Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-103
District Docket Nos. XIV-2020-0011E
and XIV-2020-0354E

In the Matter of

Michael A. Rowek

An Attorney at Law

Decision

Argued: September 15, 2022

Decided: December 1, 2022

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Michael P. Ambrosio 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 motion for final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and convictions, in the Superior Court of New Jersey, for two counts of third-degree possession of a controlled dangerous substance

(CDS) (suboxone), in violation of N.J.S.A. 2C:35-10(a)(1). The OAE asserted that these offenses constitute violations of 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 grant the motion for final discipline and conclude that a two-year suspension, with conditions, is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1987. At the relevant times, he maintained a practice of law in Totowa, New Jersey.

Effective September 24, 2013, the Court temporarily suspended respondent in connection with his 2013 guilty plea and convictions for three counts of third-degree possession of CDS (Vicodin, gamma-Butyrolactone, and Percocet), in violation of N.J.S.A. 2C:35-10(a)(1), and one count of fourth-degree possession of a device to defraud the administration of a drug test, in violation of N.J.S.A. 2C:36-10(e). In re Rowek, 215 N.J. 518 (2013).

On January 30, 2015, the Court suspended respondent for one year, retroactive to his September 24, 2013 temporary suspension, for his criminal conduct underlying his temporary suspension. In re Rowek, 220 N.J. 348 (2015) (Rowek I). In that matter, on January 14, 2009, the Superior Court of New Jersey admitted respondent to the Pre-Trial Intervention Program (PTI) in

connection with his third-degree possession of heroin and crystal methamphetamine, in violation of N.J.S.A. 2C:35-10(a)(1), and fourth-degree possession of a large quantity of syringes, with the intent to distribute, in violation of N.J.S.A. 2C:36-3. In the Matter of Michael A. Rowek, DRB 14-144 (November 24, 2014) at 2-3. On January 22, 2009, eight days after his admission to PTI, respondent attempted to defraud the administration of a drug test to conceal his recent, criminal use of heroin, crystal methamphetamine, and Percocet. Id. at 3. Thereafter, in February 2009, respondent provided his probation officer with two urine samples, the first of which was "adulterated" and "inconsistent with a 'normal sample[,]'" and the second of which tested positive for benzodiazepines. Id. at 3. Consequently, on August 3, 2010, the Superior Court terminated respondent's PTI and, between October 6, 2010 and April 18, 2013, the Morris County Prosecutor's Office obtained multiple indictments against respondent, charging him with several third- and fourth-degree CDS offenses. Id. at 3-4.

On May 1, 2013, respondent pleaded guilty to three counts of third-degree possession of CDS (Vicodin, gamma-Butyrolactone, and Percocet), and one count of fourth-degree possession of a device to defraud the administration of a drug test. Id. at 4. During his guilty plea, respondent admitted that, between August 2010 and April 2013, he (1) had possessed large quantities of

Vicodin and Percocet, (2) had utilized a device to assist him in passing a drug test, and (3) had driven under the influence of gamma-Butyrolactone. Id. at 5. Following respondent's guilty plea, the State dismissed the remaining charges, including the original charges underlying respondent's 2009 admission to PTI. Rowek, DRB 14-144 at 4.

On August 2, 2013, the Superior Court sentenced respondent to a five-year term of Drug Court probation, pursuant to N.J.S.A. 2C:35-14. Id. at 5.[1] At his sentencing, respondent asserted that, in 1985, he had been the victim of a serious accident that necessitated his use of prescription drugs. Ibid. Although respondent recovered from that accident, respondent suffered another accident, in 2000, that again led to use his of prescription drugs. Id. at 6. Following his accident in 2000, respondent became addicted to prescription drugs and began a "downward spiral." Ibid.

[1] "Drug Court is a nationally acclaimed program created and administered by the New Jersey judiciary to link qualified drug dependent defendants to court-supervised and state-funded treatment and aftercare services." State v. Harris, 466 N.J. Super. 502, 521 (App. Div. 2021). "Although N.J.S.A. 2C:35-14 is commonly referred to as the 'Drug Court statute,' the term Drug Court does not appear in the statutory text." Ibid. (citation omitted). Effective January 1, 2022, the Drug Court Program "was renamed the New Jersey Recovery Court Program to better reflect the primary goal of the program." Recovery Courts, New Jersey Courts, https://www.njcourts.gov/courts/criminal/drug.html (last visited Sept. 15, 2022). Despite the re-naming of the program, to maintain consistency and for ease of reference, we will continue to use the term "Drug Court" in this decision.

In determining that a one-year, retroactive suspension was the appropriate quantum of discipline for respondent's misconduct, we found that respondent failed to take seriously his original CDS offenses underlying his admission to PTI. Id. at 10. Specifically, within days of his admission to PTI, he attempted to defraud a drug test to conceal his continued drug abuse. Ibid. We also weighed, in aggravation, the fact that respondent had done little to mitigate his prolonged addiction. Ibid. Prior to his reinstatement, we required respondent to provide proof to the OAE of his (1) continued sobriety, (2) participation in an approved drug rehabilitation program, and (3) fitness to practice law, as attested to by a mental health professional approved by the OAE. Id. at 11. The Court agreed. Rowek, 220 N.J. at 348-49.

Meanwhile, on October 2, 2014, approximately one month before the issuance of our Rowek I decision, the Superior Court found respondent guilty of a violation of his Drug Court probation, due to his relapse in drug use, and sentenced him to a five-year term of imprisonment. Respondent was paroled on July 10, 2015.

Effective May 20, 2016, the Court restored respondent to the practice of law and required him to submit to random drug testing, to be monitored by the OAE, until further Order of the Court. In re Rowek, 225 N.J. 12 (2016).

We now turn to the facts of this matter.

A. <u>The November 30, 2019 Parsippany-Troy Hills CDS Incident</u>

On November 30, 2019, a Parsippany-Troy Hills Township police officer conducted a traffic stop of respondent's vehicle and discovered that it contained suboxone, a drug for which respondent did not have a valid prescription. Based on confidential information contained in the record, we were able to glean additional relevant facts in connection with this incident.

Following the discovery of contraband, the officer arrested respondent and charged him with two counts of third-degree possession of CDS, in violation of N.J.S.A. 2C:35-10(a)(1); one count of third-degree possession of gamma hydroxybutyrate, in violation of N.J.S.A. 2C:35-10.2(a); one count of disorderly persons possession, with the intent to use, drug paraphernalia, in violation of N.J.S.A. 2C:36-2; and several motor vehicle offenses, including driving while under the influence of drugs (DWI), in violation of N.J.S.A. 39:4-50, and reckless driving, in violation of N.J.S.A. 39:4-96.

On December 30, 2019, respondent informed the OAE, via letter, of his criminal charges for third-degree possession of CDS and gamma hydroxybutyrate. In response, on January 10, 2020, the OAE sent respondent a letter, advising him that his criminal conduct for possessing CDS could result

in the imposition of a three-month suspension. However, the OAE advised respondent, as an attorney struggling with addiction, that, pursuant to In re Schaffer, 140 N.J. 148 (1995), he could be eligible to apply for an "immediate suspension" to "coincide with his rehabilitative efforts." Respondent, however, did not contact the OAE regarding that procedure.

B. The August 9, 2020 Montville CDS Incident

On August 9, 2020, Montville Township police officer David Chieppa responded to a motor vehicle accident that had occurred on a residential street. When officer Chieppa approached the scene of the accident, he observed a crowd of people gathered around respondent's vehicle, which respondent had driven onto a residential lawn. Officer Chieppa then observed respondent, who appeared "sleepy and disheveled[,]" standing outside of his vehicle. Officer Chieppa requested that respondent produce his driver's license, vehicle registration, and insurance information, and asked respondent why he had driven his vehicle off the road. Respondent, whose speech was slurred, replied that he had struck a landscaping trailer parked on the side of the road. When respondent attempted to retrieve his vehicle registration, officer Chieppa observed him "stumbling[,] "swaying[,]" and almost falling.

Officer Chieppa followed respondent back to his vehicle and observed "multiple loose pills scattered throughout" respondent's car. Officer Chieppa further observed "multiple prescription pill bottles[,]" which were labeled in the name of another person, in a bag inside respondent's vehicle. One such prescription pill bottle contained suboxone. Officer Chieppa further observed a "powered substance" on respondent's face and in his nostril and noticed a "hypodermic syringe mark" on respondent's right arm.[2] Finally, officer Chieppa noticed that respondent's pupils were "pinpoint[,]" which suggested, based on his training, that respondent was under the influence of opioids.

Following these observations, officer Chieppa attempted to administer field sobriety tests. However, respondent, who was "swaying" and unable to "keep his head still[,]" was unable to follow officer Chieppa's instructions when the officer attempted to administer the horizontal gaze nystagmus (HGN) test.[3] Additionally, respondent refused to perform the "walk-and-turn" test

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[2] During the municipal court trial, respondent did not object to officer Chieppa's description of the "powdered substance" on his face, the "hypodermic syringe mark" on his arm, or the prescription pill bottles in his vehicle. However, in his submissions to us, he maintained his unsupported view that the "powdered substance" on his face came from an airbag that had deployed in his vehicle, that the hypodermic syringe mark was the result of a recent blood draw from his arm, and that the "loose pills" consisted of over-the-counter medication that had fallen out of his briefcase following the motor vehicle accident.

[3] "The HGN test is based on the observation of three different physical manifestations[,] which occur when a person is under the influence of alcohol [or drugs]: (1) the inability of

(footnote cont'd on next page)

based on a purported injury to his back. Finally, respondent failed to perform the "one leg stand" test because he could not maintain his balance.

Following his attempt to administer field sobriety tests, officer Chieppa queried respondent regarding his drug use, to which respondent replied that he had "struggled with drug addiction in the past." Officer Chieppa also asked respondent why he had driven his vehicle down a dead-end road; however, respondent failed to articulate any reasons for doing so. Based on the totality of his observations, officer Chieppa concluded that respondent was under the influence of narcotics and placed him under arrest.

While transporting respondent to the police station, officer Chieppa noted that respondent appeared "sleepy" and "seemed to be nodding out." Upon arriving at the police station, officer Chieppa issued three traffic tickets, charging respondent with (1) DWI, in violation of N.J.S.A. 39:4-50; (2) careless driving, in violation of N.J.S.A. 39:4-97; and (3) possession of CDS in a motor vehicle, in violation of N.J.S.A 39:4-49.1.

(Footnote cont'd)

a person to follow, visually, in a smooth way, an object that is moved laterally in front of the person's eyes; (2) the inability to retain focus and the likelihood of jerking of the eyeball when a person has moved his or her eye to the extreme range of peripheral vision; and (3) the reported observation that this 'jerking' of the eyeball begins before the eye has moved 45 degrees from forward gaze [. . .]." N.J. Div. of Child Prot. & Permanency v. V.F. (In re T.Q.), 457 N.J. Super. 525, 530 n.2 (App. Div. 2019) (first alteration in original) (citing State v. Doriguzzi, 334 N.J. Super. 530, 536 (App. Div. 2000)).

C. **The Criminal Proceedings Following the November 30, 2019 and August 9, 2020 CDS Incidents**

On January 12, 2021, respondent waived indictment in connection with the November 30, 2019 and August 9, 2020 incidents and pleaded guilty to two counts of third-degree possession of CDS (suboxone), in violation of N.J.S.A. 2C:35-10(a). In exchange for his guilty plea, the State recommended that respondent be admitted to Drug Court probation, pursuant to N.J.S.A. 2C:35-14, and that all motor vehicle charges be remanded to the Parsippany-Troy Hills and the Montville Township municipal courts for disposition. During the plea proceedings, respondent admitted that, in connection with the November 30, 2019 and August 9, 2020 incidents, he knowingly possessed suboxone without a valid prescription. Specifically, he admitted that, during the November 30, 2019 incident, he possessed "a [s]uboxone strip" and, during the August 9, 2020 incident, he possessed a "[s]uboxone pill."

On February 5, 2021, respondent appeared for sentencing, where he acknowledged his substantial history of substance abuse and expressed his willingness to put those issues "behind him[.]" Thereafter, the Honorable Michael E. Hubner, J.S.C., sentenced respondent to a term of Drug Court probation, not to exceed five years, and ordered him to comply with the requirements of his drug treatment program. Additionally, Judge Hubner remanded respondent's motor vehicle charges to the respective municipal

courts.

On February 27, 2021, respondent advised the OAE, via letter, of his convictions for two counts of third-degree possession of CDS in connection with the November 30, 2019 and August 9, 2020 incidents.

D. The April 7, 2021 Montville CDS Incident

On April 7, 2021, two months into respondent's term of Drug Court probation, Montville Township police officer Daniel Casillo responded to a report that a parked motor vehicle had been struck on the same residential, dead-end road which was the scene of respondent's August 9, 2020 incident. When officer Casillo arrived at the scene, he observed that respondent's vehicle had struck a parked truck in a driveway. Officer Casillo approached respondent, who was still in his vehicle and who stated that he "thought he was sitting in traffic" and that he was "unsure" of what had happened. Officer Casillo found that respondent appeared "disheveled[;]" that his speech was "slow and mumbled[;]" that his eyes "were watery and bloodshot[;]" and that he exuded a "faint odor of alcohol." Officer Casillo then ordered respondent to exit his vehicle. Respondent, however, struggled to stand up and was forced to "lean" on his car to maintain his balance.

While respondent struggled to stand outside his vehicle, officer Casillo attempted to administer field sobriety tests, including the HGN test, the "walk-and-turn" test, and the "one-leg stand" test. Respondent, however, could not follow the instructions of the HGN test, failed to maintain his balance and "almost fell over" during the "walk-and-turn" test, and was forced to hold onto his vehicle during the "one-leg stand" test. Additionally, during the field sobriety tests, officer Casillo observed respondent "swaying in a circulation motion" and "nodding off." Thereafter, officer Casillo asked respondent whether he had taken any drugs, and respondent replied that he "did meth a couple days before."

Following the field sobriety tests, officer Casillo determined that respondent was likely under the influence of alcohol "and a mixture of narcotics." Consequently, he arrested respondent for DWI, in addition to several other motor vehicle offenses. However, Officer Casillo did not discover any drugs in respondent's vehicle and, when he asked respondent whether he had thrown any drugs out of his vehicle, respondent replied that he recently had "r[u]n out of everything that he [had] take[n]." Finally, once he had brought respondent to the police station, officer Casillo administered an

alcotest,[4] which did not detect any alcohol level in respondent.

E. The Municipal Proceedings in Connection with the November 30, 2019, August 9, 2020, and April 7, 2021 CDS Incidents

On October 19, 2021, the Parsippany-Troy Hills Township municipal court found respondent guilty of reckless driving, in violation of N.J.S.A. 39:4-96, in connection with the November 30, 2019 incident, where an officer found respondent in possession of suboxone following a traffic stop. The municipal court imposed a six-month driver's license suspension for that offense and dismissed the remaining motor vehicle charges.[5]

On November 16, 2021, respondent appeared in the Montville Township Municipal Court for trial in connection with the August 9, 2020 and April 7, 2021 incidents. Following the testimony of officers Chieppa and Casillo, respondent presented the testimony of Dr. Nabil Yazgi, a neurologist to whom respondent had referred some of his clients. Based solely on his December 14, 2020 evaluation of respondent, Dr. Yazgi testified that respondent's behavior

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[4] "The Alcotest machine analyzes breath samples, producing blood alcohol concentration readings used to determine whether a driver's blood alcohol content is above the legal limit." State v. Cassidy, 235 N.J. 482, 486 (2018).

[5] The record does not contain any plea, trial, or sentencing transcripts in connection with the November 30, 2019 Parsippany-Troy Hills municipal court matter.

during the August 9, 2020 and April 7, 2021 incidents was attributable to a transient ischemic attack (TIA)[6] and transient global amnesia (TGA).[7] Dr. Yazgi, however, conceded that use of narcotics could also cause adverse neurological affects and, under certain circumstances, result in symptoms that resemble a stroke.

On November 30, 2021, the Honorable Joseph E. Deming, J.M.C., found respondent guilty, in connection with the August 9, 2020 incident, of: (1) DWI, in violation of N.J.S.A. 39:4-50; (2) careless driving, in violation of N.J.S.A. 39:4-97; and (3) possession of CDS in a motor vehicle, in violation of N.J.S.A. 39:4-49.1. In finding respondent guilty of those offenses, beyond a reasonable doubt, Judge Deming emphasized officer Chieppa's discovery of illicit narcotics in respondent's vehicle and the officer's observations of respondent's physical appearance and demeanor, which Judge Deming himself

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[6] A TIA is a "temporary period of symptoms similar to those of a stroke. A TIA usually lasts only a few minutes." Transient ischemic attack (TIA), Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/transient-ischemic-attack/symptoms-causes/syc-20355679 (last visited Sept. 15, 2022).

[7] TGA "is an episode of confusion that comes on suddenly in a person who is otherwise alert. This confused state [is not] caused by a more common neurological condition, such as epilepsy or stroke." Transient global amnesia, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/transient-global-amnesia/symptoms-causes/syc-20378531 (last visited Sept. 15, 2022).

observed after viewing a police body-camera recording of the incident. Judge Deming also highlighted the damage that respondent had caused to the landscaping trailer. Finally, Judge Deming found "credibility [. . .] issues" with Dr. Yazgi, who had a prior professional relationship with respondent and who had examined respondent months after the August 9, 2020 incident.

In connection with the April 7, 2021 incident, Judge Deming found respondent not guilty of DWI, reckless driving, and three other motor vehicle offenses.[8] The State, thereafter, agreed to dismiss the remaining motor vehicle charges in connection with the April 7, 2021 incident.

Prior to respondent's sentencing for his motor vehicle convictions in connection with the August 9, 2020 incident, respondent informed Judge Deming that he remained on Drug Court probation and, a few months earlier, had completed a twenty-day, in-patient drug treatment program. Respondent also advised Judge Deming that he was undergoing an intensive, outpatient drug treatment program at the same facility. Judge Deming sentenced respondent to a one-hundred-and-eighty-day county jail term and an eight-year driver's license suspension, given that the August 9, 2020 incident represented

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[8] Judge Deming did not express his reasons for finding respondent not guilty of DWI and the related motor vehicle charges.

respondent's third conviction for DWI.[9]

On November 30, 2021, immediately after his sentencing, respondent appealed, to the Superior Court, Law Division, his convictions for DWI, careless driving, and possession of CDS in a motor vehicle. On April 20, 2022, following a trial de novo, the Superior Court issued a judgment finding respondent guilty, beyond a reasonable doubt, of all three motor vehicle offenses. Thereafter, respondent appealed to the Appellate Division, and that appeal remains pending.

The OAE seeks the imposition of final discipline based primarily on respondent's indictable convictions for two counts of third-degree possession of CDS, in connection with the November 30, 2019 and August 4, 2020 incidents. Although respondent's motor vehicle convictions in connection with the August 4, 2020 incident are pending with the Appellate Division, the OAE maintained that we may impose final discipline based primarily on respondent's more serious indictable convictions, which respondent declined to appeal.

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[9] "The statutory scheme provides a tiered penalty structure for first, second, and 'third or subsequent' DWI offenses, with increasing penalties for each additional offense." State v. Denelsbeck, 225 N.J. 103, 116 (2016) (quoting N.J.S.A. 39:4-50(a)). For a third DWI violation, a defendant "shall be sentenced to imprisonment for a term of not less than 180 days in a county jail [. . .] and shall thereafter forfeit the right to operate a motor vehicle [in New Jersey] for eight years." N.J.S.A. 39:4-50(a)(3).

In urging the imposition of a one-year, prospective suspension, the OAE argued that respondent's criminal conduct was "extremely dangerous" because he caused multiple motor vehicle accidents while under the influence of narcotics. Although respondent, fortunately, caused no injuries to himself or others, the OAE emphasized that CDS played a role in each incident. The OAE also expressed its skepticism regarding respondent's commitment to sobriety, given that this matter represents respondent's second disciplinary matter, in less than ten years, underpinned by his criminal convictions for CDS offenses.

Additionally, the OAE argued that respondent is ineligible for the accelerated suspension procedure that the Court established in In re Schaffer, 140 N.J. 148 (1995), given that respondent did not avail himself of the procedure by seeking an "immediate suspension" to coincide with his rehabilitative efforts. The OAE also maintained that a retroactive suspension is inappropriate because the Court never temporarily suspended respondent in connection with his criminal conduct underlying this matter. Further, the OAE argued that respondent has neither described the steps that he has taken to avoid future relapses nor explained why his prior one-year, retroactive suspension in Rowek I was unsuccessful in preventing recidivism.

Finally, based on respondent's prolonged history of drug abuse, the OAE requested that we impose three conditions: (1) respondent must immediately

report to the OAE any positive drug test result received during Drug Court or other probation; (2) prior to reinstatement, respondent must provide proof of attendance at a substance use disorder treatment program for any time period between the termination, or successful completion, of Drug Court probation and any application for reinstatement; and (3) upon reinstatement, respondent must provide quarterly reports of his weekly attendance at a substance use disorder treatment program approved by the OAE, for a period of one year.

At oral argument and in respondent's submissions to us, he urged the imposition of no more than a three-month suspended suspension. Despite his prior term of incarceration and parole supervision and the imposition of a one-year, retroactive disciplinary suspension, respondent argued that his history of illicit drug use has not impeded his practice of law. Respondent also argued that, because his criminal convictions stemmed from his possession of "a small amount" of suboxone, a drug for which he previously had a prescription and now takes at his doctor's direction, there is "good reason to limit" his suspension "to three months." Respondent, however, alleged that any term of suspension "will likely result in the complete loss of [his] solo practice and the income needed to sustain himself." In that vein, respondent alleged that a term of suspension is unnecessary to protect the public, provided that he complies with the strict terms of his Drug Court probation, which requires all

participants to demonstrate their total abstinence from illicit drugs.

Respondent also emphasized his efforts at drug rehabilitation, including (1) his continuous participation in Alcoholics and Narcotics Anonymous since 1990; (2) his February 2021 entry into Drug Court and his simultaneous enrollment in an intensive outpatient drug treatment program, which discharged him in April 2022; (3) his two-and-one-half week participation in a separate intensive outpatient drug treatment program, which admitted him on August 3, 2021 and discharged him on August 20, 2021; and (4) his July 28, 2022 enrollment in the New Jersey Lawyers Assistance Program for relapse prevention. Moreover, respondent claimed that his "present circumstances" have improved since Rowek I and that he has begun providing pro bono legal services to military veterans. Finally, respondent argued that our review of this matter should be confined solely to his criminal convictions for possession of suboxone, given that his convictions for DWI, careless driving, and possession of CDS in a motor vehicle, in connection with the August 4, 2020 incident, remain pending appeal with the Appellate Division.

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). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; Principato, 139 N.J. at 460.

Pursuant to RPC 8.4(b), it is misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Respondent's guilty plea and convictions for two counts of third-degree possession of CDS, in violation of N.J.S.A. 2C:35-10(a), thus, establish violations of RPC 8.4(b).

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Principato, 139 N.J. at 460 (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).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J.

at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of respondent, and the pre-sentence report" before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

That an attorney's misconduct 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 an 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. Schaffer, 140 N.J. at 156.

As a preliminary matter, we determine that respondent is ineligible for the "accelerated suspension" procedure established in Schaffer. In that matter, the Court created the accelerated suspension to accommodate attorneys who "conscientiously, promptly[,] and successfully achieved rehabilitation, and [have] recognized the continuing need to remain drug-free and maintain

sobriety." Id. at 159-60. The Court recognized that a suspension for a CDS offense remains the proper measure of discipline but, "if possible," should be imposed "immediately following the commission of the offense so that it may coincide with any rehabilitation program and recovery efforts that are undertaken by the attorney following the commission of the underlying offense." Id. at 160. The Court remarked that the discipline was created so as not to undermine an attorney's rehabilitation. Ibid. The mechanics of this accelerated suspension require an attorney to apply to the OAE for a motion for discipline by consent, pursuant to R. 1:20-10(b), for an immediate suspension pending disposition of the motion. Ibid. The process also is to be accelerated for our review. Ibid.

Here, despite having received proper notice of the accelerated suspension procedure promulgated in Schaffer, respondent did not elect to undertake that procedure and, instead, chose to remain eligible to practice law during his term of Drug Court probation. Consequently, respondent is ineligible for the accelerated suspension procedure.

Moreover, our review of this matter is not confined to respondent's bare admissions in connection with his guilty pleas. See In re Gallo, 178 N.J. 115, 121 (2003) ("[a]s there are no restrictions on the scope of disciplinary review in a case of an attorney who was not charged with a crime or who was

acquitted of a crime, there is no commonsense or policy justification for imposing such restrictions when an attorney has pled guilty to a crime.") Indeed, our disciplinary review "cannot be curtailed by artificial impediments to the ascertainment of truth." Ibid. Consistent with those principles, we have found that, although the attorney disciplinary system does not address DWI violations standing alone, we may consider such conduct as an aggravating factor in determining the appropriate quantum of discipline. See In the Matter of Milena Mladenovich, DRB 21-200 (March 11, 2022) at 14. Thus, regardless of the appeal posture of respondent's motor vehicle convictions in connection with the August 4, 2020 incident, or the fact that respondent was acquitted of the motor vehicle offenses in connection with the April 7, 2021 incident, we may still consider the testimony of officers Chieppa and Casillo in evaluating the totality of respondent's behavior and in determining the appropriate quantum of discipline for respondent's indictable convictions.

Finally, we reject respondent's position that a suspended term of suspension is appropriate for his misconduct. In Schaffer, the Court found that a suspended suspension "constitutes an exceptional form of discipline[.]" Schaffer, 140 N.J. at 158. In that vein, the Court did "not believe a case in which an attorney has been convicted of a possessory crime relating to controlled dangerous substances merits a suspended suspension even when,

prior to the imposition of discipline, the underlying addiction has been zealously addressed by the attorney and rehabilitation has been accomplished." Ibid.

Here, respondent's convictions for CDS offenses do not warrant such an exceptional form of discipline, particularly when, as here, respondent has neither zealously addressed his underlying addiction nor achieved rehabilitation.

Generally, a three-month suspension is the appropriate quantum of discipline for an attorney's possession of a controlled dangerous substance. Musto, 152 N.J. at 174. See e.g., In re Kassem, 249 N.J. 97 (2021) (possession of heroin); In re Holland, 194 N.J. 165 (2008) (possession of cocaine); In re Sarmiento, 194 N.J. 164 (2008) (possession of ecstasy); and In re McKeon, 185 N.J. 247 (2005) (possession of cocaine).

However, "[s]ome offenses attributable to drug addiction may warrant stronger disciplinary measures." Musto, 152 N.J. at 174. Such heightened discipline is particularly appropriate when, as here, an attorney has a longstanding, unresolved history of drug abuse. See, e.g., In re Stanton, 110 N.J. 356 (1988) (six-month suspension for possession of cocaine when the 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

cocaine, hashish, and 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 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 methaqualone; the attorney had a prior drug-related incident and a long history of drug abuse); In re Jones, 245 N.J. 379 (2021) (one-year suspension, retroactive to the attorney's March 16, 2020 temporary suspension, for felony possession of cocaine in Florida; we determined that the attorney did nothing above and beyond the requirements imposed on him to address his substance abuse problem; the attorney also grossly mishandled a client matter and sent lewd communications to the client); In re Salzman, 231 N.J. 2 (2017) (two-year suspension for an attorney who engaged in "blatant drug abuse" and criminal conduct, despite having been placed on supervised probation for a heroin conviction; while on supervised probation, the attorney continued to abuse drugs and drive while drug-impaired, even while his license was suspended, and then failed to appear for required court proceedings or to pay court-ordered fines, resulting in the issuance of warrants for his arrest; discipline was enhanced based on egregious aggravation, including the

attorney's extensive criminal history, "sheer disdain" for court appearances and court orders, and life-long drug addiction and abuse).

Here, despite the imposition of PTI, two terms of Drug Court probation, and a one-year, retroactive disciplinary suspension, respondent's long-spanning and debilitating drug abuse has continued in much the same way as it did in Rowek I. In Rowek I, respondent committed multiple CDS offenses within days of his 2009 admission to PTI. Respondent, in the instant matter, pleaded guilty to two counts of third-degree possession of suboxone and, within two months of beginning his February 2021 Drug Court probation for those offenses, admitted to using methamphetamine just days before officer Casillo encountered respondent, in an apparent drug-impaired state, at the scene of a motor vehicle accident.

Respondent's misconduct in this matter, thus, represents the second instance where he has continued to abuse narcotics while on Drug Court probation, given that, in October 2014, the Superior Court terminated his first term of Drug Court probation following his relapse in drug use. In our view, like the attorney in Salzman, who received a two-year suspension for continuing to abuse drugs while on supervised probation and for driving while drug-impaired, respondent has continued to abuse drugs while on supervised probation and while operating motor vehicles.

Moreover, respondent has not utilized his extensive experiences with the criminal justice or the attorney disciplinary systems to reform his decades-long drug abuse. Rather, just as he did in Rowek I, respondent has shown an immense lack of respect for the criminal justice system by beginning a supervised term of court-ordered probation and then immediately resuming his illicit use of drugs. Thus, like Salzman, whose protracted drug abuse and criminal behavior gave us little confidence in his ability to regain control of his personal and professional life, respondent's criminal behavior in connection with his unmitigated drug abuse demonstrates that he has not taken his addiction or his criminal offenses seriously. Indeed, nothing in the record suggests that respondent has mitigated his dangerous, decades-long drug addiction, despite numerous opportunities to participate in probation, diversionary programs, and outpatient treatment programs. Rather, respondent has demonstrated a continued disinterest in reforming his personal and professional life, which inspires little confidence that he can meet "the standards that must guide all members of the profession." In re Cammarano, 219 N.J. 415, 421 (2014) (citation omitted).

Although we are sympathetic towards respondent's debilitating struggles with addiction, "[t]he goal in a disciplinary proceeding is to protect the public, not to punish attorneys." In re Howard, 143 N.J. 526, 529-30 (1996) ("[E]ven

in victimless crimes, we have it found it necessary to suspend attorneys who have engaged in conduct that transgressed societal norms established by our Legislature."). Thus, given the clear danger that respondent poses to the public in light of his longstanding, unmitigated drug abuse, we determine that a two-year suspension is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Finally, in light of respondent's persistent struggles with substance abuse, we determine to impose the following conditions: (1) respondent must immediately notify the OAE of any positive drug tests; (2) prior to reinstatement, respondent must provide (i) proof of fitness to practice law, as attested to by a medical doctor approved by the OAE, and (ii) proof of continuous attendance at a substance use disorder treatment program following the termination, or the successful completion, of his probation; and (3) upon reinstatement, respondent must provide to the OAE quarterly reports of his weekly attendance at a substance use disorder treatment program, for two years.

Member Joseph was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael A. Rowek
Docket No. DRB 22-103

Argued: September 15, 2022

Decided: December 1, 2022

Disposition: Two-Year Suspension

Members	Two-Year Suspension	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph		X
Menaker	X	
Petrou	X	
Rivera	X	
Singer	X	
Total:	8	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel