

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 57 DB 2023
Petitioner :
v. : Attorney Reg. No. 205573
NATHANIEL EDMOND STRASSER, :
Respondent : (Erie County)

BRIEF ON EXCEPTIONS

I. STATEMENT OF THE CASE

On November 2, 2022, Respondent attended a preliminary hearing on behalf of his client, Allysen O'Connor. The affiant, Pennsylvania State Trooper Chris Weber, observed conduct by Respondent which led him to suspect that Respondent was under the influence of a stimulant. Respondent acknowledged his use of cocaine. His employment was later terminated by the Erie County Public Defender's Office.

Respondent was not charged with any criminal offense. He was charged with violations of RPC 1.16(a)(2) and RPC 8.4(b) by Office of Disciplinary Counsel.

On September 18, 2023, a hearing was held at which time Respondent represented himself. Respondent presented no evidence of his substance abuse history or treatment although such evidence would have been readily

available. Respondent also failed to present character testimony, which was also available.

Respondent subsequently retained counsel. On November 17, 2023, counsel filed a motion to present additional testimony to the Committee. The proffered testimony related to Respondent's substance abuse history and treatment. The motion was denied on November 30, 2023. Respondent's counsel subsequently filed a motion with the Board Chair requesting that the Board direct the Committee to hear the additional testimony. That motion was denied on January 8, 2024.

On or about March 20, 2024, the Hearing Committee filed its Report and Recommendation. The Committee held that Respondent had violated RPC 1.16(a)(2) and RPC 8.4(b). The Committee recommended that Respondent be suspended from the practice of law for a period of one year and one day. Respondent files exceptions to the suspension recommendation.

II. SUMMARY OF POSITION

Respondent acknowledges his violation of RPC 1.16(a)(2) and RPC 8.4(b). Respondent's conduct, however, did not prejudice or harm any client. Furthermore, Respondent was not charged with any criminal offense. Respondent has absolutely no history of discipline.

Respondent is an addict. He has a long history of substance abuse. He has had multiple inpatient admissions for substance abuse treatment. He has also received outpatient treatment and counseling. He has been and is currently enrolled in an outpatient counseling program with The Dowd Treatment Center in Erie.

Respondent should have retained counsel. His attempt to represent himself was ill-advised and frankly abysmal. Although he would have been a good candidate for substance abuse probation, D.Bd. Rule 89.293, he failed to present evidence in support.

Respondent respectfully excepts to the disposition recommendation. He is not an unfit attorney nor will his continued ability to practice present a challenge to the integrity of the legal system. Office of Disciplinary Counsel v. Cappucio, 616 Pa. 439, 48 A.3d 1231, 1238-39 (2012). Rather, probation with a substance abuse monitor would be the appropriate disposition. Respondent recognizes that the record is deficient and again requests leave to present evidence to the Hearing Committee in support of his request for substance abuse probation.

III. GROUNDS UPON WHICH THE EXCEPTIONS REST AND ARGUMENT IN SUPPORT OF EXCEPTIONS

Respondent respectfully excepts to the Hearing Committee's refusal to

consider substantial and highly relevant evidence regarding the defendant's substance abuse history and treatment. Respondent also excepts to the Committee's recommended disposition as unduly harsh.

As previously stated, Respondent has a long history of substance abuse. Respondent admittedly failed, while representing himself, to present the evidence to the Committee. The evidence was readily available and highly relevant. See Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). Disciplinary Rules 89.291 and 89.293 explicitly provide for the admission and consideration of this evidence in consideration of substance abuse probation. The Hearing Committee was free to give whatever weight it deemed appropriate to the proffered evidence. It should not, however, have refused to consider it even though it required an additional hearing. Reopening the record for the presentation of evidence of substance abuse is not unprecedented. Office of Disciplinary Counsel v. Monsour, 549 Pa. 482, 701 A.2d 556, 557 (Pa. 1997) ("Based on a Petition to Reopen the Record filed by Monsour, the Committee held an additional hearing on September 12, 1994, for the limited purpose of allowing Monsour to present evidence regarding his alcoholism.")

The Hearing Committee gave no reason for its refusal to reopen the record. Rather, it recommended a suspension based primarily on

Respondent's conduct during the hearing. The Committee cited Office of Disciplinary Counsel v. McCamey, 43 D.B. 2014, in support of its recommendation of a year and a day suspension. McCamey, however, is readily distinguishable. Mr. McCamey had a prior disciplinary history. He was charged with two (2) DUIs and was sentenced to 90-180 days at the Renewal Center and 18 months probation. He failed to report either conviction. He received a 1 year 1 day suspension.

Respondent has no history of discipline and was not charged with any criminal offense. His misconduct related solely to his use of a controlled substance.

In Office of Disciplinary Counsel v. Timothy Tomasic, 134 D.B. 2021, Respondent was charged by Office of Disciplinary Counsel after failing to appear for a non-jury trial. The Board noted that Mr. Tomasic passed out in his car due to cocaine abuse and missed the trial. For the next 7 months Mr. Tomasic failed to withdraw as counsel. The Board noted his substance abuse history and agreed to place him on 2 years of substance abuse probation with conditions including a sobriety monitor.

Mr. Tomasic's conduct was somewhat more egregious than Respondent's. However, both have a history of substance abuse which was clearly the causal factor of their misconduct. Respondent did not have

counsel. Mr. Tomasic did. Respondent should be given the opportunity to present evidence of his substance abuse history and his treatment program.

REQUEST FOR ORAL ARGUMENT


Respondent respectfully requests that his case be scheduled for Oral Argument.

CONCLUSION

Respondent overcame many difficulties to obtain his law license. He has worked as an Assistant District Attorney and as a Public Defender. He is well respected. He has no disciplinary history. He has taken steps to overcome his addiction. He is an ideal candidate for substance abuse probation. He just requests the opportunity to establish his eligibility.

Respondent respectfully requests that the Board direct the Hearing Committee to reopen the record for the limited purpose of presenting evidence in support of his request for substance abuse probation.

Respectfully submitted,

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa.C.S. § 89.22 (relating to service by a participant).

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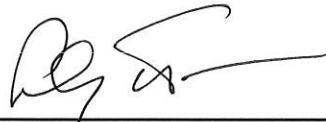
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