SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-060
District Docket No. XIV-04-191E

IN THE MATTER OF	:
ANTOINETTE R. HOLLAND	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 19, 2007

Decided: September 20, 2007

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Michael P. Ambrosio 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) (committing a criminal act (possession of cocaine) that reflects adversely on

the lawyer's honesty, trustworthiness or fitness as a lawyer). The OAE recommends a three-month suspension. For the reasons stated below, we determine to impose a suspended three-month suspension.

Respondent was admitted to the New Jersey bar in 1993. Since June 2007, she has been an associate with the law firm of Dawn L. Jackson, LLC, in Newark, New Jersey. In 2000, she was reprimanded for improperly withdrawing fees from her trust account, contrary to a court order, and for failing to maintain proper trust and business account records. In re Holland, 164 N.J. 246 (2000).

On December 30, 2003, a Mount Laurel police officer stopped respondent for speeding. The officer determined that respondent was driving under the influence of alcohol. During a search, the officer found three vials of cocaine in respondent's possession.

On April 13, 2004, a Burlington County Grand Jury indicted respondent for possession of a controlled dangerous substance (CDS), a third-degree crime. N.J.S.A. 2C:35-10(a)(1). Respondent admitted that, at the time of her arrest, she was in possession of .32 grams of cocaine. On September 14, 2005, respondent was admitted into the Pre-Trial Intervention Program (PTI) for a period of three years.

According to respondent's counsel, despite respondent's arrest for possession of cocaine, she does not "use illegal drugs and therefore has never been dependent on or addicted to any illegal substance. This fact has been substantiated by the many random drug screens performed on Respondent subsequent to the within documented arrest for possession." Counsel explained, at oral argument before us, that respondent had purchased cocaine for a "person who she was involved with." Counsel added that respondent is a recovering alcoholic and that, when she was found in possession of cocaine, her judgment was impaired by the use of alcohol.

In his June 21, 2007 brief, counsel chronicled respondent's efforts at attaining sobriety from her alcohol addiction:

> [I]n April 2004, Respondent voluntarily contacted William J. Kane, Director of the New Jersey Lawyer's Assistance Program (NJLAP), approved and sanctioned by the New Jersey Supreme Court. Based on his evaluation, Mr. Kane suggested a Preliminary Helping Plan and referred Respondent to several additional resources, such as the NJLAP and Women's attorney Peer Counseling Group which Respondent has attended since April, 2004.
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> . . . .
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> In addition to a 28 day in-patient alcohol rehabilitation program, Respondent has participated in a total of approximately 337 sessions/meetings, including AA meetings.
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> [Counsel's brief at 3.]

According to respondent's AA sponsor/recovery mentor, "[r]arely [has she] seen a woman who is as dedicated as Antoinette in maintaining sobriety. She will go to any length to accomplish what is necessary in order to stay sober."

Counsel pointed out that only recently, in June 2007, was respondent able to obtain full-time employment as an attorney:

> Since the inception of this matter, the Respondent has found it extremely difficult to maintain full time employment and for the past two years has been working on a sporadic basis. She has worked as an independent contractor attorney for various temporary agencies [and] . . . also worked on a commission basis as a commercial debt negotiator for Rocky Mountain Consulting, Inc. headquartered in Nevada.
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> [Counsel's brief at 5.]

Counsel urged us to impose a three-month suspended suspension or, in the alternative, a censure.[1] Counsel argued that "an active period of suspension will serve no purpose other than to undermine Respondent's extraordinary advances towards rehabilitation."

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[1] Although, in his brief, counsel urged the imposition of either a suspended three-month suspension or a censure, at oral argument before us he stated, "[w]e're not asking here for a censure. We're asking for a suspension of the suspension."

In turn, the OAE took the position that, under established precedent, a three-month suspension is the required sanction. In recommending against a suspended three-month suspension, the OAE noted that respondent did not avail herself of the accelerated-suspension mechanism created in In re Schaffer, 40 N.J. 148 (1995), whereby an attorney who admits or pleads guilty to possession of CDS, has promptly and successfully achieved rehabilitation, and "has recognized the continuing need to remain drug-free and maintain sobriety," id. at 159-60, 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.

In Schaffer, the Court suspended the three-month suspension. The Court, however, stressed 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 sole reason for the Court's decision to suspend the suspension was its 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 benefitted 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.]

In the OAE's view, respondent's failure to utilize the Schaffer mechanism is a "self-created hardship." At oral argument before us, respondent's attorney attributed such failure to "bad advice from [prior] counsel."

Another of the OAE's arguments against a suspended suspension was that, unlike most, if not all of the attorneys found in possession of CDS, respondent's conduct was not "motivated by a drug dependency." According to the OAE, "[t]his means basically that when she chose to have cocaine in her possession she did it completely voluntarily . . . She was just intentionally violating the law . . . ." To that, respondent's counsel countered that respondent's judgment was indeed impaired at the time of her arrest -- not by illegal drugs, but by alcohol.

Following a review of the record, we find that the facts recited in the stipulation fully support a violation of RPC 8.4(b) for respondent's possession of cocaine. The sole issue that confronts us is the extent of discipline.

Before we turn to that question, however, we are compelled to state our view that respondent's failure to initiate the disciplinary measure fashioned in Schaffer should not operate to her detriment. This is so for two main reasons. First, it would be unfair to penalize respondent for prior counsel's advice. Second, and foremost, the essential element of the Schaffer mechanism -- complete rehabilitation from CDS addiction -- is missing here, and for a good reason: respondent had no such addiction. In fact, one would presume that, had respondent opted for the Schaffer procedure, her request would have been denied by disciplinary authorities for that very same reason. Indeed, in Schaffer, the Court ruled that, "if at all possible, [the suspension] 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 . . . ." Id. at 160.

We decline, thus, to view respondent's failure to obtain the Schaffer form of discipline as a factor against a possible imposition of a suspended suspension.

We now address the issue of the suitable discipline for respondent's conduct.

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 offenses, were serving as law secretaries to members of the Judiciary, were (publicly) reprimanded for use of a small amount of cocaine. The Court imposed only a (public) reprimand because the case was one of first impression. The Court cautioned, however, that future similar conduct would be met with a suspension.

Since McLaughlin, attorneys convicted of cocaine possession for personal use have typically received three-month suspensions. See, e.g., 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 (1995) (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 Shepphard, 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 to two instances. In a recent case, In re Filomeno, 190 N.J. 579 (2007), the attorney was charged by accusation with a single count of conspiracy to possess cocaine. Without entering a guilty plea, the attorney was admitted into PTI for a one-year term, with various conditions.

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 New Jersey Lawyers Concerned for Lawyers Program meetings in Bergen County, the fact that he acted 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. The attorney received a censure.

In In re Zem, 142 N.J. 638 (1995), 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. During that period, one of her long-time friends visited her at home, brought her food, and encouraged her to get out of the house. The friend tried to persuade the attorney to try a little cocaine to "calm her down." Initially, the attorney declined the offers. Eventually, however, the attorney "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 the attorney was arrested and admitted into PTI, she was evaluated at Fair Oaks Hospital for her drug use. The

evaluation concluded that the attorney did not need any further assistance, drug treatment, or any sort of rehabilitation.

Further mitigating factors included 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.

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 both cases, the circumstances presented were truly compelling. Absent such special circumstances, the standard form of discipline for possession of cocaine remains a suspension, almost always of a three-month duration.

Furthermore, as seen from the above-cited three-month suspension cases, the Court makes no distinction, for the purpose of assessing attorney discipline, between a conviction for the use of cocaine and a conviction for possession of cocaine. Kervick, Lisa, and Schaffer were convicted of use of cocaine, while the remaining respondents were convicted of possession of cocaine, the same offense committed by this respondent. Therefore, despite respondent's statement that she does not use illegal drugs and

that the cocaine found in her possession belonged to another individual, the threshold discipline for her offense is still a three-month suspension. The question is whether that measure of discipline may be reduced because of compelling mitigation.

Our review of the record uncovered no mitigating factors as extraordinary as those present in Zem and Filomeno. On the other hand, we must give weight to certain material circumstances present in this case: respondent 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. Since then, she has made an impressive recovery from her alcohol addiction.

Therefore, although we do not believe that either a censure (Filomeno) or a reprimand (Zem) would be warranted here, we are of the view that to suspend the appropriate level of discipline -- a three-month suspension -- would accomplish several important purposes. On one hand, such discipline would continue to send the message to the bar that such conduct is presumptively deserving of a suspension. On the other hand, it would give recognition to the special circumstances presented: that respondent was not the cocaine user here, and that alcohol abuse, an addiction from which she has since recovered, affected

her judgment when she decided to purchase it for the use of an individual with whom she was "involved."

The foregoing persuades us that the appropriate level of discipline in this case, a three-month suspension, should be suspended.

Vice-Chair Pashman and Member Boylan 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
William J. O'Shaughnessy, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Antoinette R. Holland
Docket No. DRB 07-060

Argued: July 19, 2007

Decided: September 20, 2007

Disposition: Three-month suspended suspension

Members	Disbar	Three-month Suspended Suspension	Reprimand	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:		7				2

Julianne K. DeCore
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Chief Counsel