

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 92-292

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IN THE MATTER OF :  
:   
ANDREW CONSTANTINE, :  
:   
AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: October 21, 1992

Decided: November 18, 1992

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

Louis Serterides appeared on behalf of respondent.

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

This matter arose from a Disciplinary Stipulation between respondent and the Office of Attorney Ethics ("OAE"). The relevant portions of the Stipulation provide as follows:

1. Andrew Constantine, Esquire is an attorney-at-law of the State of New Jersey admitted in 1984; respondent has maintained offices for the practice of law at Speziali and Constantine, 45-2605 River Drive South, Jersey City, Hudson County, New Jersey 07310.

2. On November 30, 1989, respondent, having just received a verdict favorable to his client upon completion of a five week trial in an asbestos litigation case, decided to celebrate his victory by going out and getting drunk. Respondent drove his car to lower Manhattan New York where he knew the bars would be open late and for several hours went to many bars drinking primarily beer. During his travels, respondent met a woman who was from New Jersey, who was attending Steven's Institute of Technology and lived on campus. Although

only speaking to her for a brief period of time, respondent sensed she was interested in him and suggested that they see each other again. (See attached Exhibit A).

3. Respondent left that bar and went on to some others and ultimately ended up at a Spanish bar and restaurant where he had been before and became friendly with the bartender whom respondent told about his trial and his desire to celebrate. The bartender began pouring margaritas and 'buying' respondent shots of tequila. As the traffic in the bar diminished, the bartender began spending more time with respondent. The bartender offered to give respondent some cocaine which the bartender said respondent could do in the bathroom. In respondent's then drunken state, he accepted the cocaine, ingested some and put the rest in a paper fold in his wallet. Respondent finally left the bar after it was closed.

4. Although respondent was drunk at the time he accepted the cocaine, he knew it was cocaine and knew at the time cocaine was an illegal drug, and he intended to possess it for his own personal use.

5. Sometime after the Spanish bar and restaurant had closed, which was into the early morning hours of December 1, 1989, respondent left the bar and started back to New Jersey. Respondent had been drinking for more than eight hours, and was drunk. On his way back to New Jersey, respondent remembered the woman that he had met from Stevens Institute earlier and went to the campus hoping he could find and surprise her.

6. Respondent walked aimlessly through the halls of the dormitory and may have also used a rest room there. Respondent then opened the doors to several dormitory rooms to see if he could recognize the occupant, and apparently awakened one of the residents. Respondent remembered saying 'sorry, wrong room', before he shut the door and moved on. (See attached Exhibit A).

7. At approximately 6:30 a.m. on December 1, 1989 Stevens Institute of Technology Chief of Campus Police and Director of Safety Edward Malkowski received a call reporting an intruder in Humphreys Hall on campus. Arriving at the dorm he proceeded to room #301 to talk to the occupants, Elizabeth Segali and Gina Kovarcik who described the intruder as six feet tall, 200 pounds wearing jeans, plaid shirt and leather jacket. Respondent was observed by Campus Patrolman John Mack trying to exit the building and was positively identified

as the person who was in the women's room. Respondent had told the women he was looking for someone named Jenny, then excused himself and left the room. Respondent had repeated the same conduct in room #101 occupied by Sharon O'Leary. Respondent was detained in the campus police security office and then taken to the Hoboken Police Department where he was arrested on burglary charges pursuant to 2C:18-2 on complaints of the three females. (Exhibit B).

8. While at the Hoboken Police Department and pursuant to a search incident to the arrest, respondent was found to be in possession of 1 white folded paper packet, containing a white powdery substance suspected of being cocaine, a controlled dangerous substance. (Exhibits A and C). All evidence was marked by Detective Caesar Morales and retained by the anti-vice squad.

9. All narcotic evidence was tagged and placed into temporary evidence to be transported to the Hudson County Prosecutor laboratory for analysis. (Exhibit D).

10. Without prejudice to his right to be heard as to sanction, respondent admits to possession of .35 grams of cocaine.

11. Respondent was indicted by the Hudson County Grand Jury under Indictment 1134-03-90 with two counts of burglary, a third degree offense in violation of N.J.S. 2C:18-2 and one count of possession of a controlled dangerous substance, namely cocaine, in violation of N.J.S. 2C:35-10A (1). (Exhibit E).

12. On April 27, 1990, the Honorable Shirley A. Tolentino, J.S.C. ordered that all further proceedings under Indictment 1134-03-90 and municipal complaints W118402, W118403, W118404 and W118406 be postponed until October 27, 1990 and that respondent be released into the custody of the Pretrial Intervention Program. (Exhibit F).

13. On April 2, 1991 respondent was notified of his successful completion of the Pretrial Intervention Program and the dismissal of the charges pursuant to the Order of Dismissal dated March 14, 1991 of the Honorable Shirley A. Tolentino, J.S.C. (Exhibit G).

14. On September 23, 1991 a Petition for Expungement was filed on behalf of respondent with the Clerk of Hudson County which sought a judgment expunging any and all records in respect to the arrest of respondent on December 1, 1989. (Exhibit H).

15. At no time prior to the filing of the Petition for Expungement did respondent advise the Office of Attorney Ethics of the pendency of these charges as he was required to do under R.1:20-6(a). (Exhibit I).

Respondent admitted that he violated RPC 8.4(b), in that his knowing and intentional possession of an illegal drug - cocaine - was a criminal act that adversely reflected on his fitness to practice law. The OAE, however, recognized that the burglary charges could not be sustained to a clear and convincing standard, inasmuch as there was no evidence that respondent had entered the dormitory room "with purpose to commit an offense therein." Disciplinary Stipulation, paragraph 16.

#### CONCLUSION AND RECOMMENDATION

The sole issue before the Board is the appropriate quantum of discipline to be imposed. Stipulation, paragraph 23.

If respondent's misconduct were limited to possession of marijuana, a private reprimand might suffice. In re Echevarria, 119 N.J. 272 (1990). However, respondent's possession of cocaine requires 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 that case of first impression, in the future, similar conduct would be met with a suspension from the practice of law.

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).

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.

After consideration of the relevant circumstances, the Board's majority recommends that respondent receive a three-month suspension. Two members would have imposed a public reprimand. One member did not participate.

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

Dated: \_\_\_\_\_

11/18/1992

By: \_\_\_\_\_

Raymond R. Trombadore  
Chair  
Disciplinary Review Board