

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-236
District Docket No. XIV-2018-0341E

In the Matter of
David Andrew Ten Broeck
An Attorney at Law

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Decision

Argued: October 17, 2019

Decided: January 23, 2020

Ryan J. Moriarty appeared on behalf of the Office of Attorney Ethics.

Marc David Garfinkle 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 on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent, who admitted to having violated RPC 8.4(b) (commission of 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.

Respondent earned admission to the New Jersey bar in 2010 and to the New York bar in 2012. He has no history of discipline in New Jersey. During the relevant period, he was engaged in the practice of law in Westfield, New Jersey.

The June 7, 2019 stipulation sets forth the following facts in support of respondent's admitted ethics violation. From January 2011 until August 2018, the Montvale Police Department in Bergen County, New Jersey employed respondent as a police officer and as a detective. During the same timeframe, respondent practiced law, on a per diem basis, in association with a law firm.

According to respondent, during his college years, he abused cocaine and several other illicit substances. After college, he ceased abusing drugs. However, in the summer of 2017, after reconnecting with a college friend, he again began abusing cocaine. No one pressured respondent to use cocaine. Rather, he did so because he was "lured by old feelings of euphoria, or perhaps nostalgia." For nearly a year thereafter, respondent continued to abuse cocaine "regularly although not frequently, by [him]self."

On the night of May 12, 2018, through the early morning hours of the next day, respondent bought and used cocaine, despite being scheduled to work a patrol shift for the Montvale Police Department that very morning. Due to his cocaine use, respondent failed to report to work. Consequently, respondent's supervisor called him to determine his location. During this telephone call, respondent made excuses for his absence, and told his supervisor that he would shortly report to work. Rather than go to work, however, respondent turned off his phone and stayed at home. Because he failed to report to work or to respond to subsequent calls, respondent's supervisor contacted respondent's local police department, in Cranford, and requested that the Cranford police make direct contact with him.

The Cranford Police Department dispatched several officers to respondent's residence. When the officers arrived at respondent's apartment, he was sweating profusely and exhibited a blank stare, flushed face, and grayish skin. Respondent claimed that his appearance was due to an overnight argument with his girlfriend, whom he claimed was still inside. Based on respondent's appearance and the alleged fight, the officers became concerned about respondent's girlfriend's well-being and conducted a search of the apartment to locate her.

While searching the residence, the officers discovered that respondent's bedroom door was locked. The officers requested access to determine whether his girlfriend was inside. After entering the bedroom, the officers observed the following items on the dresser next to the bedroom door: (a) three empty plastic wrappers containing suspected cocaine residue; (b) one clear plastic wrapper containing suspected cocaine; (c) one knotted plastic wrapper containing suspected cocaine; (d) one blue "Post-it" note rolled into a straw with suspected cocaine residue; and (e) one debit card with suspected cocaine residue.

Based on their observations, the officers arrested respondent and advised him of his constitutional rights. Respondent waived his rights and admitted that he had used two-and-one-half bags of cocaine throughout the night and had last ingested cocaine forty-five minutes before the officers' arrival. The officers also confirmed that respondent's girlfriend was visiting her family out of state.

Accordingly, on May 13, 2018, respondent was arrested and released on a summons for possession of a controlled dangerous substance (CDS), cocaine, a third-degree crime, contrary to N.J.S.A. 2C:36-10(a)(1), and possession of drug paraphernalia, a disorderly persons offense, contrary to N.J.S.A. 2C:36-2. On May 31, 2018, respondent notified the OAE of his pending criminal charges.

On July 11, 2018, after a laboratory confirmed that two of the submitted items had tested positive for cocaine, respondent filed a pre-indictment application for admission into the Union County Pretrial Intervention Program (PTI). On August 29, 2018, in the Superior Court of New Jersey, Criminal Division, Union County, respondent waived his constitutional right to have his case presented to a grand jury, but entered a not guilty plea to an accusation charging him with one count of third-degree possession of a CDS. The prosecutor's office accepted respondent into PTI and the proceedings were postponed for twelve months.

As part of entry into PTI, respondent was required to fulfill conditions, including: (a) completion of sixty hours of community service; (b) random urine monitoring; (c) payment of fees totaling \$1,225; (d) continued treatment; and (e) attendance of twelve-step program meetings. On March 1, 2019, because respondent had successfully completed all conditions of the PTI program, the criminal charges against him were dismissed.

Following his arrest, respondent engaged in substantial rehabilitative efforts, including: participating in the New Jersey Lawyers Assistance Program; attending the Counseling Center at Clark, LLC; submitting negative urinalysis results; actively and regularly providing blood donations to the New York Blood

Center; regularly attending self-help recovery meetings for current and former law enforcement officers and lawyers; and traveling to self-help recovery meetings to speak about his experience and recovery. The Montvale Police Department terminated respondent's employment.

In the stipulation, the OAE recommended a three-month suspension, or other such discipline as we deem appropriate. Respondent requested a censure.

Following a review of the record, we are satisfied that the 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 and used cocaine, contrary to N.J.S.A. 2C:35-10(a)(1). Although he completed PTI and the charges against him were dismissed, a criminal conviction is not necessary to establish a violation of RPC 8.4(b). See In re Hasbrouck, 140 N.J. 162, 166-67 (1995). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. Id. at 167. 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 sole issue left for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

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, the Court would impose a suspension for similar conduct.

Based on McLaughlin, a three-month suspension generally has been the measure of discipline for possession of CDS. See In re Musto, 152 N.J. 165, 174 (1997). A three-month suspension has been imposed on attorneys found to possess cocaine. In re Holland, 194 N.J. 165 (2008); In re McKeon, 185 N.J. 247 (2005); In re Avrigian, 175 N.J. 452 (2003); and In re Nixon, 122 N.J. 290 (1991).

Similarly, attorneys who possessed combinations of CDS and drug paraphernalia also have received three-month suspensions. See In re Sarmiento, 194 N.J. 164 (2008) (ecstasy); In re Kervick, 174 N.J. 377 (2002) (cocaine and drug paraphernalia); In re Ahrens, 167 N.J. 601 (2001) (marijuana, cocaine, and

drug paraphernalia); In re Karwell, 131 N.J. 396 (1993) (marijuana, cocaine, and drug paraphernalia).

Regardless of the nature of the criminal offense, the quantum of discipline typically is enhanced when the attorney is a member of law enforcement or a public servant at the time of the RPC 8.4(b) violation. See, e.g., In re Asbell 135 N.J. 446, 456 (1994) (prosecutor who filed false police report received two-year suspension followed by two-year proctorship); In re Bailey, 200 N.J. 277 (2009) (public defender suspended for six-months for arson and insurance fraud; substantial personal mitigation lessened period of suspension). Attorneys in the role of a government representative are held to a higher standard. See In re Magid, 139 N.J. 449, 455 (1995) (“[a]ttorneys who hold public office are invested with a public trust and are thereby more visible to the public. Such attorneys are held to the highest of standards.”).

The Court rarely has departed downward from the standard three-month suspension. Such a departure has occurred only when the attorney has established significant rehabilitation and remorse. See, e.g., In re Zem, 142 N.J. 638 (1995); In re Filomeno, 190 N.J. 579 (2007); and In re Simone, 201 N.J. 10 (2009). The Court also has imposed lesser discipline when it has determined that

a suspension would undermine the substantial rehabilitation efforts that the attorney had achieved. See In re De Sevo, 228 N.J. 461 (2017).

In Zem, the Court reprimanded a young attorney who used cocaine for a period of only two months to cope with the deaths of her mother and brother. In the Matter of Bonnie Zem, DRB 94-295 (August 11, 1995) (slip op. at 4). During this period, one of Zem’s long-time friends persuaded her to try a little cocaine to “calm her down.” Ibid. Initially, the attorney declined the offers. Ibid. Eventually, though, she succumbed to the friend’s assurances that the drug would “perk [her] up . . . lift her spirits a little and just make [her] feel a little better.” Id. at 5. After the attorney was arrested and admitted into PTI, she was evaluated at a hospital for her drug use. Ibid. The evaluation concluded that she did not need further assistance, drug treatment, or any other rehabilitation. Id. at 3. Further mitigating factors included Zem’s genuine remorse for her behavior, which was deemed aberrational, her embarrassment over the incident, the resolution of her personal problems, and her successful endeavors to move forward with her life. Id. at 6.

In Filomeno, the Court imposed a censure when 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. In the Matter of Anthony Filomeno, DRB 06-091 (July 19, 2006) (slip op. at 4-5). 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 the New Jersey Lawyers Concerned for Lawyers Program meetings in Bergen County, and his characterization as a "very distinctive and helpful role model," from which other participants in that program profited. Ibid. Further, he completed PTI three months early, because of his commitment and diligence in exceeding its conditions. Ibid. Finally, we considered his expression of deep regret for his conduct. Ibid.

In Simone, the Court censured the attorney for possession of crack cocaine. In deviating from the typical three-month suspension, we considered special circumstances, including the attorney's successful completion of inpatient treatment; his attendance at twice weekly counseling sessions after his release from inpatient treatment; his attendance of ten to twelve Alcoholics Anonymous (AA) meetings per week; and his successful completion of PTI, resulting in the dismissal of all criminal charges against him. In the Matter of Vincent N. Simone, DRB 09-117 (September 3, 2009) (slip op. at 2-6). Additionally, he submitted clean drug screens to the OAE. Ibid. Lastly, 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 Ibid.

Finally, in De Sevo, the Court imposed a censure for the attorney's possession of cocaine. The attorney completed PTI and the prosecutor dismissed the charges against him. In the Matter of Alexander Ralph De Sevo, DRB 16-041 (November 4, 2016) (slip op. at 5-14). He was practicing law, had moved forward with his life, and had taken "extraordinary measures to rehabilitate himself," including his attendance at drug rehabilitation facilities on four occasions, ranging from twenty-eight to ninety-two days; his participation in an intensive outpatient program; and his residence in a half-way house, followed by residence in an "Oxford House" for almost two years, where he served as an active member of the organization. Ibid. Additionally, he had not practiced law from October 2011 to March 2013. Ibid.

Further, De Sevo attended ninety recovery meetings in fifty-six days; attended ninety meetings following his discharge from Oxford House; and spoke at Narcotics Anonymous (NA) meetings, AA meetings, and meetings associated with Lawyers Caring for Lawyers. Ibid. He had attended more than 1,000 recovery meetings in the prior forty-one months and continued to regularly

attend NA meetings. Ibid. He had sponsored two other individuals, and had been clean and sober for forty-one months. Ibid.

The attorney's employer also detailed his recovery to us and to the Court, certifying that De Sevo attended NA meetings daily, he was an important part of the law firm, he was genuinely interested in helping clients, and his absence would have been a tremendous loss to the firm and clients alike, as he was the designated trial attorney in ninety-two pending cases. Ibid. Moreover, by the time we would have imposed discipline, almost five years would have elapsed since the time of his arrest. Ibid.

De Sevo requested that we impose either a censure or a suspended three-month suspension, emphasizing that he had turned his life around and arguing that to impose a suspension nearly five years after his criminal violation "would undermine the substantial rehabilitation efforts he had achieved." Ibid. We determined to impose a censure, and the Court agreed.

To craft the appropriate discipline in this case, we evaluated both mitigating and aggravating factors. In mitigation, we considered that respondent has no disciplinary history; stipulated to the RPC violation; admitted the criminal conduct; has expressed remorse for his actions; and has undertaken substantial rehabilitative efforts, including counseling, providing evidence of

negative urinalysis results, and attending self-help recovery meetings. At respondent's urging, we also considered that he has already experienced substantial consequences due to his misconduct, including loss of employment as a police officer, public humiliation, and damaged personal relationships.

In aggravation, we considered respondent's status as a law enforcement officer during the time of his illegal drug use. He was sworn to uphold and obey the laws of the State of New Jersey and, importantly, to enforce those same laws, which included the authority to arrest individuals for the sale or possession of CDS.

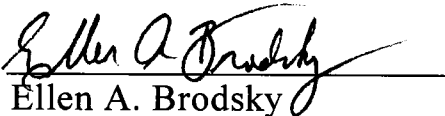
On balance, we assign significant weight to the great strides respondent has made since his arrest. His rehabilitation from his period of drug abuse is laudable. He has sought counseling, maintained his sobriety, and now fervently seeks to help others. Respondent's significant and consistent steps towards rehabilitation, along with the other mitigating factors detailed above, persuaded us that respondent's case is most akin to those of the attorneys in Filomeno, Simone, and De Sevo. We, thus, 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 similar to those imposed in Simone and Filomena. Specifically, like

the attorney in Simone, respondent is required to submit drug screens, on a quarterly basis for one year, 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 self-help recovery meetings, on at least a monthly basis, for two years.

Vice-Chair Gallipoli and Members Rivera and Zmirich voted for a three-month suspension. 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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

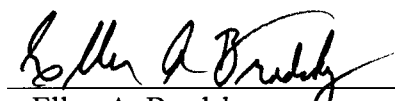
In the Matter of David Andrew Ten Broeck
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Disposition: Censure

<i>Members</i>	Censure	Three-Month Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph				X
Petrou	X			
Rivera		X		
Singer	X			
Zmirich		X		
Total:	5	3	0	1


Ellen A. Brodsky
Chief Counsel