SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-091
District Docket No. XIV-05-059E

IN THE MATTER OF	:
ANTHONY FILOMENO	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 18, 2006

Decided: July 19, 2006

Walton W. Kingsbery, III 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 pursuant to R. 1:20-6(c)(1), which provides that a hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation. In all other cases the pleadings, together with a

statement of procedural history, shall be filed by the trier of fact directly with us, for our consideration in determining the appropriate sanction to be imposed.

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) for possessing cocaine and drug paraphernalia. For the reasons expressed below, we determine to impose a three-month suspended suspension.

Respondent was admitted to the New Jersey bar in 1990. He maintains a law office in Wayne, New Jersey. He has no history of discipline.

On November 17, 2004, as part of a large scale investigation of illegal narcotics activity in Passaic County, the Clifton police arrested respondent and charged him with one count of possession of cocaine (N.J.S.A. 2C:35-10a(1)), and one count of possession of drug paraphernalia (N.J.S.A. 2C:36-2).

As part of the same investigation, on January 14, 2005, the police again arrested respondent and charged him with conspiracy to possess cocaine (N.J.S.A. 2C:5-2).

By letter dated February 8, 2005, respondent notified the Office of Attorney Ethics ("OAE") of his arrests. The OAE awaited the resolution of the criminal charges against respondent before investigating his ethics violations. In response to the OAE's

requests, in February, April, and May 2005, respondent submitted various documents, as well as information relating to his rehabilitation efforts. Once respondent's criminal matter was concluded, the OAE determined from police reports and court documents that respondent had violated RPC 8.4(b). The parties, thus, stipulated the following.

On November 17, 2004, the Passaic County Narcotics Task Force notified the Clifton Police Department that respondent had illegal drugs in his possession. Based on that information, the Clifton police stopped respondent, searched his vehicle, and found a bag of what appeared to be cocaine. The police officers "field-tested" the substance, which yielded a positive result for cocaine.

On March 23, 2005, respondent waived his rights to a Grand Jury presentment and trial by jury, agreeing instead to proceed by accusation. Accusation No. 05-03-0253A charged respondent with a single count of conspiracy to possess cocaine (N.J.S.A. 2C:5-2). The prosecutor moved to dismiss the other charges. Thereafter, respondent was admitted into the Pre-Trial Intervention Program ("PTI") for a one-year term, with the conditions that he pay court-ordered fines, complete twenty-five hours of community service, submit to drug testing, and successfully complete the New Jersey Lawyers' Assistance Program ("NJLAP"). Respondent was not required to enter a guilty plea to the accusation, before entering into PTI.

Respondent admitted that his conduct, "conspiring to possess cocaine and possessing cocaine as well as paraphernalia to ingest it," was a criminal act, violating RPC 8.4(b).

The stipulation provided, as an aggravating factor, that respondent was charged with crimes that required a knowing or purposeful state of mind, and that, in committing the charged acts, he knew what he was doing and did so purposely, violating his oath as an attorney to uphold and obey all of the laws of the State of New Jersey.

Mitigating factors were that respondent had no ethics history, acted expeditiously to dispose of the criminal charges, submitted to drug rehabilitation, and had completed counseling offered by NJLAP.

In his brief to us, respondent detailed his rehabilitation efforts more thoroughly. He obtained a "Helping Plan" from NJLAP, to which he committed himself "whole-heartedly." According to respondent, as of April 19, 2006, he had attended 415 meetings, including 243 Alcoholics Anonymous ("AA") meetings and 108 NJLAP Lawyers Concerned with Lawyers meetings, thirty-four counseling sessions, and random drug testing. Respondent was "instrumental" in re-establishing the NJLAP Lawyers Concerned for Lawyers Program meetings in Bergen County. The NJLAP Director commended respondent

for the positive measures he had taken, and for being a "very distinctive and helpful role model," from whom others profited.

Respondent concluded his PTI program three months early, because of his commitment and diligence in exceeding its terms. On December 19, 2005, the court dismissed the remaining charges against him.

Respondent expressed shame, regret, and remorse for his conduct.

The OAE urged us to suspend respondent for no fewer than three months.

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

According to the stipulated facts, respondent conspired to possess cocaine, a violation of RPC 8.4(b). Nothing in this record establishes that his possession of cocaine was for other than personal use.

The discipline imposed in cases involving the use of cocaine depends on several factors, such as the extent of the use, the presence of other ethics infractions, and any mitigating factors.

The Court has 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 offense, were serving as law secretaries to members of the Judiciary, were publicly reprimanded for use of a small amount of cocaine. The Court noted that, while a public reprimand had been issued in that case of first impression, in the future, similar conduct would be met with a suspension from practice. Id. at 462.

Since McLaughlin, attorneys convicted of cocaine possession for personal use have typically served three-month suspensions. See, e.g., In re Avrigian, 175 N.J. 452 (2003) (three-month suspension for possession of cocaine, a third-degree crime); In re Kervick, 174 N.J. 377 (2002) (three-month suspension for possession of cocaine, use of a controlled dangerous substance, 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, 140 N.J. 148 (1995) (three-month suspended suspension where the attorney was guilty of possession of cocaine, being under the

influence of cocaine, and possession of drug-related paraphernalia, but achieved rehabilitation prior to the consideration of his ethics offense); 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 for attorney who possessed small amounts of marijuana, cocaine, and drug paraphernalia; the attorney engaged in efforts to combat his dependency); 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 attorney was admitted into PTI, whereupon the indictment was dismissed).

The Court's departure from the standard three-month suspension has been limited. In In re Zem, 142 N.J. 638 (1995) (reprimand) a young attorney's cocaine usage was for only a brief period. The attorney used the drug while attempting to privately cope with the death (cancer) of her mother, with whom she had been extremely close. Seven months later, her brother died from Hodgkin's disease. When the attorney was evaluated for her drug use, it was determined that she did not require treatment or rehabilitation. After she successfully completed PTI, the drug charges against her were dismissed. By the time the Court considered Zem's disciplinary matter, she was practicing law, had married, and was moving forward with her life.

In Shaffer, the attorney received a suspended suspension of three months. Schaffer had admitted his violations, successfully completed PTI, and underwent drug rehabilitation by regularly attending group treatment twice a week, participating in individual sessions in a substance abuse treatment program, undergoing periodic drug testing, regularly attending AA meetings, and expressing his regret for bringing shame to his colleagues and family.

In determining the proper discipline to impose in that case, the Court was mindful of the special hardships that befall an attorney who is suspended several years after the occurrence of his/or her ethics offenses, and after recovery has been achieved. The Court emphasized that imposing a suspension after rehabilitation has been achieved could "engender special hardship because it may itself jeopardize that recovery, undermine rehabilitation and incite relapse." In re Shaffer, supra, 140 N.J. at 159.

The Court, thus, fashioned an innovative form of discipline to accommodate attorneys whose drug addiction contributed to the commission of a possessory CDS offense, but who "conscientiously, promptly and successfully achieved rehabilitation, and recognized the continuing need to remain drug-free and maintain sobriety." Id. at 159-60. The Court authorized an accelerated suspension so that a suspension for a possessory CDS offense could be imposed

immediately following the commission of the offense, to coincide with rehabilitation programs and recovery efforts undertaken by the attorney.

Shaffer was unable to avail himself of that alternative because his case was the "vehicle for [the Court's] announcement of a rule that would otherwise have benefited [him]." Thus, fairness dictated that he not be suspended at that time. The Court imposed a suspended suspension, which had only been given once before, where

> the infractions of the attorney themselves did not warrant discipline more severe than a suspension; the infractions were committed when the attorney was relatively young and inexperienced, and the misconduct was attributable in large measure to that inexperience and lack of supervision; and, most importantly, a very extended period of time had elapsed between the commission of the infractions and the imposition of discipline, and, during that time, that attorney had gained in experience and knowledge and had engaged in the practice of law in good repute and without any ethical blemish or transgression. E.g., In re Kotok, 108 N.J. 314 (1987); see In re Stier, 108 N.J. 455 (1987).
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> [Id. at 158.]

Here, we find that, although, respondent would have been a candidate for an accelerated suspension, the time for him to avail himself of such an opportunity has already passed. Under Schaffer, the accelerated suspension could be imposed right after the

commission of the offense, to coincide with rehabilitation efforts. Here, respondent's offense took place in November 2004.

Because respondent has made such great strides in his rehabilitation, was released from PTI early, has been a helpful role model to others, self-reported his conduct, and showed deep remorse for his transgression, we conclude that an active period of suspension will serve no purpose other than to undermine his extraordinary steps toward rehabilitation. We are mindful of the Court's strong stance on suspending attorneys for violating laws relating to controlled dangerous substances. On balance, however, we believe that, in this instance, a suspended suspension of three months will reinforce the gravity of the offense and protect the Court's commitment in punishing errant attorneys, but, at the same time, give recognition to respondent's successful efforts at rehabilitation and allow him to move forward with his life.

Members Boylan and Baugh did not participate.

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

Disciplinary Review Board
William J. O'Shaughnessy, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony Filomeno
Docket No. DRB 06-091

Argued: May 18, 2006

Decided: July 19, 2006

Disposition: Three-month suspended suspension

Members	Three-month suspended Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman	X				
Baugh					X
Boylan					X
Frost	X				
Lolla	X				
Pashman	X				
Stanton	X				
Wissinger	X				
Total:	7				2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel