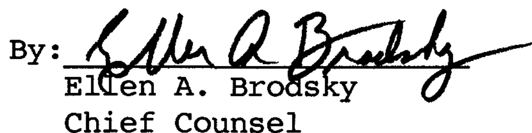
Member Zmirich voted to impose a three-month suspended suspension.

Member Gallipoli recused himself.

Members Hoberman and Rivera 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

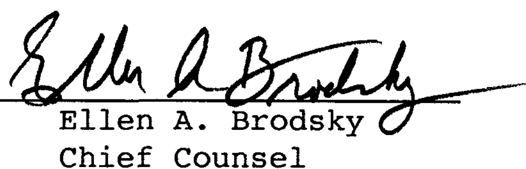
In the Matter of Alexander R. De Sevo
Docket No. DRB 16-041

Argued: June 16, 2016

Decided: November 4, 2016

Disposition: Censure

Members	Censure	Three-month Suspended Suspension	Recused	Did not participate
Frost	X			
Baugh	X			
Boyer	X			
Clark	X			
Gallipoli			X	
Hoberman				X
Rivera				X
Singer	X			
Zmirich		X		
Total:	5	1	1	2



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