Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-319
District Docket No. XIV-2018-0140

In the Matter of

Ivan Stewart DeVoren

An Attorney at Law

Decision

Argued: January 16, 2020

Decided: March 30, 2020

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se, via telephone.

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), pursuant to R. 1:20-13(c)(2), following respondent's guilty pleas, in the Court of Common Pleas of Allegheny County, Pennsylvania, to summary disorderly conduct, in contravention of 18 Pa.C.S. §

2705; the unlawful discharge of a firearm inside a residence, in contravention of Pittsburgh, Pennsylvania Ordinance 30-1993, § 607.03; two counts of possession of a controlled dangerous substance, in contravention of 35 P.S. § 780-113(a)(16)); possession of a small amount of marijuana, in contravention of 35 P.S. § 780-113(a)(31); and two counts of possession of drug paraphernalia, in contravention of 35 P.S. § 780-113(a)(32). Respondent failed to report his criminal charges to the OAE, as R. 1:20-13(a)(1) requires.

For the reasons set forth below, we determine to grant the motion for final discipline and impose a six-month suspension.

Respondent was admitted to the New Jersey bar in 1991, the Pennsylvania bar in 1990, and the Ohio bar in 2016. He has no prior discipline in New Jersey. On October 3, 2019, he was placed on disability inactive status. In re DeVoren, 240 N.J. 49 (2019).

On January 11, 2019, respondent appeared in the Court of Common Pleas of Allegheny County, Pennsylvania, before the Honorable Jill E. Rangos. He entered guilty pleas to a downgraded charge of summary disorderly conduct (18 Pa.C.S. § 2705), possession of drug paraphernalia (35P.S. § 780-113(a)(32)), and a violation of Pittsburgh, Pennsylvania Ordinance 30-1993, § 607.03, prohibiting the discharge of a firearm inside a residence. The total

negotiated sentence for the aggregated charges was a fifteen-month term of probation.

On that same date, respondent entered guilty pleas to two counts of possession of a controlled dangerous substance (35 P.S. § 780-113(a)(16)), one count of possession of a small amount of marijuana (35 P.S. § 780-113(a)(31)), and a second instance of possession of drug paraphernalia (35 P.S. § 780-113(a)(32)). Additionally, pursuant to the plea agreement, the prosecution agreed to dismiss twenty charges that respondent repeatedly subjected his dog to criminal sexual acts. The total negotiated sentence on these charges was a three-year term of probation.

During his plea allocutions, respondent waived his right to have the Commonwealth summarize the facts to be proven at trial, instead stipulating to the facts contained in the affidavit of probable cause and the police reports forming the factual bases for the charges to which he pleaded guilty.

That same date, Judge Rangos sentenced respondent as follows. In respect of his first guilty plea: ninety days' probation for disorderly conduct; one year's probation for possession of drug paraphernalia; and a $1,000 mandatory fine for the residential firearm violation. In respect of his second guilty plea: possession of heroin, one year's probation; possession of cocaine, one year's probation; possession of a small amount of marijuana, thirty days'

probation; and possession of drug paraphernalia, one year's probation. The individual terms of probation under the second plea were to be served consecutively to all other terms of probation. The aggregate term of probation imposed on respondent, thus, amounted to three years and four months.

As a condition of probation, respondent agreed to forfeit ownership of his dog to a designated animal shelter and was prohibited from owning, possessing, controlling or having custody or any responsibility for any animal during his probationary term. He also was prohibited from possessing or controlling a firearm during that time.

In addition, on March 14, 2018, police responded to a report of a shot fired inside respondent's apartment. In plain view, police found a black pistol with a spent shell casing. Out of concern for occupants of the adjoining apartments of respondent's dwelling, police returned with a search warrant and seized two Ruger firearms, assorted ammunition, holsters, and three pipes commonly used to smoke crack cocaine.

The OAE sought a six-month suspension for the totality of respondent's wrongdoing – three months for the combined drug offenses, and an additional three months for the summary disorderly conduct involving respondent's dog and his unlawful discharge of a weapon. The OAE argued that, when imposing discipline, we should consider, as an aggravating factor, respondent's firing of

a gun in his apartment as separate from his guilty pleas to drug offenses, thus, warranting additional discipline. In further aggravation, as previously noted, the OAE cited respondent's failure to report his criminal charges, as R. 1:20-13(a)(1) requires. The OAE also recommended that, as a condition precedent to any reinstatement, respondent be required to provide proof of fitness to practice law, as attested to by a psychiatric professional approved by the OAE and, for a period of two years following the imposition of discipline in this matter, attend a narcotics treatment or counseling program approved by the OAE.

In his September 10, 2019 brief to us, respondent contested the OAE's six-month suspension recommendation and proposed condition that he be required to attend drug counseling for two years. He argued that the OAE's position was "excessive," given his treatment through Mercy Behavioral Health, since February 2018, as a condition of bail, and as verified by his required submission to random drug testing by Allegheny Adult Probation until his probationary term ends in 2024. Respondent did not recommend a specific disciplinary sanction for the totality of his criminal conduct.

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is

conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty pleas to disorderly conduct, the unlawful discharge of a firearm, possession of controlled, dangerous substances (heroin, cocaine, and marijuana), and possession of drug paraphernalia, establish violations of RPC 8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, 139 N.J. at 460. Fashioning the appropriate penalty involves a consideration of many 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, 118 N.J. 443, 445-46 (1989).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse an ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 165, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

In sum, we find that respondent committed multiple violations of RPC 8.4(b). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

A three-month suspension is generally the measure of discipline for an attorney's possession of a controlled dangerous substance (CDS). In re Musto, 152 N.J. at 174. 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); and In re McKeon, 185 N.J. 247 (2005) (three-month suspension for possession of cocaine).

Some offenses attributable to drug addiction may warrant stronger disciplinary measures. In re Musto, 152 N.J. at 174. See, e.g., In re Stanton,

110 N.J. 356 (1988) (six-month suspension for possession of cocaine where the attorney had acknowledged ten years of drug abuse); In re Pleva, 106 N.J. 637 (1987) (six-month suspension for attorney who pleaded guilty to possession of cocaine, hashish, and marijuana; the attorney was a regular drug user and had been arrested previously; the Court further imposed a three-month suspension for the attorney's guilty plea to the charge of giving false information about drug use, when he completed a certification required before purchasing a firearm); In re Kaufman, 104 N.J. 509 (1986) (six-month suspension for attorney who pleaded guilty to two separate criminal indictments for possession of cocaine and methaquaalude; the attorney had a prior drug-related incident and a long history of drug abuse); In re Rowek, 220 N.J. 348 (2015) (one-year, retroactive suspension for attorney who pleaded guilty to possession of Vicodin, GBL, Percocet, a device used to assist him in fraudulently passing a drug urinalysis, and driving under the influence of GBL; the attorney had a long history of drug abuse and, after being admitted to pre-trial intervention, continued to use drugs and attempted to improperly pass his court-mandated drug test; we emphasized the attorney's lack of respect for the criminal justice system as an aggravating factor warranting enhanced discipline); and In re Salzman, 231 N.J. 2 (2017) (two-year suspension for an attorney who engaged in "blatant drug abuse" and criminal conduct, despite

having been placed on supervised probation for a heroin conviction; enhanced discipline imposed based on egregious aggravation, including the attorney's extensive criminal history, "sheer disdain" for court appearances and court orders, and life-long drug addiction and abuse).

In crafting the appropriate quantum of discipline, we must also consider the effect of aggravating and mitigating factors. The OAE correctly asserted that a three-month suspension does not sufficiently address the totality of respondent's misconduct. We allocate significant weight to respondent's additional misconduct – the reckless discharge of a firearm in a residential apartment building – as well as his failure to notify the OAE of the criminal charges against him, as R. 1:20-13 requires. The only mitigation to consider is respondent's lack of a disciplinary history.

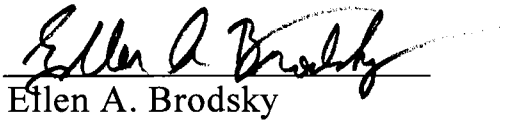
On balance, we determine that a six-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar. Furthermore, we require respondent, for the remainder of his probationary term, to (1) provide to the OAE quarterly proof of weekly attendance in a drug treatment program, and (2) immediately notify the OAE if random drug tests taken during probation yield a positive result for the presence of drugs. Moreover, as a condition precedent to his reinstatement, respondent must

provide proof of fitness to practice law, as attested to by a psychiatric professional approved by the OAE.

Chair Clark was recused. Vice-Chair Gallipoli and Members Hoberman and Singer voted for a three-month suspension. Member Boyer 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
Maurice J. Gallipoli, Vice-Chair

By: 
Ellen A. Brodsky
Chief Counsel

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DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Six-Month Suspension

Members	Six-Month Suspension	Three-Month Suspension	Recused	Did Not Participate
Clark			X	
Boyer				X
Gallipoli		X		
Hoberman		X		
Joseph	X			
Petrou	X			
Rivera	X			
Singer		X		
Zmirich	X			
Total:	4	3	1	1

Ellen A. Brodsky
Chief Counsel