SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-079
District Docket No. XIV-06-0605E

IN THE MATTER OF	
RAMON SARMIENTO	
AN ATTORNEY AT LAW	

Decision

Argued: July 19, 2007

Decided: September 20, 2007

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

Respondent appeared pro se.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-14(a), based on respondent's consent to a thirty-day suspension in Florida. The suspension followed respondent's

arrest for his possession of Ecstasy, a controlled dangerous substance (CDS).[1] The criminal charge was later dismissed.

For respondent's violation of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), the OAE recommends a three-month suspension, retroactive to December 1, 2006, the effective date of respondent's suspension in Florida.[2] We determine that a three-month suspended suspension is the appropriate discipline in this case.

Respondent was admitted to the New Jersey bar in 2005, and the Florida bar in 2003. He resides in Miami Beach, Florida. He has no history of discipline in New Jersey.

On September 5, 2006, respondent entered into a Stipulation for Probable Cause, Unconditional Guilty Plea and Consent Judgment for Discipline (stipulation) with the Florida Bar.

According to the stipulation:

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[1] The OAE's brief states that "[i]n New Jersey, Ecstasy, the 'street' name for MDMA, or 3, 4-Methylenedioxy methamphetamine, a 'mood elevator' that produces a euphoric state without hallucinations is a Schedule I Controlled Dangerous Substance. See N.J.S.A. 24:21-5(e)." The brief further states that, in New Jersey, possession of Ecstasy is a third-degree crime, in violation of N.J.S.A. 2C:35-10(a)(1).

[2] According to the OAE, respondent has certified that he has not practiced law in New Jersey since that date.

3. Respondent, stipulating to probable cause, admits that the following facts are true and accurate and stipulates:

A. Respondent was arrested on March 18, 2006, for possession of a controlled substance;
B. Respondent admits that by reason of the foregoing facts Respondent has violated Rules 3-4.3 (misconduct); 3-4.4 (criminal misconduct) of the Rules of Discipline, and Rules 4-8(a)(an attorney shall not violate/attempt to violate the Rules of Professional Conduct); and, 4-8.4(b) (an attorney shall not commit a criminal act) of the Rules of Professional Conduct.

4. Pursuant to Rule 3-7.9(a) of the Rules Regulating The Florida Bar, Respondent hereby tenders this Stipulation for Probable Cause and Consent Judgment for Discipline wherein Respondent agrees to the following discipline:
A. Respondent consents to be suspended from the practice of law for a period of 30 days – the suspension to take place during the month of December 2006.
B. Respondent is already under contract and shall remain in compliance with the terms of his contract for a period of one year and thereafter unless and until FLA [Florida Lawyers Assistance] recommends otherwise.[3] Respondent shall be responsible for any fees incurred for monitoring such contract.

[OAEbEx.C2.]

[3] The contract requires, among other things, that respondent totally refrain from the use of mood-altering substances including alcohol, be monitored monthly by the FLA, and actively participate in a twelve-step or other abstinence, self-help program.

Thereafter, on October 26, 2006, the Supreme Court of Florida entered an order suspending respondent for thirty days, effective December 1, 2006.

As required by R. 1:20-14(a), respondent notified the OAE of his thirty-day suspension, by letter dated November 26, 2006. Respondent's letter informed the OAE that, although he had been arrested, no charges had been filed against him. To corroborate his assertion, respondent appended a certified copy of the final disposition from the clerk of the court. The memorandum of no action stated that "The State of Florida declines to file charges in this case and therefore enters this 'NO ACTION.'" It listed as the reason for doing so, "Evidence admissible at trial is insufficient to prove guilt beyond a reasonable doubt."

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

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore, adopt the findings of the Supreme Court of Florida.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the

> discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that fall within the scope of subparagraphs (A) through (D). As the OAE properly noted, subparagraph (E) applies.

R. 1:20-15A(a)(3) provides that, "[a]bsent special circumstances, a suspension for a term shall be for a period that is no less than three months and no more than three years." Nothing in the record persuades us that we should deviate from the categories of discipline provided in the above rule. Moreover, as seen below, possession of a CDS almost invariably results in a three-month suspension, unless compelling mitigating circumstances justify a lesser sanction.

Ecstasy, otherwise known as methylenedioxy amphetamine, is a Schedule I controlled dangerous substance (N.J.S.A. 24:21-5). A substance is considered a Schedule I substance if it "(1) has high

potential for abuse; and (2) has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision" (N.J.S.A. 24:21-5). Cocaine is a Schedule II controlled dangerous substance because it "(1) has a high potential for abuse; (2) has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and (3) abuse may lead to severe psychic or physical dependence" (N.J.S.A. 24:21-6).

For purposes of assessing discipline in this matter, cases involving the possession of cocaine are helpful because the same penalties apply to possession of either substance under N.J.S.A. 2C:35-5(a).

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 Avrigian, 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). But see In re Filomeno, 190 N.J. 579 (2007) (censure for attorney arrested for possession of cocaine and drug paraphernalia; numerous mitigating circumstances considered, including the attorney's quick action to achieve 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) and In re Zem, 142 N.J. 638 (1995) (reprimand for 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 the attorney initially declined the offers, she ultimately "succumbed" to the friend's assurances that the drug would make her feel better; a hospital evaluation following the attorney's arrest 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).

Notwithstanding that the State of Florida declined to file charges against respondent, the fact remains that he stipulated that he had been arrested for possession of a CDS. A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. In In re McEnroe, 172 N.J. 324 (2002),

we declined to find a violation of RPC 8.4(b) because the attorney had not been charged with the commission of a criminal offense. In the Matter of Eugene F. McEnroe, DRB 01-154 (January 29, 2002) (slip op. at 14). The Court reinstated the RPC 8.4(b) charge and found the attorney guilty of violating that rule.

Because the record is devoid of any special circumstances warranting a departure from the standard three-month suspensions imposed for possession of a CDS, we determine that respondent, too, should be suspended for three months. In this fashion, we remain faithful to established precedent, which requires a period of suspension for attorneys guilty of possession of a CDS. In re Schaffer, 40 N.J. 148 (1995) (holding that "a suspension for a possessory CDS offense remains a proper measure of discipline." Id. at 160).

It is our firm belief, however, that, in this case, the suspension should be suspended. Respondent tells us that it was his alcohol addiction that caused him to commit the offense that is at the root of his disciplinary troubles. He has recovered from that addiction, as attested by the FLA Assistant Director's letter of July 17, 2007. He is a young attorney whose judgment was impaired by alcohol abuse. He has served his thirty-day suspension in Florida and is now an associate with a law firm in that state. Although he does not intend to practice law in New

Jersey in the near future, he thought it important not to waive appearance before us in order to "face . . . what happened and to acknowledge the errors [he has] made."

We are mindful that the OAE would not object if the suspension were to be made retroactive to December 1, 2006, a circumstance that would make respondent eligible to practice in New Jersey now, should he so desire. But we are also aware that, first, respondent must go through a reinstatement process that requires the filing of a petition for the restoration of his license, a review of the petition by this Board and by the Court, and a formal Court order.

With all of the above considerations in mind, we believe that to suspend the appropriate form of discipline -- a three-month suspension -- fairly and adequately addresses respondent's present circumstances as well as the goals of the disciplinary system.

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 Ramon Sarmiento
Docket No. DRB 07-079

Argued: July 19, 2007

Decided: September 20, 2007

Disposition: Three-month suspended suspension

Members	Disbar	Three-month 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