

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 16-324  
District Docket No. XIV-2012-0280E

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IN THE MATTER OF :  
ERIC SALZMAN :  
AN ATTORNEY AT LAW :  
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Decision

Argued: January 19, 2017

Decided: May 5, 2017

Hillary Horton 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 motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty pleas to criminal offenses in 2012 and 2013. Specifically, on March 15, 2012, in the Superior Court of New Jersey, Hudson County, respondent entered a guilty plea to an amended charge of loitering to obtain controlled dangerous substances, a disorderly persons offense, in violation of N.J.S.A. 2C:33-2.1(b). Also, on

September 3, 2013, in the Superior Court of New Jersey, Monmouth County, respondent entered a guilty plea to an amended charge of conspiracy to possess heroin, a third-degree crime, in violation of N.J.S.A. 2C:5-2/35-10(a)(1). Additional criminal conduct committed by respondent is set forth, in detail, below.

The OAE recommends that respondent receive a six-month to one-year suspension, and that, prior to reinstatement, he be required to provide proof of sobriety and proof of fitness to practice law. In addition, the OAE recommends that, upon reinstatement, respondent be required to provide proof of drug treatment until further Order of the Court.

For the reasons set forth below, we determine to grant the OAE's motion for final discipline and to impose a two-year suspension, with conditions.

Respondent was admitted to the New Jersey bar in 2007. In 2015, he was admonished for numerous recordkeeping violations. In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015). Effective June 30, 2016, the Court temporarily suspended respondent from the practice of law for his failure to comply with the determination of a fee arbitration committee that he refund \$5,275 to a client. In re Salzman, 225 N.J. 341 (2016). Respondent remains suspended to date.

On March 15, 2012, before the Honorable Francis B. Schultz, J.S.C., respondent entered a guilty plea to an amended charge of loitering to obtain controlled dangerous substances, a disorderly persons offense, in violation of N.J.S.A. 2C:33-2.1(b). On January 11, 2011, respondent was indicted, along with four co-defendants, for various drug crimes. He entered into a negotiated plea agreement, whereby the prosecutor reduced an original charge of third-degree possession of cocaine to the disorderly persons offense to which respondent pleaded guilty, and dismissed respondent's remaining indictable charge of third-degree possession of heroin.

During his allocution before the court, respondent admitted that, on September 7, 2010, he and his co-defendants were riding in a motor vehicle in Jersey City with the purpose to buy illegal drugs. In aggravation, the State emphasized that respondent had four prior disorderly persons adjudications in New Jersey, including prior drug offenses, plus prior convictions in New York and Arizona. In his statement to the court, respondent acknowledged that he had a long-spanning substance abuse history, had completed a year-long drug treatment program in Florida, and had graduated law school and been admitted to the bar. Judge Schultz sentenced respondent to pay mandatory fines and penalties.

On January 7, 2012, respondent was cited by the Pequannock Township Police Department for driving while his license was suspended. On July 16, 2012, respondent was adjudicated guilty of this offense, sentenced to ten days in jail, had his license revoked for 180 days, and was ordered to pay \$1,139 in fines, including a \$100 fine for "contempt of court." Respondent was ordered to pay all fines by January 31, 2013; on that date, however, he was delinquent, with an outstanding balance of \$669.

On September 3, 2013, before the Honorable Francis J. Vernioia, J.S.C., respondent entered a guilty plea to the aforementioned charge of conspiracy to possess heroin, a third-degree crime, in violation of N.J.S.A. 2C:5-2/35-10(a)(1). On or about December 11, 2012, respondent had been indicted for possession of heroin and alprazolam. Pursuant to a negotiated plea agreement, the prosecutor reduced an original charge of third-degree possession of heroin to the third-degree conspiracy crime to which respondent pleaded guilty, and dismissed respondent's remaining indictable charge of third-degree possession of alprazolam, plus numerous accompanying, drug-related disorderly persons offenses.

During his allocution before the court, respondent admitted that, on April 16, 2012, he was arrested on an outstanding warrant at his home in Fair Haven, New Jersey. While in his

home, the police seized a bag of heroin, located in his bedroom, that respondent had just purchased from a friend for his personal use.

Satisfied with the factual basis for the guilty plea, the court proceeded with the simultaneous sentencing of respondent. In respect of aggravating factors, the court emphasized that respondent had twenty-four contacts with the criminal justice system as an adult, including a 1995 robbery conviction in New York, for which he had previously been incarcerated, and a 1990 assault conviction in Arizona.<sup>1</sup> The court noted that, from 1996 through 2010, respondent had no arrests, but had a "significant substance abuse history with treatment." In his statement to the court, respondent again acknowledged that he had a lengthy substance abuse history and past criminal convictions, but asserted that he had achieved nine years of sobriety, including a period while he attended law school, before recently relapsing. The court sentenced respondent to a two-year term of probation, with the condition that he undergo substance abuse testing, counseling, and treatment, as well as mandatory fines and penalties.

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<sup>1</sup> During oral argument before us, respondent stated that he disclosed these criminal convictions on his bar application, prior to his 2007 admission in New Jersey.

On March 21, 2012, respondent was cited by the Middletown Township Police Department for driving while his license was revoked. On September 13, 2013, respondent pleaded guilty to this offense, was sentenced to ten days in jail, had his license revoked for 180 days, and was ordered to pay \$1,039 in fines. Respondent was ordered to begin serving his jail sentence on weekends, beginning on September 20, 2013. By September 24, 2013, however, he had violated that court order.

The following misconduct occurred after respondent was placed on probation for his criminal conviction for conspiracy to possess heroin. On March 31, 2013, respondent was cited by the Kinnelon Borough Police Department for driving while his license was revoked. On September 10, 2013, respondent pleaded guilty to this offense, had his license revoked for 90 days, and was ordered to pay \$1,039 in fines. On December 24, 2014, a warrant for respondent's arrest was issued after he failed to timely pay his court-ordered fines.

On January 7, 2014, respondent was stopped by the Pequannock Township Police Department for driving while his license was revoked and for failing to maintain his traffic lane. During the motor vehicle stop, police discovered that respondent was in possession of a hypodermic needle; he, thus, was also charged with possession of drug paraphernalia. On

December 1, 2014, a warrant for respondent's arrest was issued after he failed to appear, as required, in Pequannock Township Municipal Court in respect of these matters.

On July 14, 2014, respondent was stopped by the Parsippany Township Police Department due to erratic driving on Route 80; the patrol officer stated that respondent "was swerving all over the road, and that [the officer] feared that [respondent] would cause a motor vehicle crash if not stopped." During the motor vehicle stop, police observed that respondent was "sweating profusely . . . was very nervous," and that his "eyelids were droopy and his eyes were rolling to the back of his head." Respondent failed field sobriety tests administered by police at the scene, and was arrested for driving under the influence of drugs. During a search incident to arrest, officers found an orange syringe cap in respondent's possession. At the police department, an officer trained to recognize the symptoms of drug use opined that respondent was under the influence of narcotic and depressant substances.

Respondent was cited for driving under the influence, driving while his license was revoked, careless driving, and unsafe lane change. On January 20, 2015, a warrant for respondent's arrest was issued after he failed to appear, as

required, in Parsippany Troy Hills Municipal Court in respect of these matters.

Finally, on October 10, 2014, respondent was arrested by the Bayonne Police Department in connection with a shoplifting scheme at a pharmacy. According to the police report, respondent distracted the cashier while his female accomplice stole \$65 worth of liquid soap. When police arrived at the scene, the female accomplice had fled, but respondent was present in a vehicle that contained the stolen merchandise plus suspected cocaine and drug paraphernalia. On October 28, 2014, a warrant for respondent's arrest was issued after he failed to appear, as required, in Bayonne City Municipal Court in respect of these matters.

On November 28, 2016, respondent contacted the Office of Board Counsel from an out-of-state halfway house to request a copy of the OAE's motion for final discipline and its brief and appendix. During oral argument, respondent represented that he currently lives in Manhattan, receives public assistance, and is voluntarily engaged in substance abuse treatment at The Addiction Institute of New York, located at Mount Sinai West Hospital; respondent also admitted that he has used illegal street drugs as recently as July 2016.



In response to a request from the Office of Board Counsel, the OAE provided an update on respondent's outstanding court matters. Specifically, on December 8, 2016, respondent entered a plea of guilty to loitering for controlled dangerous substances (CDS) in the Bayonne Municipal Court and was sentenced to time served in jail. He has not satisfied the fines and costs imposed in connection with his Middletown municipal matter. Moreover, respondent has active arrest warrants issued by the municipal courts in Kinnelon, Parsippany, and Pequannock for failure to appear and failure to pay court-imposed fines and costs. On March 11, 2016, thirty days after respondent had surrendered himself in connection with a warrant for his arrest, his New Jersey Superior Court probation was "terminated without improvement" by the Honorable David Bauman, J.S.C.

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Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). A criminal conviction (including an adjudication for a disorderly persons offense) is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Maqid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Accordingly, respondent's guilty pleas to loitering for controlled dangerous

substances, in violation of N.J.S.A. 2C:33-2.1(b), and conspiracy to possess heroin, a third-degree crime, in violation of N.J.S.A. 2C:5-2/35-10(a)(1), establish two violations of RPC 8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Hence, the sole issue before us is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the 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." Ibid. (citations omitted). 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, 118 N.J. 443, 445-46 (1989).

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,

supra, 139 N.J. at 454. The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect the attorney's clients. In re Schaffer, 140 N.J. 148, 156 (1995). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Gavel, 22 N.J. 248, 265 (1956). Thus, offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, will, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995).

A three-month suspension is generally the measure of discipline for possession of CDS. In re Musto, 152 N.J. 165, 174 (1997). See, e.g., In re Holland, 194 N.J. 165 (2008) (three-month suspension for possession of cocaine); In re Sarmiento, 194 N.J. 164 (2008) (three-month suspension for possession of ecstasy, a CDS); In re McKeon, 185 N.J. 247 (2005) (three-month suspension for possession of cocaine); In re Avrigian, 175 N.J. 452 (2003) (three-month suspension for possession of cocaine); and In re Kervick, 174 N.J. 377 (2002) (three-month suspension for possession of cocaine, use of a CDS, and possession of drug paraphernalia).

Some offenses attributable to drug addiction may warrant stronger disciplinary measures. In re Musto, supra, 152 N.J. at

17. See, e.g., In re Stanton, 110 N.J. 356 (1988) (six-month suspension for possession of cocaine where attorney had acknowledged ten years of drug abuse); In re Pleva, 106 N.J. 637 (1987) (six-month suspension for attorney who pleaded guilty to possession of nine and one-half grams of cocaine, eleven grams of hashish, and fifty-two grams of marijuana; the attorney was a regular drug user and had been arrested previously; the Court further imposed a three-month suspension for the attorney's guilty plea to the charge of giving false information about drug use, when completing a certification required before purchasing firearm); In re Kaufman, 104 N.J. 509 (1986) (six-month suspension for attorney who pleaded guilty to two separate criminal indictments for possession of cocaine and methaqualude; the attorney had a prior drug-related incident and a long history of drug abuse); and In re Rowek, 220 N.J. 348 (2015) (one-year retroactive suspension for attorney who pleaded guilty to possession of Vicodin, GBL, Percocet, a device used to assist him in fraudulently passing a drug urinalysis, and driving under the influence of GBL; the attorney had a long history of drug abuse and, after being admitted to PTI, continued to use drugs and attempted to improperly pass his court-mandated drug test; we emphasized the attorney's lack of respect for the criminal

justice system as an aggravating factor warranting enhanced discipline).

Citing much of the above case law, and with emphasis on Rowek, the OAE argues that here, given respondent's demonstrable history of criminal conduct, he "suffers from an ongoing and untreated drug addiction and has made no real attempt at rehabilitation," and shows "a complete lack of respect for the criminal justice system." Accordingly, the OAE contends that a six-month to one-year suspension is the appropriate sanction. The OAE further urges us to impose conditions: (1) that, as part of any reinstatement petition, respondent be required to provide proof of sobriety and proof of fitness to practice law; and (2) that, if reinstated, respondent be required to submit certifications of sobriety and proof of drug treatment until further Order of the Court.

Respondent's disorderly persons adjudication and his conviction for a third-degree crime conclusively establish violations of RPC 8.4(b). R. 1:20-13(c)(1). In aggravation, we find his additional and extensive criminal misconduct, some of which remains unresolved, is extremely troubling. Indeed, his wrongdoing continued, even after he was placed on supervised probation. Respondent, who at both sentencings offered his status as an officer of the court to demonstrate his ability to

obey the law and to be productive, showed an utter disregard for the law, and engaged in blatant drug abuse and criminal conduct, despite having been placed on supervised probation for a third-degree conspiracy to possess heroin conviction. While on probation, when he was court-ordered to undergo drug treatment and testing, he not only continued to abuse drugs, but also drove on the highway while drug-impaired, despite his revoked driver's license, and then failed to appear for required court proceedings or to pay court-ordered fines, resulting in the issuance of warrants for his arrest. Moreover, by his own admission, respondent has used illegal street drugs as recently as July 2016. Finally, respondent has before been the subject of discipline – first in 2015, based on his failure to comply with the determination of the Court's Rule in respect of recordkeeping, and then, one year later, in 2016, when he was temporarily suspended, based on his failure to comply with the determination of the Court's fee arbitration committee, requiring him to refund to his client more than \$5,000.

Like Rowek, respondent has continued to pursue a life of drug abuse and crime while on supervised probation, exacerbated by sheer disdain for court appearances and court orders. His extensive criminal history, combined with his long-spanning and debilitating drug abuse, gives us little confidence in his

ability or desire to regain control over his personal and professional life. In our view, the public must be protected from an attorney who routinely shuns the norms of society and disregards court orders, even when such behavior is clearly driven by drug addiction. Thus, we determine to impose a two-year suspension.

Additionally, prior to any consideration of reinstatement, respondent must (i) comply with the determination of the fee arbitration committee; (ii) conclude all of his open municipal court matters, including, but not limited to, open arrest warrants and the payment of all court-imposed fines and costs; and (iii) provide proof that he has overcome his drug addiction and that he is otherwise fit to practice law. Further, upon reinstatement, respondent should be required to continue supervised drug treatment and submit to random drug-testing, monitored by the OAE, until further Order of the Court.

Members Boyer, Clark, Singer, and Zmirich voted for a one-year suspension, along with the same conditions imposed by the majority.

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  
Ellen A. Brodsky  
Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Eric Salzman  
Docket No. DRB 16-324

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Argued: January 19, 2017

Decided: May 5, 2017

Disposition: Two-year suspension

<b>Members</b>	<b>Two-year Suspension</b>	<b>One-year Suspension</b>	<b>Did not participate</b>
Frost	X		
Baugh	X		
Boyer		X	
Clark		X	
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer		X	
Zmirich		X	
<b>Total:</b>	5	4	

  
Ellen A. Brodsky  
Chief Counsel