
IN THE MATTER OF :
:
RICHARD SILBERFEIN, :
:
AN ATTORNEY AT LAW :
:
:

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-439

DISSENT

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

In recommending that respondent be suspended for three months for his guilty plea to possession of 868 milligrams of cocaine, some members of the Board majority felt constrained by precedent. Those members felt bound to make such a recommendation in light of the Court's imposition of a three-month suspension in recent cases dealing with possession of drugs. In re Benjamin, 135 N.J. 461 (1994); In re Constantine, 131 N.J. 452 (1993); In re Karwell, 131 N.J. 396 (1993); In re Sheppard, 126 N.J. 210 (1991); In re Nixon, 122 N.J. 290 (1991). These three dissenting members, too, believe that suspension is appropriate in the vast majority of drug-possession cases. Nevertheless, to impose a suspension mechanically and without regard for individual circumstances is to dispense justice without judiciousness. These members believe that the unique, special and compelling circumstances present in this case allow for the imposition of a public reprimand.

In the above cited cases, the criminal conduct that gave rise to the disciplinary proceedings extended beyond possession of cocaine, the offense for which this respondent received a conditional discharge. (Possession of 0.26 grams of cocaine and under 50 grams of marijuana in Benjamin; possession of .08 grams of marijuana, .13 grams of cocaine and drug paraphernalia in Karwell; possession of 10.5 grams of marijuana and .39 grams of cocaine in Sheppard; possession of .726 grams of cocaine and 13.24 grams of marijuana in Nixon; and burglary and possession of .35 grams of cocaine in Constantine). In addition, one of those attorneys had had a prior conditional discharge for possession of under 50 grams of marijuana (Sheppard) and two did not report their arrest to the Office of Attorney Ethics, as required by R. 1:20-6(a) (Benjamin and Constantine). Two of those attorneys were arrested for possession of drugs either on the way to the court house (Nixon) or inside the court house (Karwell). More significantly, all of those attorneys were either alcohol- or drug- dependent or, at a minimum, used drugs occasionally. Here, respondent's use of a small amount of cocaine was confined to a single, aberrant incident for which he demonstrated atypical bad judgment. On October 1, 1992, the date of this unfortunate occurrence, respondent turned thirty years of age and was looking to celebrate this milestone in a different way that ultimately led to his arrest. Drugs had not

been a part of his life before. Nevertheless, respondent thereafter sought individual psychotherapy "in order to: 1) deal with the stress that his arrest and subsequent charges of cocaine possession (less than 1 gram) has created for him, and 2) to better understand why he got involved in a situation that would have the potential to be detrimental to his professional and personal well being." Letter of Jeffrey C. Greenberg, Ph.D., dated January 4, 1994.

Also, after his arrest and conviction, respondent's employers's confidence in his professional integrity and personal character remained unshaken. They have not hesitated to extend an invitation for respondent's return to their law firm, if he is to be suspended.

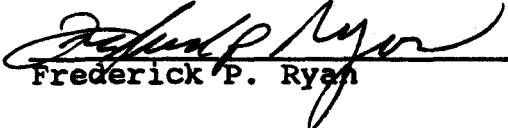
Under those circumstances, these members are convinced that to impose the same form of discipline ordered in Benjamin, Constantine, Karwell, Sheppard, and Nixon would be an inflexible application of the powers conferred to the Court. We understand that the Court should continue to be guided by the discipline ordinarily meted out in such cases and that, ordinarily, a period of suspension will reinforce the seriousness of the offense and maintain the necessary public confidence in the legal profession.

There would be no disservice to the bar or to the public, however, in imposing only a public reprimand in this case. By now, attorneys have had sufficient notice that drug-possession cases will ordinarily result in a period of suspension and that only the most unique circumstances may warrant a deviation from that rule. At the same time, the public confidence in the bar would not be eroded by rare departures from that rule, when exceptional circumstances so require. These members believe this is such a case. We would impose a public reprimand. Harsher discipline would serve no other purpose but to punish this respondent and to cause unnecessary disruption to the pursuit of his professional and personal endeavors.

Dated: September 27, 1994


Elizabeth L. Buff, Vice-Chair


Honorable Paul R. Huot


Frederick P. Ryan