

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-135  
District Docket No. XIV-2019-0147E

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In the Matter of  
Francis J. Caratzola  
An Attorney at Law

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Decision

Argued: June 20, 2019

Decided: November 27, 2019

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Peter N. Gilbreth appeared on behalf of respondent.

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

This matter was before us by way of a disciplinary stipulation filed by the Office of Attorney Ethics (OAE), in which respondent admitted having violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer).

For the reasons set forth below, we determine to impose a censure, with conditions.

Respondent earned admission to the New Jersey bar in 2017 and has no disciplinary history. During the relevant time frame, he maintained an office for the practice of law in Springfield Township, Union County, New Jersey.

The disciplinary stipulation, dated April 9, 2019, sets forth the following facts in support of respondent's admitted ethics violation, and provides us with information in respect of mitigation.

On February 12, 2018, during a motor vehicle stop in Hanover Township, Morris County, respondent was arrested for possession of a controlled dangerous substance (CDS) – oxycodone. Specifically, upon approaching respondent's motor vehicle to investigate his lack of a valid motor vehicle registration, the police officer observed suspected drug paraphernalia – a rolled up dollar bill and a plastic straw – on the passenger seat. Respondent granted the officer consent to search his vehicle and admitted that he had smoked oxycodone the previous night, possessed one oxycodone tablet in his wallet and another in the console of his motor vehicle, and had no valid prescription for the drugs.

On the same date that he was arrested, the authorities charged respondent with one count of third-degree possession of oxycodone, in

violation of N.J.S.A. 2C:35-10(a)(1), and one count of disorderly persons possession of drug paraphernalia, in violation of N.J.S.A. 2C:36-2.

Four days later, on February 16, 2018, respondent notified the OAE of his arrest and indictable charge, as R. 1:20-13 requires. On February 20, 2018, the Morris County Prosecutor's Office determined to downgrade the third-degree possession of CDS charge to the disorderly persons offense of failure to make lawful disposition of CDS to a law enforcement officer, in violation of N.J.S.A. 2C:35-10(c), thus, remanding the matter to Hanover Township Municipal Court.

On April 23, 2018, the municipal court granted respondent's request for suspended proceedings; admitted him into a one-year conditional discharge program, pursuant to N.J.S.A. 2C:36A-1; and ordered him to pay \$833 in fines, costs, and assessments.

Respondent stipulated that he unlawfully possessed CDS, and that his conduct violated RPC 8.4(b). The OAE and respondent further stipulated, in respect of mitigation, that respondent has sought medical counseling to address his opiate addiction; was cooperative with law enforcement; has exhibited remorse; and has no prior discipline. Respondent submits that he has been an "opiate addict for a number of years," and has provided records of his extensive attendance at various drug counseling sessions, including Alcoholics

Anonymous (AA), the New Jersey Lawyers Assistance Program (NJLAP), and Lawyers Concerned for Lawyers (LCL).

The OAE urges a three-month suspension or such lesser discipline as we deem appropriate. Respondent requests a censure, citing the breadth and scope of his dedication to treatment to combat his addiction.

Following a full review of the record, we are satisfied that facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 8.4(b).

Specifically, respondent stipulated that he knowingly and unlawfully possessed a CDS, oxycodone, without a prescription. That behavior constituted a third-degree crime and a violation of RPC 8.4(b). That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse an ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 165, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). 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 his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

In sum, respondent violated RPC 8.4(b). The only remaining issue, thus, is the appropriate quantum of discipline to be imposed for respondent's misconduct. The following disciplinary precedent provides guidance in crafting the suitable sanction.

In In re McLaughlin, 105 N.J. 457 (1987), the Court imposed a reprimand on three individuals who, at the time of their offenses, were serving as law clerks to members of the Judiciary, and had possessed small amounts of cocaine. The Court imposed only a reprimand because it was a case of first impression. The Court cautioned, however, that, in the future, similar conduct would be met with a suspension.

Based on the rule announced by the Court in McLaughlin, a three-month suspension is generally the measure of discipline for possession of CDS. See In re Musto, 152 N.J. 165, 174 (1997). See also 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).

The Court's downward departure from the standard three-month suspension has been limited. In In re Simone, 201 N.J. 10 (2009), the attorney was censured for possession of crack cocaine. We considered special circumstances that justified such a departure from the standard three-month suspension. Specifically, the attorney successfully completed inpatient treatment; attended twice weekly counseling sessions after his release from inpatient treatment, and then weekly sessions; attended ten to twelve Alcoholics Anonymous meetings per week; successfully completed pre-trial intervention (PTI), resulting in the dismissal of all criminal charges against him; and submitted clean drug screens to the OAE; in addition, the drug court judge believed that the attorney was doing so well with his recovery that he could inspire others, and, thus, invited him to address a drug court graduation. In the Matter of Vincent N. Simone, DRB 09-117 (September 3, 2009) (slip op. at 2-6).

In In re Filomeno, 190 N.J. 579 (2007) (censure), the attorney was charged by accusation with a single count of conspiracy to possess cocaine. Without entering a guilty plea, he was admitted into PTI for a one-year term, with various conditions. The attorney's numerous mitigating circumstances included his swift action toward rehabilitation; his attendance at 415 meetings in that process; his instrumental role in re-establishing LCL meetings in

Bergen County; his characterization as a “very distinctive and helpful role model,” from which other participants in that program profited; his conclusion of the PTI program three months early because of his commitment and diligence in exceeding its terms; and his expression of deep regret for his conduct. In the Matter of Anthony Filomeno, DRB 06-091 (July 19, 2006) (slip op. at 4-5).

Here, we accord respondent’s unblemished disciplinary record minimal weight – he earned admission to the New Jersey bar in 2017. His case presents other, laudable mitigation, but arguably falls short of satisfying the extremely high standard, set forth in Simone and Filomeno, that would warrant a downward departure from a three-month suspension. Specifically, in those cases, the attorneys had successfully completed their diversionary programs by the time discipline was imposed, and had markedly excelled in their efforts to rehabilitate themselves and others. Like respondent, they also attended a high volume of post-offense counseling sessions to combat their addiction.


Given respondent’s extreme youth at the time of his misconduct, and demonstrated willingness to take continuing, wide-ranging action in his battle against addiction, however, we determine to impose a censure – a quantum of discipline less than the term of suspension presumed under McLaughlin. In return, to protect the public and preserve confidence in the bar, we impose

conditions to bring respondent's posture in accord with that of the attorneys in Simone and Filomena. Specifically, like the attorney in Simone, respondent is required to submit drug screens, on a quarterly basis for two years, to the OAE. The drug screens will be performed by an independent drug testing facility acceptable to the OAE. Moreover, pursuant to Filomeno, we further require respondent to continue to participate in AA, NJLAP, and LCL meetings, on at least a monthly basis, for two years.

Member Joseph did not participate.

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  
Bruce W. Clark, Chair

By:   
Ellen A. Brodsky  
Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Francis J. Caratzola  
Docket No. DRB 19-135

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Argued: June 20, 2019

Decided: November 27, 2019

Disposition: Censure

<i>Members</i>	Censure	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph			X
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1

  
Ellen A. Brodsky  
Chief Counsel