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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-078

IN THE MATTER OF
BRAXTON LEE EPPS
AN ATTORNEY AT LAW

Decision
Default R. 1:20-4(f)(1)

Decided: December 4, 1996

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

Pursuant to R. 1:20-4(f)(1), the District IIIB Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by regular and certified mail, which was signed and accepted by respondent. In addition, an amendment to the complaint was served by both regular and certified mail, which was returned as unclaimed.

The formal complaint, filed by the Office of Attorney Ethics ("OAE"), charged respondent with violations of RPC 8.4(b) (criminal conduct that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Furthermore, respondent failed to notify the OAE that he had been charged with an indictable offense, in violation of R. 1:20-13(a)(1).

Respondent was admitted to the New Jersey Bar in 1977. Respondent has no prior history of discipline. The complaint stems from respondent's arrest for possession of less than 20 grams of cocaine, in violation of N.J.S.A. 2C:36-10a(1); use of cocaine, in violation of N.J.S.A. 2C:35-10b; and possession of drug paraphernalia, in violation of N.J.S.A. 2C:36-2.

The underlying facts, as set forth in the New Jersey State Police Investigation report, are as follows:

On December 25, 1993, Marine Police Officers Steve Bliss and Steve McNally observed respondent's car parked in an area posted "Official Use Only." Respondent and his passenger were observed consuming alcoholic beverages and several beverage containers were observed lying outside the vehicle. While officer Bliss approached the vehicle, he observed respondent's attempt to hide something in his left hand. The officer found a cellophane bag containing a white powdery substance in respondent's hand, in addition to another cellophane bag containing the same and a one dollar bill with a white powdery residue.

Upon further inspection of the vehicle, the officers found six bags containing a white powdery substance, a metal spoon with white powdery residue, and a hypodermic needle in the passenger's purse. A certified laboratory report revealed that the cellophane bags and other items obtained from respondent tested positive for cocaine, while the hypodermic needle obtained from the passenger tested positive for heroin.

Subsequently, respondent was charged with one-count of possession of cocaine, in violation of N.J.S.A. 2C:35-10a(1). On July 31, 1995, respondent was admitted into Pre-Trial Intervention on terms requiring him to complete fifty hours of community service; submit to drug and alcohol testing and treatment, and pay fines and penalties of \$1,225.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence of respondent's unethical conduct.

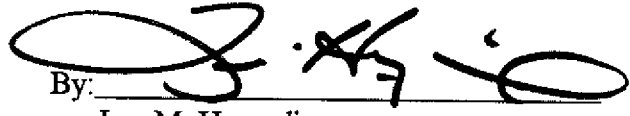
This leaves only the issue of appropriate discipline. Ordinarily, conduct similar to that displayed by respondent has resulted in a three-month suspension. See In re Battaglia, 139 N.J. 610 (1995) (attorney received a three-month suspension for his conviction of possession of cocaine) and In re Schaffer, 140 N.J. 148 (1995) (attorney received a suspended three-month suspension for possession of cocaine for personal use).

However, in this case some aggravating circumstances warrant a longer period of suspension. Specifically, respondent failed to notify the OAE of the indictable charges brought against him. Also, respondent's passenger was found to be in possession of heroin.

Under a totality of the circumstances, the Board unanimously voted to suspend respondent for six months. Two members did not participate.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 12/4/96

By: 

Lee M. Hymerling
Chair
Disciplinary Review Board