

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-147

IN THE MATTER OF :
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:
ROBIN E. ECHEVARRIA, :
:
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 20, 1989

Decided: February 7, 1990

Paula T. Granuzzo appeared on behalf of the Office of Attorney Ethics.

John S. Furlong 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 Motion for Final Discipline based upon respondent's criminal conviction for violation of N.J.S.A. 2C:35-10(b), use of marijuana, and N.J.S.A. 2C:35-10(a)(4), possession of less than 50 grams of marijuana.

On November 15, 1987, respondent attended her sister-in-law's wedding reception at a restaurant in Scotch Plains. At one point in the evening, respondent stepped outside the restaurant for fresh air. Once outside, she met two acquaintances and decided to sit with them in a car belonging to one of the two, in the restaurant parking lot. One of the acquaintances asked if she wanted to "smoke a joint." She agreed and accepted the marijuana and paper, which she rolled into a cigarette. The marijuana cigarette was

passed around the car. Respondent took one or two puffs from it before a police officer knocked on the window. A search of the vehicle revealed the remains of the marijuana cigarette and two containers of marijuana. All three occupants of the car were arrested.

After a non-jury trial, on January 20, 1989, respondent was convicted of violating N.J.S.A. 2C:35-10(b) and N.J.S.A. 2C:35-10(a)(4), and was sentenced to a one-year probation on each of the two counts, to run concurrently. Respondent was to receive a drug evaluation and random urine-monitoring. In addition, her driver's license was suspended for six months, she was fined \$500, and assessed \$610 in penalties and fees.¹

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt in disciplinary proceedings. Matter of Goldberg, 105 N.J. 278, 280 (1987); Matter of Tuso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1, 3 (1981); R. 1:20-6(b)(i). Therefore, no independent examination of the underlying facts is necessary to ascertain guilt. In re Bricker, 90 N.J. 6,10 (1982). The sole issue to be determined is the quantum of discipline to be imposed. Matter of Goldberg, supra, 105 N.J. at 280; Matter of Kaufman, 104 N.J. 509, 510 (1986); Matter of Kushner, 101 N.J. 397, 400 (1986);

¹ On February 1, 1989, an error in the assessment of penalties and fees was corrected and another \$550 was added to the amount due, for a total of \$1,160.

In re Addonizio, 95 N.J. 121, 123-124 (1984); In re Infinito, 94 N.J. 50, 56 (1983).

Respondent's conviction clearly and convincingly demonstrates she engaged in a criminal act that reflected adversely on her honesty, trustworthiness and fitness as a lawyer, in violation of RPC 8.4(b).

The illegal activity underlying respondent's conviction 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, which 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 her behavior was not related to the practice of law or that this offense was not committed in her 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 drug usage will ordinarily call for suspension. Matter of McLaughlin, 105 N.J. 457, 462 (1987).

The Board recognizes the warning issued in McLaughlin. However, the Board is of the opinion that the disorderly person offenses of which respondent was found guilty do not rise to the level of the criminal offenses found in McLaughlin. Possession of cocaine is a more serious offense than possession and use of

marijuana. Historically, the New Jersey State Legislature has distinguished the two substances. Possession and use of even one gram of cocaine, a Schedule II controlled dangerous substance, is a violation of N.J.S.A. 2C:35-10(1), a crime of the third degree. An individual found guilty under this section is subject to a fine of up to \$25,000, and a prison term of three to five years. N.J.S.A. 2C:43-6(a)(3). On the other hand, possession and use of 50 grams or less of marijuana, a Schedule I controlled dangerous substance, is a disorderly person offense (N.J.S.A. 2C:35-10(4)) punishable under N.J.S.A. 2C:43-8 by no more than six months in prison.

Prior to McLaughlin, supra, discipline in the form of private reprimand has resulted from conviction for possession and use of small amounts of marijuana. The Board is of the opinion that, absent aggravating circumstances, a private reprimand is the proper quantum of discipline in matters arising from the possession and use of a small amount of marijuana. However, in this case the Board has taken into consideration respondent's conditional discharge for possession of marijuana in 1975.² Based on this factor, the requisite majority of the Board recommends that respondent be publicly reprimanded. One member would impose a

² The Board did not consider a private reprimand received by respondent on June 27, 1988, as the issue involved therein is unrelated to the present infraction.

private reprimand, believing that the conditional discharge should not be taken into account, in view of the passage of twelve years.

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

Dated: February 7, 1990. By: Shirley O'Neill, Vice Chair
for Raymond R. Frombadore
Chair
Disciplinary Review Board