

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-217
District Docket No. XIV-04-592E

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IN THE MATTER OF
WENDY ELLEN NEGGERS
AN ATTORNEY AT LAW

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Decision

Argued: September 15, 2005

Decided: October 26, 2005

Lee A. Gronikowski 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 was before us on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent.

Respondent was admitted to the New Jersey bar in 1995. She has no history of discipline. At the time of the events in question, she did not maintain an office for the practice of law.

On March 17, 2003, respondent was arrested for possession of heroin and possession of heroin with the intent to distribute.

Respondent was living with her parents at the time of her arrest. After respondent's father was unable to awaken her, he called "911." When Morristown police officers arrived, respondent's father informed them that respondent was a "recovering" heroin addict and that he had gone through her purse when he was unable to revive her. There he found thirty-one bags of heroin, which he turned over to the police. The Morristown ambulance squad transported respondent to the hospital for treatment for a heroin overdose.

Respondent was treated in the cardiac care unit. While at the hospital, the nursing staff found five additional packets of heroin in respondent's possession, which they turned over to the police.

On June 11, 2003, respondent was recommended for admission into the Pre-Trial Intervention Program ("PTI"). The probation officer making the recommendation noted in her report that respondent had been "very remorseful" during her PTI interview and had taken full responsibility for her actions. In addition, since her arrest, she had completed the St. Claire's Partial Hospitalization program and was attending their intensive

outpatient program. The report also stated that respondent was unemployed at the time of her overdose.

On June 12, 2003, respondent signed a waiver of indictment. On that same date, a two-count accusation was filed against her, charging her with unlawfully and knowingly or purposely possessing a controlled dangerous substance, heroin, Schedule I, (N.J.S. 2C:35-10a(1)); and unlawfully and knowingly or purposely possessing a controlled dangerous substance, heroin, Schedule I, in a quantity of less than one-half ounce, with the intent to distribute same (N.J.S. 2C:35-5b(3)). Respondent was accepted into PTI on June 12, 2003.

The OAE recommended a six-month to a one-year suspension for respondent's violation of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer). In support of its recommendation, the OAE relied on the following cases: In re Hasbrouck, 140 N.J. 162 (1995) (one-year suspension for obtaining controlled dangerous substances (pain medication) using false prescriptions); In re Kinnear, 105 N.J. 391 (1987) (one-year suspension where the attorney shared a small amount of cocaine with another individual); In re Kaufman, 104 N.J. 509 (1986) (six-month suspension for guilty plea to two indictments charging possession of a controlled dangerous substance); and In re Orlando, 104 N.J. 344 (1986) (indefinite

suspension for a guilty plea to a one-count indictment for possession of cocaine).

The OAE further recommended that, prior to reinstatement, respondent be required to demonstrate that she is medically and psychologically fit to practice law.

Following a de novo review of the record, we are satisfied that the stipulation demonstrates by clear and convincing evidence that respondent was guilty of unethical conduct. Respondent acknowledged that she was admitted into PTI for possession and possession with intent to distribute heroin, thereby violating RPC 8.4(b). It is obvious that she had a serious drug problem. The record, however, does not disclose how long she has been battling this addiction.

We have taken into account the considerable strides respondent has made in her efforts at rehabilitation. She outlined those efforts and her accomplishments in her August 2005 letter-brief to us: a twenty-eight day inpatient program following her March 2003 arrest; an intensive outpatient program at Saint Michael's Medical Center, from which she was discharged in July 2004; successful completion of outpatient substance abuse treatment, followed by aftercare treatment; a methadone maintenance program since April 2003; weekly psychotherapy sessions and bi-monthly psychiatrist visits for medication management; participation in a program to

become a certified alcohol and drug counselor and pursuit of a master's degree from Thomas Edison College.

We note that, in January 2005, respondent retroactively listed herself as "retired" from the New Jersey Lawyers' Fund for Client Protection attorney form. Respondent stated that she plans to remain on the retired list because she intends to pursue a career in the "addictions" field. She argued, and we agree in principle, that imposing discipline at this juncture will have no effect, given that she is retired from the practice of law. We believe, nevertheless, that discipline is warranted to inform the bar about the consequences of such serious conduct. Moreover, there is precedent for such action. See, e.g., In re Magee, 180 N.J. 302 (2004) (attorney reprimanded in 2004, even though listed as retired since 1990; he entered a guilty plea to one count of eluding a police officer, one count of resisting arrest, and one count of driving under the influence).

The discipline imposed in cases dealing with possession, use or distribution of drugs has varied greatly depending on pertinent factors, such as the type of drug involved, the extent of the use, the harm to clients, the presence of other ethics infractions, and mitigating factors. We find those cases, cited

below, helpful in assessing the proper quantum of discipline to impose here.

This case does not involve the wide-scale use or distribution of controlled dangerous substances for financial gain, or a conspiracy, warranting disbarment, as in In re Goldberg, 105 N.J. 278 (1987) (knowing participation in an extensive narcotics conspiracy with a known drug-dealer and fugitive), or In re McCann, 110 N.J. 496 (1988) (participation in a large-scale and prolonged criminal narcotics conspiracy involving the purchase of large quantities of cocaine in various South American countries).

Significant terms of suspension were imposed in In re Lloyd, 183 N.J. 228 (2005) (three-year suspension for attorney convicted of two counts of felony purchase of a controlled dangerous substance (crack cocaine), one count of possession of drug paraphernalia, four counts of contributing to the delinquency or dependency of a minor, and one count of driving under the influence); In re Musto, 152 N.J. 165 (1997) (three-year suspension for conspiracy to possess heroin and cocaine, possession of heroin and cocaine, and possession of methyl ecgonine; although the attorney was also guilty of conspiracy to distribute cocaine, the Court considered that he had no other ethics infractions in his twelve-year legal career, he was not practicing law at the time of his arrests, he was primarily a drug user, rather than a seller, he did not harm any clients, he

cooperated fully with federal agents, and he confronted his addiction both before and after he was arrested); In re Morris, 153 N.J. 36 (1998) (three-year suspension where attorney pleaded guilty to official misconduct and conspiracy to obtain cocaine); and In re Kinnear, 105 N.J. 391 (1987) (one-year suspension where the attorney pleaded guilty to one count of distribution of CDS; the attorney was placed on probation for three years and was directed to continue outpatient treatment; the Court considered the relationship of the crime to the practice of law, the good reputation of the attorney, his prior conduct and character, and that his misconduct was limited to one episode, unrelated to the practice of law, and unlikely to recur).

Lesser discipline was imposed in In re Kaufman, 104 N.J. 509 (1986) (six-month suspension for an attorney who pleaded guilty to two separate charges of drug possession (methaqualude and cocaine) and had a prior drug incident and history of drug abuse); In re Schaffer, 140 N.J. 148 (1995) (three-month suspended suspension where attorney was guilty of possession of cocaine, being under the influence of cocaine, and possession of drug-related paraphernalia); and In re Karwell, 131 N.J. 396 (1993) (three-month suspension where the attorney possessed small amounts of marijuana, cocaine, and drug paraphernalia, but engaged in efforts to combat his dependency).

Those cases did not involve possession with intent to distribute, however.

We find that respondent's misconduct is not as serious as that in the cases where the attorneys were disbarred or suspended for three years. However, we considered that respondent had thirty-six bags of heroin in her possession at the time of her arrest, for which she was charged with intent to distribute, and that she was under the influence at that time. While we appreciate respondent's tremendous gains in her efforts at drug rehabilitation and her eagerness to move forward with her life, we conclude that a one-year suspension is appropriate discipline for her misconduct. Moreover, we are not persuaded that respondent has established her readiness to practice law.

Vice Chair O'Shaughnessy did not participate and Member Boylan abstained.

We further determine that, should respondent seek reinstatement, with her application she is to provide proof of fitness to practice law, as attested to by a psychiatrist approved by the OAE, and proof of continued participation in a drug rehabilitation program. The OAE should monitor her periodic, random drug-testing.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

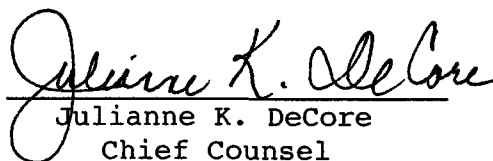
In the Matter of Wendy Ellen Neggers
Docket No. DRB 05-217

Argued: September 15, 2005

Decided: October 26, 2005

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Dismiss	Abstained	Disqualified	Did not participate
Maudsley		X				
O' Shaughnessy						X
Boylan				X		
Holmes		X				
Lolla		X				
Neuwirth		X				
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		7		1		1


Julianne K. DeCore
Chief Counsel