

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-280
District Docket No. XIV-04-265E

IN THE MATTER OF
STEVEN T. KEARNS
AN ATTORNEY AT LAW

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Decision

Argued: November 17, 2005

Decided: December 15, 2005

Thomas Carver appeared on behalf of the Office of Attorney Ethics.

Respondent's counsel waived appearance for oral argument.

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

This matter was before us on a stipulation signed by the Office of Attorney Ethics ("OAE") and respondent. Although the stipulation does not specify which RPC respondent violated, the

complaint asserted a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer).

Respondent was admitted to the New Jersey bar in 1982. He was temporarily suspended on July 1, 2003 for failure to pay a \$250 sanction in connection with a fee arbitration award. In re Kearns, 177 N.J. 225 (2003). In 2004, he received a reprimand in a default case in which he represented the borrowers in a refinance, failed to timely pay off two prior mortgages, failed to maintain required records, and failed to cooperate with disciplinary authorities, violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with a client), RPC 1.15(b) (failure to promptly deliver funds to third parties), RPC 1.15(d) and R. 1:21-6(b) (failure to comply with recordkeeping requirements), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). In re Kearns, 179 N.J. 507 (2004). The order required respondent to prove his fitness to practice law before he is reinstated and to practice under the supervision of a proctor for one year after his reinstatement.

On September 6, 2004, respondent was arrested for possession of heroin after police officers in Paramus stopped

his vehicle because of his erratic driving. Although criminal complaints were signed alleging possession of a controlled dangerous substance with intent to distribute, possession of heroin, possession of cocaine, and possession of drug paraphernalia, an October 18, 2004 accusation charged respondent only with possession of "heroin and/or cocaine."¹ On that date, October 18, 2004, he was admitted into the Bergen County Pre-trial Intervention Program ("PTI"), without entering a guilty plea.

The OAE recommends a suspension of six months to one year, citing In re Hasbrouck, 140 N.J. 162 (1995), In re Kaufman, 104 N.J. 509 (1986), In re Orlando, 104 N.J. 344 (1986), and In re Kinnear, 105 N.J. 391 (1987).

Following a de novo review of the record, we find that the stipulated facts clearly and convincingly establish that, by possessing heroin, respondent violated RPC 8.4(b).

In In re Musto, 152 N.J. 165, 174-75 (1997), the Court discussed the appropriate measure of discipline in drug cases:

A three-month suspension is a generally appropriate measure of discipline for possessory crimes related to controlled

¹ Although the accusation charged respondent with possession of heroin and/or cocaine, the stipulation refers only to heroin.

dangerous substances (CDS). See *Schaffer*, 140 N.J. at 161 (ordering a three-month suspension for unlawful possession of a CDS, unlawful possession of drug paraphernalia, being unlawfully under the influence of a CDS, and possession of a CDS in a motor vehicle); *In re Benjamin*, 135 N.J. 461, 462, 640 A.2d 845 (1994) (ordering a three-month suspension for unlawful possession of cocaine and marijuana); *In re Karwell*, 131 N.J. 396, 399, 620 A.2d 1048 (1993) (ordering a three-month suspension for possession of 0.08 grams of marijuana, 0.13 grams of cocaine, and drug paraphernalia); *In re Sheppard*, 126 N.J. 210, 211, 594 A.2d 1333 (1991) (ordering a three-month suspension for possession of under 50 grams of marijuana and for failure to deliver a CDS (cocaine) to a law enforcement officer); *In re Nixon* 122 N.J. 290, 290, 585 A.2d 322 (1991) (ordering a three-month suspension for possession of marijuana and cocaine).

Some offenses attributable to drug addiction may warrant stronger disciplinary measures. See *In re Stanton*, 110 N.J. 356, 357, 360, 541 A.2d 678 (1988) (ordering a six-month suspension for possession of cocaine where attorney had acknowledged ten years of drug abuse); *In re Pleva*, 106 N.J. 637, 647, 525 A.2d 1104 (1987) (ordering a six-month suspension of attorney for pleading guilty to possession of nine and one-half grams of cocaine, eleven grams of hashish, and fifty-two grams of marijuana where attorney was regular drug user and had been arrested previously; three-month sentence warranted for guilty plea to charge of giving false information about drug use when completing certification required before purchasing firearm); *In re Kaufman*, 104 N.J. 509, 514, 518 A.2d 185 (1986) (ordering a six-month suspension of attorney for pleading guilty

to two separate criminal indictments for possession of cocaine and methaqualude where attorney had prior drug-related incident and a long history of drug abuse); *In re Orlando*, 104 N.J. 344, 352, 517 A.2d 139 (1986) (suspending attorney who pled guilty to one count indictment for possession of cocaine until such time as [he] could demonstrate fitness where attorney was seeking psychological help for depression).

The Court has imposed longer sentences in drug-related offenses that also involved dishonest, fraudulent, and deceptive conduct. *Hasbrouck, supra*, 140 N.J. at 172 (imposing one-year suspension on attorney for pleading guilty to criminal charges where the attorney was forging false prescriptions for darvocet and vicodin for seven years); *In re McCarthy*, 119 N.J. 437, 575 A.2d 434 (1990) (imposing suspension on attorney convicted of distribution of a CDS and obtaining a CDS by misrepresentation, fraud, forgery, deception, or subterfuge until attorney could demonstrate fitness). A longer sentence is warranted under those circumstances because dishonest conduct particularly "'impugns the integrity of the legal system' and destroys 'public trust and confidence' in the law and the legal system." *Hasbrouck, supra*, 140 N.J. at 168 (citations omitted).

Cases decided after Musto, supra, have followed the general rule that possession of a controlled dangerous substance ordinarily requires a three-month suspension. See, e.g., In re Avriqian, 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); and In re Foushee, 156 N.J. 553 (1999) (three-month suspension for possession of cocaine; the attorney had received a three-year suspension for misconduct in four matters, including gross neglect, failure to communicate with clients, failure to prepare written retainer agreements, and failure to cooperate with ethics authorities).

Although, as mentioned above, the OAE submits that a suspension of six months to one year is warranted, we find the cases cited in support of this contention distinguishable. The attorney in In re Hasbrouck, supra, 140 N.J. 162, received a one-year suspension for using forged prescriptions to obtain controlled dangerous substances. She obtained prescription pads from her father, a physician, and issued phony prescriptions in her name, as well as those of her husband and her sister. The Court took into account the "fraudulent and deceptive" nature of the attorney's conduct, elements not present here. Id. at 168.

In In re Kaufman, supra, 104 N.J. 509, the attorney pleaded guilty to possession of methaqualude tablets and, four months

later, pleaded guilty in a separate indictment to possession of cocaine. In imposing a six-month suspension, the Court stated:

More troubling, however, is the fact that respondent's unlawful behavior does not stand in the isolation of a single offense. We are not dealing with but one conviction, which might otherwise arguably be viewed as an extraordinary aberration in an otherwise unremarkable record, but rather with two incidents of drug-related criminal conduct within about four months. At the time of the cocaine arrest in October 1984, respondent was awaiting indictment for possession of methaqualone in June 1984. If the fact of two drug offenses within four months does not demonstrate a callous disregard of a lawyer's obligation to conduct himself or herself within the confines of the law, it surely represents a casual approach to that obligation. It is that fact -- two offenses in four months -- that most strongly influences our conclusion that a period of suspension is warranted.

[Id. at 513.]

The attorney in In re Orlando, supra, 104 N.J. 344, pleaded guilty to possession of cocaine, alleging that he suffered from depression. He had been suspended for other non-drug related disciplinary matters for four and one-half years. The Court determined to adopt our recommendation of "indefinite suspension until such time as he can demonstrate his fitness to practice law again." Id. at 351.

Finally, the attorney 'in' In re Kinnear, supra, 105 N.J. 391, received a one-year suspension after pleading guilty to a charge of distribution of a controlled dangerous substance, a much more serious charge than simple possession.

Here, we find nothing in the stipulation to compel a deviation from the three-month suspensions imposed on attorneys found guilty of possession of a controlled dangerous substance. The fact that the controlled dangerous substance in this case was heroin, rather than cocaine, does not, in our view, justify greater discipline. Under the criminal code, possession of both substances constitutes a third degree offense. See N.J.S.A. 2C:35-10(a)(1). Moreover, respondent's prior reprimand for unrelated conduct does not require a longer suspension, as illustrated by the three-month suspension imposed in In re Foushee, supra, 156 N.J. 553, despite that attorney's prior three-year suspension for ethics infractions not related to drug usage.

We, thus, determine that a three-month suspension is the appropriate level of discipline to be imposed in this matter. Respondent may not be reinstated until he complies with the order of temporary suspension requiring that he satisfy a fee arbitration award and until he provides proof of fitness to

practice law, pursuant to the Court's 2004 Order reprimanding him. Upon reinstatement, respondent must practice under the supervision of a proctor for one year. Member Neuwirth voted for a six-month suspension. Chair Maudsley and Vice-Chair O'Shaughnessy did not participate.

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

Disciplinary Review Board
Louis Pashman, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

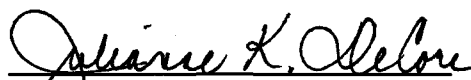
In the Matter of Steven T. Kearns
Docket No. DRB 05-280

Argued: November 17, 2005

Decided: December 15, 2005

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Six-month Suspension	Dismiss	Disqualified	Did not participate
Maudsley						X
O'Shaughnessy						X
Boylan		X				
Holmes		X				
Lolla		X				
Neuwirth			X			
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		6	1			2


Julianne K. DeCore
Chief Counsel