

Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 19-278
District Docket Nos. XIV-2018-0228E
and XIV-2019-0119E

In the Matter of
Robert Michael Dennerlein, III
An Attorney at Law

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Decision

Argued: November 21, 2019

Decided: February 6, 2020

Hillary K. 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), following respondent's July 23, 2018 guilty plea in Superior Court of New Jersey, Hudson County, to possession of a controlled dangerous substance (CDS) with intent to distribute (cocaine), a second-degree crime, contrary to N.J.S.A. 2C:35-5(a)(1),

and his March 22, 2019 guilty plea to wandering to obtain CDS (heroin), a disorderly persons offense, contrary to N.J.S.A. 2C:33-2.1.

For the reasons set forth below, we determine to grant the motion for final discipline and to impose a six-month suspension, retroactive to respondent's temporary suspension.

Respondent earned admission to the New Jersey bar in 2015. On October 4, 2018, he was temporarily suspended in connection with this matter. In re Dennerlein, 235 N.J. 281 (2018). He remains suspended to date.

On July 23, 2018, the Hudson County Prosecutor's Office filed an accusation charging respondent with second-degree possession of CDS (cocaine) with intent to distribute, contrary to N.J.S.A. 2C:35-5(a)(1). That same date, before the Honorable Paul M. DePascale, J.S.C., respondent entered a guilty plea to that charge. During his allocution, respondent admitted that, on March 28, 2018, a Hudson County law enforcement task force conducted a raid on his Union City apartment and found respondent in possession of slightly more than one-half ounce of cocaine. Although respondent's girlfriend also was present in the apartment, respondent claimed that the cocaine belonged solely to him.

Next, on February 19, 2019, a Hudson County grand jury returned an indictment charging respondent with a single count of possession of CDS (heroin), a third-degree crime, in contravention of N.J.S.A. 2C:35-10(a)(1). On March 22, 2019, before the Honorable John A. Young, Jr., J.S.C., respondent entered a guilty plea to the downgraded charge of wandering to obtain CDS, a disorderly persons offense, contrary to N.J.S.A. 2C:33-2.1. Respondent admitted that, on August 15, 2018, law enforcement arrested him, in Jersey City, as he attempted to obtain CDS. Judge Young imposed a negotiated sentence consisting solely of \$125 in mandatory financial assessments.

Subsequently, on April 5, 2019, respondent was sentenced for his second-degree possession of cocaine with intent to distribute. At the urging of the prosecutor, Judge DePascale treated respondent as a third-degree offender and imposed a five-year term of probation, with conditions that respondent remain drug-free; submit to random urine monitoring; maintain gainful employment; attend drug and alcohol counseling as required by probation authorities; and pay fines totaling \$1,255.

In the brief in support of the motion for final discipline, the OAE analyzed relevant disciplinary precedent, and urged the imposition of a one-year suspension. Additionally, the OAE requested that respondent be required to (1) provide proof of fitness to practice law, as attested to by a substance abuse

counselor approved by the OAE prior to reinstatement; (2) provide to the OAE quarterly proof of weekly attendance in a drug and alcohol treatment program; and (3) immediately notify the OAE if any of his random drug tests during probation yield a positive result.

In his brief to the Board, respondent did not oppose the OAE's one-year suspension recommendation. However, he requested that any suspension be imposed retroactively to October 4, 2018, the date of his temporary suspension.

In respect of mitigation, respondent proffered that he became increasingly dependent on opioids approximately two years ago, a fact that he kept secret from friends and family. He subsequently made a series of "poor choices" to fund an "increasingly expensive habit." After his arrest, respondent was forced to face "the truth of [his] situation," thereafter attending inpatient rehabilitation at Veritas in Perth Amboy, New Jersey, followed by almost six months in an outpatient rehabilitation program at Damon House, Paterson, New Jersey.

Respondent asserts that he has been drug free for more than a year. During his recovery, he reached out to the New Jersey Lawyers Assistance Program and was referred to Lawyers Concerned for Lawyers (LCL). Respondent attends weekly LCL meetings in Fort Lee, which have inspired him to provide motivation for "other attorneys who are not as far along in the process of sobriety."

If respondent is permitted to practice law in the future, he hopes to “give back to society via criminal justice reform.” Respondent acknowledged that the criminal justice system worked well for him, but he is “not under any illusion that the system works well for everyone.” Through his new connections at LCL, he has found a “feasible avenue to pursue that dream.” Respondent hopes to become “a shining example that recovery does work,” and believes that a prospective suspension would only hinder his progress in that regard.

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). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent’s guilty pleas to possession of CDS with intent to distribute and wandering to obtain CDS establish 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 is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. “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). Fashioning the appropriate penalty involves a consideration of 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).

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, we find that respondent twice violated RPC 8.4(b). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent’s misconduct.

A three-month suspension is generally the measure of discipline for possession of a 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); and In re McKeon, 185 N.J. 247 (2005) (three-month suspension for possession of cocaine).

Some offenses attributable to drug addiction may warrant stronger disciplinary measures. In re Musto, 152 N.J. at 174. 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 he completed a certification required before purchasing a 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); In re Rowek, 220 N.J. 348 (2015) (one-year retroactive suspension for attorney who pleaded guilty to possession of Vicodin, GBL, Percocet, and 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); and In re Salzman, 231 N.J. 2 (2017) (two-year suspension for attorney who engaged in "blatant drug abuse" and criminal conduct, despite having been placed on supervised probation for a heroin conviction; enhanced discipline imposed based on egregious aggravation, including attorney's extensive criminal history, "sheer disdain" for court appearances and court orders, and life-long drug addiction and abuse).


Here, respondent's misconduct warrants stronger discipline than that imposed in cases involving mere possession of CDS. His matter is most similar to Pleva and Kaufman, in light of his conviction for possession with the intent to distribute cocaine. We further considered the information contained in the confidential pre-sentence report regarding the criminal proceedings against respondent. We acknowledge that respondent has advanced significant mitigation, most notably the great strides he has made toward recovery. On balance, we determine that a six-month suspension, retroactive to October 4, 2018, the date of respondent's temporary suspension, is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Furthermore, we require respondent, for the remainder of his probationary term, to (1) provide to the OAE quarterly proof of weekly attendance in a drug/alcohol treatment program, and (2) immediately notify the OAE if random drug tests taken during probation yield a positive result for the presence of drugs. Moreover, as a condition precedent to his reinstatement, respondent must provide proof of fitness to practice law, as attested to by a substance abuse counselor approved by the OAE.

Vice-Chair Gallipoli and Members Petrou and Rivera voted for a retroactive one-year suspension. Member Joseph voted for a one-year prospective suspension.

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 Robert Michael Dennerlein, III
Docket No. DRB 19-278

Argued: November 21, 2019

Decided: February 6, 2020

Disposition: Six-Month Suspension, Retroactive

<i>Members</i>	Six-Month Suspension, Retroactive	One-Year Suspension, Retroactive	One-Year 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	1	0	0


Ellen A. Brodsky
Chief Counsel