

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)

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**BRIEF OF OFFICE OF DISCIPLINARY COUNSEL  
TO HEARING COMMITTEE**

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## **METHOD OF CITATION USED**

Numbers and letters in parentheses indicate documents and location as follows:

Ans. \_\_\_ indicates a (numbered) paragraph of the Answer to Petition for Discipline that Respondent filed on May 1, 2023;

N.T. \_\_\_\_\_ indicates a page or pages of the notes of testimony from the disciplinary hearing on September 18, 2023;

ODC-\_\_\_\_\_ at \_\_\_\_\_ indicates a (numbered) exhibit of the Office of Disciplinary Counsel at Bates stamp pagination; and

Respondent-\_\_\_\_\_ indicates a (lettered) exhibit of Respondent.

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\*To access an unreported Disciplinary Board Report, go to <http://www.pacourts.us>. Hover the pointer over the Supreme Court heading at the top, and then click on “Opinions and Postings.” From the pull-down box for “Court Type” select Disciplinary Board, then select an appropriate date range according to the year of the case (e.g. 1/01/1995 to Today’s Date), and then enter the Disciplinary Board case number (be sure to use the four-digit year for the case in the Board Docket Number field). Click “Search,” then click on the .pdf link to open the Report.

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## I. STATEMENT OF THE CASE

This matter is before the Hearing Committee as a result of disciplinary proceedings instituted by the Office of Disciplinary Counsel (hereinafter “ODC”) by way of a Petition for Discipline filed on April 10, 2023, to No. 57 DB 2023. The Petition charged Respondent with violations of RPC 1.16(a)(2) and RPC 8.4(b). Respondent filed an Answer to Petition for Discipline on May 1, 2023. The Board Prothonotary appointed Hearing Committee Members Jason Alan Medure, Esquire, Chair; Ashley Ardoin Piovesan, Esquire; and Michael Thomas Della Vecchia, Esquire. A prehearing conference was conducted on July 13, 2023, before Designated Member Medure.

A disciplinary hearing was conducted on September 18, 2023. ODC introduced exhibits ODC-1 through ODC-4 and presented the testimony of Pennsylvania State Police Trooper Chris Weber. N.T. at 8-41. Respondent introduced Respondent-A during his cross examination of Trooper Weber, but presented no testimony or exhibits during his case-in-chief. *Id.* at 40-41. The Hearing Committee found, pursuant to D. Bd. Rules § 89.151, that the evidence it received established *prima facie* violations of RPC 1.16(a)(2) and RPC 8.4(b). *Id.* at 49. Respondent thereafter testified on his own behalf in mitigation, but otherwise presented no additional testimony or exhibits. *Id.* at 49-53.

This brief is presented in support of ODC's position that Respondent's appearance at a hearing on a client's behalf while under the influence of cocaine, particularly when combined with Respondent's failure to express any remorse therefor and a stunning void of evidence regarding any genuine pursuit of sobriety, warrants a suspension from the Bar of the Commonwealth of Pennsylvania for at least one year and one day.

## **II. PROPOSED FINDINGS OF FACT**

1. ODC, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules. Ans. at ¶ 1.

2. Respondent, Nathaniel Edmond Strasser, was born in 1979, was admitted to practice law in the Commonwealth of Pennsylvania on December 3, 2007, and maintains an office for the practice of law at Law Office of Nathaniel E. Strasser, 821 State Street, Erie, Pennsylvania 16501. *Id.* at ¶ 2.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. *Id.* at ¶ 3.

4. At all times material hereto, Respondent served as an assistant public defender with the Erie County Public Defender's Office. *Id.* at ¶ 4.

5. On or about September 7, 2022, Allysen O'Connor was arrested and charged with, *inter alia*, DUI: Controlled Substance. This matter was thereafter docketed in Magisterial District Court 06-3-01 at MJ-06301-CR-0000288-2022 (hereinafter the "Criminal Proceedings"). *Id.* at ¶ 5; ODC-1.

6. Respondent was assigned to represent Ms. O'Connor in the Criminal Proceedings. Ans. at ¶ 6; ODC-1 at 000002.

7. Respondent appeared for a preliminary hearing in the Criminal Proceedings on November 2, 2022. Ans. at ¶ 7; ODC-1 at 000003; N.T. at 14-15.

8. Respondent was under the influence of cocaine at the time that he appeared for this preliminary hearing. ODC-2; N.T. at 14-19, 38-39. See *also Id.* at 32 ("based off of everything I saw that day, you were impaired").

9. While Respondent was inside Magisterial District Court 06-3-01 on November 2, 2022, Pennsylvania State Police Trooper Chris Weber, the affiant in the Criminal Proceedings, observed that Respondent, *inter alia*,



“was very hyperactive, fidgety,” and “put his sunglasses on and kept his sunglasses on during the duration while he was in Judge Ferrick’s office.” *Id.* at 14-17.

10. Trooper Weber has served as a Drug Recognition Expert for the Pennsylvania State Police since 2019, *Id.* at 13, which informed Trooper Weber’s observations of Respondent on November 2, 2022, *Id.* at 15-16 (“based off my experience and training...”).

11. Following the November 2, 2022 preliminary hearing, Trooper Weber approached Respondent in the parking lot of Magisterial District Court 06-3-01, at which time, *inter alia*:

- (a) Trooper Weber advised that he could not let Respondent drive because he was under the influence of a stimulant;
- (b) Respondent advised that he would not submit to any field sobriety tests; and
- (c) Respondent advised that he would not submit to any blood analysis.

*Id.* at 17-19. *See also* Ans. at ¶ 10(a)(c).

12. During his interaction with Respondent in the parking lot of Magisterial District Court 06-3-01, Trooper Weber observed that, *inter alia*:

- (a) Respondent’s pupils were dilated;

- (b) one of Respondent's nostrils had hair in it, while the other nostril was hairless and inflamed; and
- (c) Respondent's nose was bleeding.

N.T. at 17-20 ("it was a bright day, midday, bright, sunny sky, little to no clouds, and his pupils were so large that I couldn't tell you what color his eyes were"). See also Ans. at ¶ 11(a).

13. After Respondent's interaction with Trooper Weber in the parking lot of Magisterial District Court 06-3-01, attorney Nicole D. Sloane Kondrlik, the chief public defender, arranged for Respondent's transportation from Magisterial District Court 06-3-01. *Id.* at ¶ 12.

14. On November 2, 2022, at Ms. Sloane Kondrlik's request, Respondent submitted to a drug test. *Id.* at ¶ 13.

15. This drug test was positive for cocaine. *Id.* at ¶ 14; ODC-2.

16. On or about November 21, 2022, the Erie County Public Defender's Office terminated Respondent's employment. Ans. at ¶ 15.

17. By letter to Respondent dated December 27, 2022, ODC requested Respondent's Statement of Position regarding allegations that he, *inter alia*, appeared for the November 2, 2022 preliminary hearing while under the influence of cocaine. ODC-3.

18. By letter to ODC dated January 25, 2023, Respondent provided his Statement of Position. ODC-4. Respondent conceded therein that “[c]ocaine was in [his] system” when he appeared for the November 2, 2022 preliminary hearing. *Id.* at 000010 (¶ 11).

19. The testimony of Trooper Weber was credible. N.T. at 11-40.

20. Respondent failed to accept responsibility or express remorse for appearing for the November 2, 2022 preliminary hearing while under the influence of cocaine. *See, generally, Id.* at 50-53. *See also* Ans. at ¶ 16 and Section IV(B) *infra*.

### **III. PROPOSED CONCLUSIONS OF LAW**

Respondent violated RPC 1.16(a)(2) and RPC 8.4(b).

### **IV. ARGUMENT**

#### **A. RESPONDENT APPEARED FOR A HEARING ON A CLIENT’S BEHALF WHILE UNDER THE INFLUENCE OF COCAINE.**

On November 2, 2022, *on behalf of a client charged with driving under the influence of a controlled substance*, ODC-1 at 000002, Respondent appeared for a preliminary hearing while under the influence of cocaine. ODC-2; N.T. at 14-19, 32, 38-39. Respondent thereby violated RPC 1.16(a)(2). *See, e.g., Id.* at 19 (“he is definitely impaired to a degree that he was incapable of safely driving”). Respondent now contends that, while cocaine was

“in [his] system,” he was not actively under the influence of cocaine during the November 2, 2022 preliminary hearing. See, e.g., ODC-4 at 000010 (¶ 11); N.T. at 42 (“So I admit that I had cocaine in my system that day”). Trooper Weber, a drug recognition expert, explained that the mere presence of cocaine “in Respondent’s system” could not explain the symptoms that Respondent manifested during and immediately after the November 2, 2022 preliminary hearing, N.T. at 20-21, 38 (“the duration of effects for cocaine, for me to see the hyperactivity and the dilated pupils and everything along those lines that I saw, it would have had to have -- he would have had to use the drugs within two hours”); See also Respondent-A at 22 (“General effects will persist for 1-2 hours...”); however, even assuming *arguendo* the veracity of Respondent’s explanation, the presence of any cocaine “in Respondent’s system” while he was appearing at a hearing on a client’s behalf violates RPC 1.16(a)(2).

Respondent does not dispute that he voluntarily ingested cocaine prior to the November 2, 2022 preliminary hearing, he disputes only the amount of time that elapsed between his voluntary ingestion of cocaine and the commencement of the November 2, 2022 preliminary hearing. See, e.g., ODC-4 at 000010 (¶ 8) (“Respondent last used cocaine the evening of October 31,

2022 and into the morning of November 1, 2022”) (emphasis supplied). Respondent was, accordingly, in possession of cocaine either on October 31, 2022, as he claims in his verified Statement of Position, or in the moments preceding the November 2, 2022 preliminary hearing. Respondent thereby violated 35 P.S. § 780-113(a)(16) and RPC 8.4(b). See, e.g., *Office of Disciplinary Counsel v. John Martin Cahill, Jr.*, 96 DB 2011 (S. Ct. Order 11/16/2012) (consent discipline); *Office of Disciplinary Counsel v. Adam Marc Yanoff*, 71 DB 2012 (S. Ct. Order 10/4/2012) (consent discipline).

#### **B. RESPONDENT EXPRESSED NO REMORSE.**

In aggravation, Respondent failed to express any remorse for appearing at the November 2, 2022 preliminary hearing while under the influence of cocaine. See, generally, N.T. at 50-53. “There is no question that the refusal to acknowledge one’s guilt and a lack of remorse are aggravating factors that must be taken into account.” *Office of Disciplinary Counsel v. Samuel Foley, Jr.*, 201 DB 2011 (D. Bd. Rpt. 4/22/2014) (S. Ct. Order 8/14/2014) at 10 (citing *Office of Disciplinary Counsel v. Michael Radbill*, 899 A.2d 1099 (Pa. 2006) and *Office of Disciplinary Counsel v. John L. Chaffo, Jr.*, 8 DB 2011 (D. Bd. Rpt. 7/30/2013) (S. Ct. Order 11/15/2013)). Indeed, Respondent’s entire cross examination of Trooper Weber was based on the

absurd notion that cocaine *enhances* Respondent's performance as an attorney. See, e.g., N.T. at 24 ("And essentially -- cocaine, actually, if you read -- if you read that, it -- it -- it increases your awareness; correct?"). See also, e.g., *Id.* at 42 ("cocaine has a positive effect on one's cognitive abilities in low doses...My mental awareness was at a heightened state, not a lower state"). *But compare Id.* at 29 ("yeah, you had severe focus, but you were - - it appeared that you were focusing on a hundred things and couldn't quite figure out what was important at the time") and Respondent-A at 23 ("Cocaine may enhance performance of simple tasks *but not complex, divided-attention tasks such as driving*") (emphasis supplied).

**C. RESPONDENT OFFERED NO EVIDENCE REGARDING HIS ABILITY TO COMPLY WITH SOBRIETY MONITOR PROBATION.**

D. Bd. Rules § 89.293(c) enables the Disciplinary Board, "in cases of alcohol or drug abuse," to place a respondent-attorney on probation subject to sobriety monitoring. Respondent, however, introduced no evidence whatsoever regarding his ability to comply with the conditions of such sobriety monitoring, such as records demonstrating his participation in rehabilitation programs or verification of his attendance at twelve-step meetings. See, *generally*, N.T. at 41, 50-53. In fact, Respondent testified that he is not pres-

ently attending twelve-step meetings because he does not have a drug addiction. *Id.* at 51 (“in regards to any 12 Step programs or anything like that, that’s only for addiction, and my problems aren’t really addiction.”). *See also Id.* at 53 (“Yeah, I’m not an addict.”). Probation subject to sobriety monitoring is therefore not appropriate. *Office of Disciplinary Counsel v. Antoinette M. J. Bentivegna*, 156 DB 2002 (D. Bd. Rpt. 4/16/2004) (S. Ct. Order 7/15/2004) at 20 (“The recommendation of probation is likewise inappropriate. Respondent has not shown recognition of the causes of her misconduct or a real commitment to improvement.”).

Moreover, even if Respondent had not explicitly disavowed the existence of a substance use disorder, Respondent *also* failed to present evidence sufficient to establish a causal connection between any such disorder—or any other mental illness for that matter—and his misconduct, as contemplated by *Office of Disciplinary Counsel v. Seymour H. Braun*, 553 A.2d 894 (Pa. 1989) and its progeny:

Our Court has never held that lay opinions alone, are sufficient to establish that an addiction or mental illness was the cause of an attorney’s misconduct. Indeed, recent decisions of our Court have emphasized the critical role of expert testimony in establishing such a causal link. *See Czmus*, 889 A.2d at 1203 (“The Disciplinary Board may consider as potential mitigation an expert’s opinion establishing a causal connection between the misconduct and an underlying mental infirmity.”); *Cappuccio*, 48

A.3d at 1241 (refusing to consider attorney’s psychiatric condition as causing the attorney’s misconduct since he “did not present expert testimony meeting the *Braun* standard” for mitigation).

As Disciplinary Counsel highlights, Pozonsky presented *no* expert testimony to the Disciplinary Board establishing that he had an addiction to cocaine, or any other psychiatric disorder, which caused him to engage in his thefts and personal use of drug evidence.

*Office of Disciplinary Counsel v. Paul Michael Pozonsky*, 177 A.3d 830, 845

(Pa. 2018) (emphasis in original).

**D. A SUSPENSION FOR AT LEAST A YEAR AND A DAY IS NECESSARY TO PROTECT THE PUBLIC FROM AN UNACCEPTABLE RISK THAT RESPONDENT WILL REPEAT THIS MISCONDUCT.**

“[D]isciplinary sanctions are not designed for their punitive effects, but rather are intended to protect the public from unfit attorneys and to maintain the integrity of the legal system.” *Office of Disciplinary Counsel v. Brian J. Preski*, 134 A.3d 1027, 1031 (Pa. 2016) (citing *Office of Disciplinary Counsel v. John Rodes Christie*, 639 A.2d 782, 782 (Pa. 1994)). Respondent’s refusal to express remorse for appearing at a hearing on a client’s behalf while under the influence of cocaine—and his suggestion throughout the disciplinary hearing in this matter that cocaine enhances his performance as an attorney—presents an unacceptable risk that Respondent will repeat this intolerable misconduct. Accordingly, the only disposition that would “protect



the public” is a suspension of sufficient length that Respondent would be required to demonstrate his fitness before regaining the privilege of practicing law. Rule 218(a)(3), Pa.R.D.E. (“An attorney may not resume practice until reinstated by order of the Supreme Court after petition pursuant to this rule if the attorney was suspended for a period exceeding one year”). See, e.g., *Bentivegna*, 156 DB 2002 at 20 (“In light of the serious nature of Respondent’s misconduct, as well as her demeanor before the Hearing Committee, the Board recommends that Respondent be suspended for a period of one year and one day. Respondent is currently unfit to practice law without a future show of fitness.”).

## **V. CONCLUSION**

ODC respectfully requests that this Honorable Hearing Committee recommend to the Disciplinary Board that Respondent be suspended from the Bar of the Commonwealth of Pennsylvania for at least one year and one day.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell  
Chief Disciplinary Counsel

A handwritten signature in black ink, appearing to read "D. White", with a stylized flourish at the end.

By

\_\_\_\_\_

Daniel S. White  
Disciplinary Counsel

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

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents 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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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature:  \_\_\_\_\_

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