

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-027

IN THE MATTER OF :
:
CHARLES J. BENJAMIN, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 24, 1993

Decided: May 25, 1993

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

Raymond F. Flood 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 between respondent and the Office of Attorney Ethics (OAE).

Respondent was admitted to the New Jersey bar in 1982 and is engaged in practice in Newark, Essex County. Respondent was arrested, on April 19, 1991, for possession of controlled dangerous substances and possession of controlled narcotic paraphernalia. On that date, a New Jersey State Police Trooper observed respondent driving an automobile in an erratic fashion. The officer caused respondent to stop. While speaking to respondent, the officer detected the odor of alcohol on his breath. Upon looking into the

vehicle's interior, he observed an open bottle of beer. The officer then administered sobriety tests to respondent. Based on the officer's experience, he was led to believe that respondent was under the influence of alcohol, whereupon he placed respondent under arrest.

After arresting respondent, the officer approached a passenger in the vehicle, at which time the officer detected the smell of burnt marijuana from the interior of the vehicle. A check of the glove box revealed a marijuana "pipe," with burnt resin in the "bowl." A marijuana "roach" was also found in the vehicle. The passenger was also arrested. It was later revealed that he also had a bag of marijuana and rolling paper in his pocket.

During a search incident to the arrest, the officer found a plastic bag containing marijuana and rolling paper in respondent's pocket. Further search revealed a "druggist fold" of cocaine.

Respondent was charged with the indictable third degree offense of unlawfully possessing a controlled dangerous substance, cocaine, in violation of N.J.S.A. 2C:35-10a(1), the disorderly persons' offense of unlawfully possessing a controlled dangerous substance, marijuana under 50 grams, in violation of N.J.S.A. 2C:35-10a(4), and the disorderly persons' offense of unlawfully possessing narcotic paraphernalia, in violation of N.J.S.A. 2C:36-2.

On June 23, 1992, the Honorable John Kingfield, J.S.C., dismissed the complaints against respondent as a result of his satisfactory participation in the Warren County Pre-Trial Intervention Program.

Respondent admitted his unlawful possession of 0.26 grams of cocaine and of under 50 grams of marijuana. He conceded that his misconduct violated RPC 8.4(b).

Respondent failed to inform the Director of the OAE, in writing, of the charge of violation of N.J.S.A. 2C:35-10a(1), an indictable offense, and of the disposition of the matter, as required by R.1:20-6(a). On July 14, 1992, the Supreme Court of New Jersey notified the OAE of the criminal charges against respondent and their disposition.

CONCLUSION AND RECOMMENDATION

There is no question that, given the disciplinary stipulation, respondent violated RPC 8.4(b), in that his conduct clearly reflected adversely on his fitness to practice law. The sole issue remaining before the Board is the appropriate quantum of discipline to be imposed. In re Goldberg, 105 N.J. 278, 280 (1987); In re Kaufman, 104 N.J. 509, 510 (1986); In re Kushner, 101 N.J. 397, 400 (1986).

Respondent's illegal activity is not related to the practice of law. See In re Kinnear, 105 N.J. 391, 395 (1987). Nonetheless, good moral character is a basic condition for membership in the bar. In re Gavel, 22 N.J. 248, 266 (1956). Any misbehavior, private or professional, that reveals lack of good character and integrity essential for an attorney, constitutes a basis for discipline. In re LaDuca, 62 N.J. 113, 140 (1973). That respondent's activity did not arise from a lawyer-client

relationship, that his behavior was not related to the practice of law, or that his offense was not committed in his professional capacity is immaterial. In re Suchanoff, 93 N.J. 226, 230 (1983); In re Franklin, 71 N.J. 425, 429 (1976).

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, the Supreme Court has warned members of the bar that even a single instance of possession of cocaine will ordinarily call for a suspension. In re McLaughlin, 105 N.J. 457, 462 (1987). In McLaughlin, 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 practice:

It is our judgment that a private reprimand would be wholly inappropriate to the occasion. We forbear the imposition of a period of suspension only because this is the first time that we have spoken to the question of discipline for a private drug incident of the sort revealed by this record. We very much hope that infractions of this type will be rare, but our confidence in that regard has its limits. Members of the Bar would be well advised not to rely on our indulgent treatment of these respondents: similar conduct henceforth will ordinarily call for suspension.

[Id. at 462].

In In re Nixon, 122 N.J. 290 (1991), 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 PTI, whereupon the indictment was dismissed.

See, also, In re Sheppard, 126 N.J. 210 (1991) (where 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).

Like Nixon, respondent had small amounts of both marijuana and cocaine. Indeed, amounts in respondent's possession were even less than in Nixon.

The Board noted that respondent has not been previously disciplined and that there is no suggestion in the record that the drugs were intended for other than personal use. The Board also noted respondent's cooperation with the disciplinary authorities, once this matter entered the system. Accordingly, the Board unanimously recommends that respondent be suspended for a period of three months.

One final aspect deserves mention. It was the OAE's position that respondent should receive an additional three-month suspension, to run consecutive to any other sanction imposed, because of his failure to report his arrest to the OAE, as required by R.1:20-6(a). Respondent's counsel argued before the Board that respondent's failure to comply was the result of his unfamiliarity with his obligations under the rule and also of his criminal attorney's failure to so advise him. Ignorance of the law is no

excuse, however. In re Eisenberg, 75 N.J. 454, 456 n.1 (1978). Although the Board is mindful that respondent cooperated with the ethics authorities after the commencement of these proceedings, the Board cannot ignore that respondent failed to report his arrest to the OAE. For this latter infraction alone, respondent should received a public reprimand. The Board unanimously so recommends.

One member did not participate.

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

Dated: _____

5/25/93

By: _____



Raymond R. Trombadore
Chair
Disciplinary Review Board