SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-153

IN THE MATTER OF

PAUL H. KARWELL,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 17, 1992

Decided: July 23, 1992

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Thomas M. Murphy appeared on behalf of respondent.

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

This matter was before the Board based upon a Disciplinary Stipulation reached by respondent and the Office of Attorney Ethics (OAE).

Respondent was admitted to the practice of law in New Jersey in 1970 and has been engaged in practice in New Providence, Union County. Respondent was arrested on April 22, 1991, for possession of controlled dangerous substances and possession of controlled dangerous substances paraphernalia. The stipulated facts surrounding his arrest are as follows:

> 1. [Respondent] is an attorney-at-law of the State of New Jersey admitted in 1970; respondent has maintained offices for the practice of law at 630 Springfield Avenue, New Providence, Union County, New Jersey 07922.

2. On April 22, 1991, at approximately 8:45 a.m. at the Hunterdon County Court House, Flemington, New Jersey, respondent came through metal detector #3, setting it off. After keys, ring binder and a book were taken from him by Hunterdon Sheriff's Officer Tony Critelli, respondent was told to go through the metal detector again but still set it off. Respondent was asked by Officer Critelli if he had a pocket knife, pager or other metal object. Respondent reached into his lower left, inside jacket pocket and moved things around and then produced a mirror, double edged razor blade and white powder (inside a clear plastic case). Additionally, Officer Critelli retrieved a straw which had dropped out of the binder or book belonging to respondent. Exhibit A.

3. Hunterdon Sheriff's Officer Drew Stephens took possession of the seized property (suspected CDS paraphernalia) and requested the respondent to accompany him into the jury room of courtroom #3. At this time the respondent was verbally advised of his Miranda Rights and respondent verbally answered to affirm. The respondent was then escorted to the Hunterdon County Sheriff's Department, Criminal Investigation Unit (CIU). A field test for narcotic content was performed on the white powder samples taken from the inside of the straw; the test revealed a positive indication of CDS cocaine. At this time, Officer Stephens again read the Miranda warning which was dated and signed by the respondent who wrote the word "yes" next to his signature indicating to the affirmative that he understood his rights as explained by Officer Stephens. At this time Officer Stephens asked the respondent if he would like to give a written statement and the respondent indicated to the negative. At this time, Officer Stephens asked the respondent if he would consent to a search of his vehicle and respondent indicated negative. Exhibits A, B and C. At this time, all narcotics evidence was marked DLS for identification and placed in the temporary evidence locker. Officer Stephens then advised the respondent that he was being arrested for possession of CDS cocaine and possession of narcotic paraphernalia. Respondent was photographed, fingerprinted and an arrest report was completed by Officer Stephens and respondent was placed in the holding cell area. A warrant and summons and complaint were signed against respondent for possession of a controlled dangerous substance, to wit, cocaine in violation of N.J.S.A. 2C:35-10a(1) and possession of narcotic paraphernalia in violation of N.J.S.A. 2c:36-2.[sic] Exhibits D and E. Judge Roger Mahon set bail at an ROR status. Respondent was served the complaints and released by Officer Stephens.

4. On April 22, 1991, as a result of a search of respondent's jacket by Hunterdon County Sheriff's Investigator Capt. Douglas Stryker, what is believed to be cocaine and marijuana was found in the left, inside jacket pocket. The evidence was secured and marked and placed in the evidence locker. Exhibit F.

5. When asked how he had come to Flemington, the respondent stated that he had driven a white four door Toyota rental car with registration of ZLV-794. Sgt. David L. Kaulius of the Hunterdon County Prosecutor's Office, while leaving the sheriff's department, observed a white Toyota with New York registration ZLV-794 parked on Court Street next to the prosecutor's office. Sgt. Kaulius walked over to the vehicle to make sure same was secure and to copy the vehicle identification number to complete the arrest report, and as possible probable cause for a search warrant. While checking the vehicle, Sgt. Kaulius observed white powder on the driver's seat, floor and console. The white powder was in the form of small chunks and flakes, and was consistent with the appearance of cocaine. Exhibit G.

6. Sgt. Kaulius prepared an Affidavit for a search warrant and same was signed by Judge Mahon. Exhibit H. Sgt. Kaulius executed the search warrant, along with Sgt. Joseph Buchanan, Cpl. Drew Stephens and Officer Paul Wolfe. Exhibit I. Additionally, the search of respondent's vehicle was assisted by K-9 Hero. Exhibit J. Removed from the vehicle was a small quantity of white powder that field tested positive for cocaine.

7. All narcotic evidence was tagged and placed into temporary evidence to be transported to the State Police laboratory for analysis. Exhibit K.

8. Without prejudice to his right to be heard as to sanction, respondent admits to possession of .08 grams of marijuana, .13 grams of cocaine and a mirror, razor and straw which were cited as paraphernalia.

9. Respondent was indicted by the Hunterdon County Grand Jury under Indictment 0074-06-91[1] with one count of possession of controlled dangerous substance, a third degree offense in violation of N.J.S.A. 2C:35-10a(1). Exhibit L.

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[1]An examination of Exhibit L reveals that the Indictment was 91-06-0074-I.

10. On October 28, 1991, the Hunterdon County Prosecutor's Office consented to respondent's admission into the Pretrial Intervention Program with conditions for both indictable and disorderly offenses. Exhibit M.

11. On October 31, 1991, respondent agreed to certain conditions as outlined in the Hunterdon County Pretrial Intervention plan of counselling and supervision. Exhibit N.

12. On November 6, 1991, the Honorable Roger F. Mahon, J.S.C. ordered that all further proceedings under Indictment 0074-6-91[2] and Municipal Complaint SK27519 be postponed until November 7, 1992 and that respondent is [sic] thereby released into the custody of the Pretrial Intervention Program. Exhibit O.

13. Respondent therefore admits to misconduct in violation of R.P.C. 8.4(b), in that his knowing and intentional possession of illegal drugs was a criminal act that reflects adversely on his fitness to practice law.

14. In mitigation, the record should reflect that respondent has never previously been the subject of discipline in this state.

15. Respondent understands that it is the position of the OAE that case law warrants a three month suspension for the admitted misconduct, especially in light of Matter of Nixon, 122 N.J. 290 (1991).

16. Respondent understands that the Disciplinary Review Board and/or the Supreme Court may review the matter de novo on the record and are not bound by the OAE's recommendation and may impose such other and more severe discipline as they deem appropriate.

17. Respondent reserves the right to argue that lesser discipline is appropriate under the particular factual circumstances of this case.

18. Respondent also reserves the right to put forward in writing to the Disciplinary Review Board additional facts in mitigation.

19. By entering into this stipulation, respondent does hereby waive the filing of a formal complaint and the conduct of a formal hearing, it being agreed that the

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[2]See note #1.

matter may proceed directly to the Disciplinary Review Board for its review in accordance with R.1:20-4(f)(1) for the sole purpose of determining the extent of final discipline to be imposed.

20. It is understood that other than the instant or any other reciprocal ethics proceedings, this stipulation is not being entered into evidence into any legal proceeding, civil or criminal, as an admission or as giving rise to an inference of wrong doing.
[Disciplinary Stipulation]

CONCLUSION AND RECOMMENDATION

There is no question that, given the stipulated conduct, respondent violated RPC 8.4(b), in that his conduct reflected adversely on his fitness to practice law. The sole issue before the Board is, thus, the appropriate quantum of discipline to be imposed.

If respondent's misconduct was limited to possession of marijuana, a private reprimand might suffice. See In re Echevarria, 119 N.J. 272 (1990). However, respondent's possession of cocaine mandates that public discipline be imposed. In In re McLaughlin, 105 N.J. 457 (1987), three individuals who, at the time of their offense, were serving as law secretaries to members of the judiciary, were publicly reprimanded for use of a small amount of cocaine. The Court noted that, while a public reprimand had been issued in this case of first impression, in the future, similar conduct would be met with a suspension from the practice of law.

In In re Nixon, supra, the Court held that a three-month suspension was the appropriate discipline for an attorney who was

indicted for the third degree crime of possession of a controlled dangerous substance (cocaine), in violation of N.J.S.A. 2C:35-10(a)(1). Nixon was admitted into the pretrial intervention program, after which the indictment was dismissed.

Similarly, in In re Sheppard, 126 N.J. 210 (1991), the attorney was suspended for three months after pleading guilty to two disorderly person offenses: possession of under fifty grams of marijuana, a violation of N.J.S.A. 2C:35-10a(4), and failure to deliver a controlled dangerous substance (cocaine) to a law enforcement officer, a violation of N.J.S.A. 2C:35-10c. This was not Sheppard's first drug-related offense: in 1980, he received an unsupervised conditional discharge for possession of under fifty grams of marijuana.

Other instances of drug use by attorneys have resulted in more lengthy suspensions. In re Pleva, 106 N.J. 637 (1987), (attorney suspended for six months for possession of 9.5 grams of cocaine, 11 grams of hashish and 52 grams of marijuana)[3]; In re Kaufman, 104 N.J. 509 (1986), (guilty pleas to indictments charging him with possession of cocaine and methaquaalude, in offenses that occurred within four months of each other, resulted in six month suspension). See, also, In re Peia, 111 N.J. 381 (1987), (where an attorney was suspended for nine months following a guilty plea to possession of cocaine. Peia had been arrested for possession of marijuana, a small amount of cocaine and drug paraphernalia. The

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[3]An additional three-month suspension was imposed for firearm violations.

Court noted Peia's prior arrest for assault and his arrest for possession of drugs, eight months after the arrest that led to the matter before the Court).

Although respondent stipulated to possession of the CDS and paraphernalia, his statement to the arresting police officer denied any culpability on his part. Exhibit G reveals that respondent stated to Sgt. Kaulius

> that he didn't know about the narcotics in his pocket, and maybe a girl he knew put it there. He went on to say that he went to Bally's Park Place Casino on Thursday night, April 18, 1991, and met a female in the Casino. He also stated that he purchased the mirror in the casino gift shop, but didn't know how much he paid for it. [Respondent] also stated that he didn't know the girl's name, but could find her because she was in the Casino every Thursday night.

With regard to respondent's knowledge that the narcotics were in his pocket, the Board noted that he was arrested several days after his trip to the casino and that he reached into his pocket and removed the incriminating items, obviously knowing that they were there. None of the police reports indicates that respondent was surprised to find cocaine in his pocket.

On June 2, 1992, the Office of Board Counsel received a letter from Nicholas F. Colangelo, Ph.D., Vice President of Clear Brook Inc. According to Colangelo, respondent was admitted to Clear Brook Manor, a facility in Pennsylvania, on April 25, 1991, for treatment, remaining there until May 23, 1991. Colangelo's letter describes respondent's remorse for his actions and his prognosis, which appears to be good.

While recognizing the seriousness of respondent's misconduct, the Board was also struck by the extensive mitigating factors present in this case:

1. Respondent is a recovering alcoholic who, after over fifteen years, slipped into another substance abuse situation.

2. Three days after his arrest respondent entered a treatment program.

3. Respondent has been undergoing therapy and, according to his treating physician, his prognosis is good.

4. Respondent had a considerably smaller amount of CDS than the attorney in Nixon.

5. Respondent has not been previously disciplined in a legal career spanning over twenty years.

6. There is no suggestion in the record that the drugs were intended for other than personal use.

7. Respondent cooperated fully with the OAE.

The Board's task in this matter, as in all others, is to carry out its directive to protect the public, and not to punish the attorney. It is difficult, in a case such as this, to strike a balance between protecting the public and the obvious need to consider respondent's situation and the strong mitigation that exists. Perhaps this is an example of the type of case where more flexibility in the discipline that can be recommended is necessary for the Board to properly fulfill its mandate.

A balancing of interests is called for in this case. While this attorney presents a compelling case for more flexibility in the measure of discipline to be imposed, the Board felt constrained to remain within the guidelines of precedent such as In re Nixon, supra. Accordingly, the Board, by a requisite majority, recommends a three-month suspension in this matter. Three members dissented, one believing a public reprimand to be sufficient discipline and one believing a one-month suspension to be sufficient. The third member would impose a three-month suspension, but would recommend that it be suspended.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 7/23/92

By: _____
Raymond R. Trombadore
Chair
Disciplinary Review Board