

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 90-223

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IN THE MATTER OF :  
:   
WILLIAM S. NIXON, :  
:   
AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: October 17, 1990

Decided: December 3, 1990

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Jon Steiger appeared on behalf of respondent.

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

This matter is before the Board on a recommendation for public discipline filed by the District IX Ethics Committee. That recommendation is based upon respondent's conditional discharge for possession of cocaine.

Respondent was admitted to the practice of law in New Jersey in 1982. He currently practices law with a small firm in Aberdeen, New Jersey.

On October 4, 1988, at about 8:45 a.m., respondent was stopped for speeding. At that time, he was on his way from his office to appear in court. The police officer who stopped respondent noticed several items in plain view, including a pack of E-Z Wider paper, a plastic straw containing white powder, and a brown vial with a

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clear top that contained a white powdery substance. Additionally, seeds and stems, which appeared to be marijuana, were observed on the floor of respondent's vehicle on both the driver and passenger side. Respondent then authorized the police officer to search his glove compartment, at which time burned marijuana cigarettes, a plastic baggie containing what was later determined to be marijuana, and a prescription vial that was also determined to contain marijuana, were removed. Respondent was arrested and charged with possession of cocaine, in violation of N.J.S.A. 2C:35-15(a), possession of 50 grams or less of marijuana, in violation of N.J.S.A. 2C:35-10(a), and with being under the influence of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-10(b).

Respondent made a statement to the arresting officer, at which time he admitted to having used cocaine at approximately 7:00 a.m. that morning. A report was subsequently filed by the New Jersey State Police, Special and Technical Services Section, Forensic Science Bureau, confirming that the items in respondent's vehicle were .726 grams of cocaine and 13.24 grams of marijuana.

Thereafter, respondent 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). On March 22, 1989, respondent was granted a conditional discharge by the Honorable Robert A. Coogan, J.S.C., following his acceptance of application for admission to the Monmouth County Pre-Trial Intervention Program

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(PTI). Respondent fully participated in that program. Three urinalyses were conducted during the period of his participation in PTI to detect any continued use of a controlled dangerous substance. Those urinalyses were negative for CDS. Following his successful completion of the PTI Program, Indictment No. 88-01-0083 was dismissed in September 1989.

Respondent advised the panel that, at the time of his arrest, he and his wife had a newborn child, which fact had caused a certain degree of stress and sleepless nights. He further advised the panel that prior to his arrest, his use of these drugs was infrequent, and that he has not used any illegal drugs since his arrest. As noted by the hearing panel, respondent has continued his employment without interruption, and nothing was presented to indicate that respondent's drug use had any adverse impact on either his practice or his representation of clients.

Following hearing, the panel determined that respondent had violated RPC 8.4(b), based on its conclusion that he committed a criminal act that reflects adversely on his fitness to practice law. The panel noted respondent's candor in his testimony, the fact that he was particularly candid in admitting his illegal conduct, and his full cooperation with the police following his arrest. The panel stated that, in its view, public discipline was required given existing case law, including Matter of McLaughlin, 105 N.J. 457 (1987).

**CONCLUSION AND RECOMMENDATION**

Following a de novo review of the record, the Board finds that the conclusions of the committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

The Board agrees with the committee's conclusion that respondent violated RPC 8.4(b), in that his possession of illegal drugs was a criminal act that reflects adversely on his fitness to practice law.

Respondent's illegal activity is not related to the practice of law. See Matter of 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. 133, 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 this 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). Furthermore, the Supreme Court has advised members of the bar that even a single instance of

possession of cocaine will ordinarily call for suspension. Matter of McLaughlin, 105 N.J. 457, 462 (1987).

Were this a case of possession of marijuana only, a private reprimand might suffice. See Matter of Echevarria, 119 N.J. 272 (1990). The fact that cocaine, as well as marijuana, was found in respondent's possession, however, requires the imposition of public discipline.

In Matter of McLaughlin, supra, the Court considered the case of three fledgling attorneys who were publicly reprimanded for their participation in the purchase of cocaine. The Court addressed the question of the appropriate level of discipline for cases involving possession of cocaine:

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.

[Matter of McLaughlin, 105 N.J. 457, 462 (1987).]

A number of other disciplinary matters involving illegal drug use have resulted in suspensions for terms ranging from six months to one year. In Matter of Pleva, 106 N.J. 637 (1987), the

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respondent was suspended for six months<sup>1</sup> for possession of 9.5 grams of cocaine, 11 grams of hashish and 52 grams of marijuana. The Court considered that respondent was previously involved in at least one additional prior arrest involving drugs, and noted that his drug usage was admittedly neither "innocuous" nor "casual". Id. at 644.

In another drug-related disciplinary action, an attorney was suspended for six months following his guilty pleas to indictments charging him with possession of cocaine and of methaquaalude. The indictments were based on offenses that occurred in a four-month period. Matter of Kaufman, 104 N.J. 509 (1986). The Court noted Kaufman's long-term use of marijuana and cocaine. In fact, he had received an "unsupervised conditional discharge" following a 1969 arrest for possession of illegal drugs. The Court stressed the fact of two drug arrests in four months as the strongest indication that a suspension for a term was warranted. Id. at 513.

In a similar case, an attorney received a nine-month suspension following his guilty plea to a charge of possession of cocaine. Matter of Peia, 111 N.J. 318 (1987). At the time of his arrest, respondent was found to be in possession of marijuana, a small vial of cocaine, and a variety of drug paraphernalia. The Court noted that respondent had a prior arrest for assault, and was

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<sup>1</sup> Pleva received an additional three-month suspension for firearm violations.

again arrested for illegal drug possession eight months after his arrest on the matter before the Court. The Court found that:

(h)is conviction, the circumstances surrounding his offense and his attitude disclose that his breach of ethics was not aberrational or inadvertent. Rather, these suggest hostility and insensitivity to the standards that govern the professional conduct of attorneys.

[Id. at 324.]

See also, Matter of Kinnear, 105 N.J. 391 (1987), where the crime of distribution of cocaine by an attorney resulted in a suspension of one year, following the Court's consideration that the one episode was unrelated to the practice of law and unlikely to recur, and that respondent was primarily a drug user rather than a distributor.

Had respondent's misconduct occurred prior to McLaughlin, the Board might be inclined to recommend discipline short of suspension. See Matter of Shamey, 110 N.J. 702 (1988). This was not, however, the case and, in accordance with the dictates of McLaughlin, a suspension from the practice of law is required.

In arriving at its recommendation for discipline, the Board gave significant weight to the fact that this case involves only one incident of possession of small amounts of both cocaine and marijuana, rather than the more significant criminal records of Pleva, Kaufman, and Peia, supra. Moreover, there is no suggestion that the drugs were intended for other than person

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al consumption. The Board also took into account respondent's contrition for his illegal conduct, and the fact that he has not previously been the subject of discipline.

The requisite majority of the Board, therefore, recommends that respondent be suspended for three months. One member dissented, voting for a six-month suspension. Two members did not participate.

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

Dated: 12/3/1990

By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board