

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-297
District Docket No. XIV-2014-0350E

IN THE MATTER OF
GREGORY R. NOONAN
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision

Argued: January 28, 2016

Decided: June 1, 2016

Andrea R. Fonseca-Romen appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c), following respondent's guilty plea, in the Court of Common Pleas, Montgomery County, Pennsylvania to: (1) two counts of possession of CDS with intent to deliver within 8,000 feet of a school zone, an ungraded felony; (2) one count of criminal use of a communications facility, a third-degree felony; (3) one count

of dealing in unlawful proceeds, a first-degree felony; (4) one count of forgery, a first-degree felony; and (5) one count of theft by deception, a third-degree felony. We determine to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1995. Although he has no prior discipline in New Jersey, he has been declared administratively ineligible as of November 16, 2015, based on non-compliance with his continuing legal education requirements. He remains ineligible in New Jersey to date. Respondent also had been admitted to the Pennsylvania bar in 1987. However, he was disbarred by consent in that jurisdiction on February 27, 2014. Finally, although respondent also was admitted to practice in North Carolina in 1985, he is listed as "inactive" in that state.

The charges to which respondent pleaded guilty are contained in separate criminal complaints against him, resulting in guilty pleas on April 7, 2014 and January 12, 2015.

I. The Drug Charges

On April 7, 2014, respondent entered a guilty plea in the Pennsylvania Court of Common Pleas to: two counts of possession of CDS with intent to deliver within 8,000 feet of a school zone,

an ungraded felony; one count of criminal use of a communications facility, a third-degree felony; and one count of dealing in unlawful proceeds, a first-degree felony.

The following facts were elicited from respondent by the Assistant District Attorney for the Commonwealth of Pennsylvania:

First of all, on November 23, you sold, I believe it was, 175 Oxycodone, a Schedule II Controlled Substance, weighing, approximately 22.65 grams to someone; is that correct?

A. That's correct.

Q. These pills were not yours? You're not someone licensed to sell these pills, correct?

A. Correct.

Q. And you understand these sales occurred within 8,000 feet of Gotwals Elementary School, right?

A. That's correct.

Q. Next, I believe on or about December 19, 2013, in Montgomery County, you sold Oxycodone pills again, approximately, I believe it was, 180 pills; is that correct?

A. Yes, correct.

Q. That was weighing, approximately, 25 to 30 grams as well?

A. That's correct.

Q. And you were not licensed to do so, right?

A. That's correct.

Q. And these pills were not -- did not belong to you?

A. No. That's correct.

Q. And you understand that this also happened within 8,000 feet of Gotwals Elementary School?

A. I do.

Q. In both of these instances, these drug sales were set up using a phone call. You used a cellphone to contact the person you were going to sell to; is that correct?

A. That's correct.

Q. And after the first sale on November 23, 2013, you used some of the money to purchase the pills for the second sale, right?

A. Well, actually, I hadn't paid for the second sale. I used that money to pay for the pills from the first sale.

Q. You used that money for an illegal purpose, though; is that correct?

A. Correct.

Q. And you understand as an ungraded felony on the possession with intent to deliver charges, they both carry a maximum of ten years' incarceration and a \$20,000 fine?

A. I know that.

Q. Do you understand the dealing with unlawful proceeds charge is a felony of the first degree, and it carries a 20-year maximum penalty and \$25,000 fine?

A. I'm aware of that.

Q. You understand that criminal use of a communications facility, a felony of the third degree, carries a maximum of seven years of incarceration and a \$15,000 fine?

A. I'm aware of that as well.

[OAEbEx.A23-Ex.A25.]¹

¹ OAEb refers to the OAE's August 13, 2015 brief in support of the motion for final discipline.

II. The Forgery and Theft Charges

On January 12, 2015, respondent entered a guilty plea in the Pennsylvania Court of Common Pleas to one count of forgery, a first-degree felony, and one count of theft by deception, a third-degree felony.

Specifically, respondent admitted that he had represented James Strizziere in a civil action against Joseph Valerio and J&J Shell. The matter settled for \$87,520.50. Respondent did not tell Strizziere that the case had settled or that he had received a settlement check for \$87,520.50. Rather, he led Strizziere "to believe that we were going forward on sort of an appeal." He then forged Strizziere's signature, deposited the funds into his business account, and made withdrawals from those funds until they were depleted. He did not have Strizziere's authorization to use them. Strizziere received none of the settlement proceeds.

At respondent's April 8, 2015, sentencing hearing before the Honorable William R. Carpenter, it became clear that, at the time, respondent had "a lot of problems with the IRS, a lot of personal problems, and basically the motivation for [the theft] was financial."²

² In an August 22, 2015 handwritten letter-brief to us, respondent explained that he had stolen the funds "to keep the office running and keep my drug addiction ongoing. . . ."

Judge Carpenter imposed two separate sentences for the offenses. Specifically, for possession with intent to deliver (count one), four to ten years; for possession with intent to deliver (count two), four to ten years; for criminal use of a communication device (count eight), one to ten years; and for dealing in proceeds of unlawful activity (count nine), one to ten years. The judge ordered the drug sentences to run concurrently.

For the charges associated with the stolen client funds, respondent received a prison term of one to five years for theft by deception (to run consecutively to the prison term meted out for the drug charges) and one to ten years for forgery (to run concurrently with the drug charges). Judge Carpenter explained the need for a consecutive sentence:

Stealing that amount of money from a client, of course, is never acceptable; stealing it from a senior citizen in some ways makes it worse. Being an attorney and stealing clients' money, yeah, that's the most terrible thing you can do. However, you pretty much matched that by engaging in drug dealing and dealing in significant amounts.

So we have this criminal conduct conducted by someone who is sworn to uphold the law instead of violate it. The reasons for committing these crimes are never any justification or excuse. Hard times do not mean that we turn to illegal activity as an answer. It's not an appropriate answer. There was a period of time here where your daily actions showed a complete disregard for the law, as if you thought you were above the law.

[OAEbEx.A65.]

Judge Carpenter considered respondent's mitigation. His law partner had suffered from a life-threatening disease for six years, which put pressure on respondent to do the work of two attorneys and to keep the practice afloat. During that time, respondent's own physical ailments, primarily gout, led him to take Percocet pain killers, to which he became addicted. Previous to these events, respondent had enjoyed a good reputation with his clients and was admired by his family. His twin sister, Susan, spoke highly of him at the hearing. Finally, as part of his law practice, respondent performed pro bono legal services for some of his clients.

The OAE sought respondent's disbarment for the theft of client funds, a violation of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979), and for the drug convictions, citing In re Valentin, 147 N.J. 499 (1997) (attorney disbarred on a motion for reciprocal discipline after pleading guilty to third-degree sale of one pound of cocaine; the Court determined that the attorney's distribution of drugs for a profit was unconscionable); and In re Goldberg, 105 N.J. 278 (1987) (attorney disbarred after pleading guilty to participating in a large narcotics operation, which netted him profits in excess of \$500,000).

By letter to the OAE, dated April 28, 2015, respondent sought to consent to his disbarment. The OAE explained, however, that,

given respondent's incarceration in Pennsylvania and the fact that he does not have counsel, a disbarment by consent application was not practicable.

We determine to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

In determining the appropriate measure of discipline, the interests of the public, the bar, and respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, 139 N.J. 456,460 (1995). Thus, we must take into consideration many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987). "It is well-established that private conduct of attorneys may be

the subject of public discipline." In re Magid, 139 N.J. 449, 454 (1995).

Respondent was convicted of selling 355 Oxycodone pills to undercover officers, criminal use of a mobile phone, and dealing in unlawful proceeds of the sale of CDS. For his crimes, respondent received four separate state prison terms ranging from one to ten years in duration. In aggravation, just one day before his first drug sale, respondent had concluded defending a "pill mill" doctor accused of drug crimes.

Respondent knew, from that representation, the havoc wreaked upon the public by sellers of illicit narcotics.

Respondent also was convicted of theft by deception of Strizziere's settlement funds. He admittedly signed Strizziere's name to an \$87,520.50 settlement check without the client's knowledge or authorization, deposited it into his attorney business account, and then depleted all of the funds for his own use, disbursing none of them to Strizziere. Respondent's actions in this regard constituted the knowing misappropriation of client funds, a violation of RPC 1.15(a).

Respondent's knowing misappropriation of client funds in the Strizziere matter violated RPC 1.15(a) and requires his disbarment, under In re Wilson, supra, 81 N.J. 451. Accordingly, although respondent's conduct in respect of the drug offenses

establishes a violation of RPC 8.4(b) (commission of criminal act that reflects adversely on respondent's honesty, trustworthiness or fitness as a lawyer), we need not address the issue of the proper discipline for the additional drug-related convictions or weigh the aggravating and mitigating factors. We, therefore, recommend that respondent be disbarred.

Member Boyer abstained.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Gregory R. Noonan
Docket No. DRB 15-297

Argued: January 28, 2016

Decided: June 1, 2016

Disposition: Disbar

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Abstain	Did not participate
Frost	X					
Baugh	X					
Boyer					X	
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	8				1	


Ellen A. Brodsky
Chief Counsel