

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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

REPORT AND RECOMMENDATION OF THE HEARING COMMITTEE

I. SUMMARY OF THE CASE

The Office of Disciplinary Counsel (hereinafter “ODC”) instituted the instant Petition for Discipline against Nathaniel Edmond Strasser (hereinafter “Respondent”) on or about April 10, 2023 at No. 57 DB 2023. Respondent was charged with violations of RPC1.16(a)(2) and RPC 8.4(b). As of 2022, Respondent served as an Assistant Public Defender with the Erie County Public Defender’s Office. Respondent was assigned to represent Allysen O’Connor who was arrested and charged with DUI: controlled substance on or about September 7, 2022. Ms. O’Connor’s criminal case was docketed at Magisterial District Court 06-3-01 at MJ-06301-CR-0000288-2022. Thereafter, Respondent appeared for a preliminary hearing in connection with Ms. O’Connor’s criminal case on or about November 2, 2022.

At the November 2, 2022 in which Respondent was representing Ms. O’Connor, Respondent was observed by Pennsylvania State Trooper Chris Weber, the affiant in the criminal proceedings, to be “hyperactive” and “fidgety” and wearing sunglasses inside the

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Magistrate Judge's office. Trooper Weber approached Respondent in the parking lot after the hearing and advised that he could not let Respondent drive as it appeared that Respondent was under the influence of a stimulant. Respondent told Trooper Weber that he would not submit to field sobriety tests or submit to a blood test. Trooper Weber, who testified before this panel, reported that one of Respondent's nasal passages had hair whereas the other did not and that Respondent's nose was bleeding. Respondent's pupils, according to Trooper Weber, were also dilated.

Respondent's manager, Chief Public Defender, Nicole D. Sloane Kondrik arranged for Respondent's transportation from the scene. Later that day, Respondent took a drug test which was positive for cocaine. Respondent was thereafter terminated by the Erie County Public Defender's Office.

As stated above, Respondent was charged with violations of RPC 1.16(a)(2) and RPC 8.4(b). Respondent thereafter filed an Answer to the Petition for Discipline on or about May 1, 2023. A hearing was conducted on September 18, 2023 at which ODC and Respondent presented evidence. Respondent represented him and also testified on his own behalf. The Hearing Committee determined that Respondent violated RPC 1.16(a)(2) and RPC 8.4(b) and recommends that Respondent be suspended from the practice of law for a period of one year and one day.

II. STATEMENT OF THE CASE

This Hearing Committee finds that Respondent violated the following Rules of Professional Conduct in his representation of Allysen O'Connor on or about November 2, 2022. At the hearing before this Hearing Committee on September 18, 2023, Respondent

admitted that he ingested cocaine prior to representing Ms. O'Connor at a preliminary hearing on November 2, 2022. Respondent only disputed the amount of time that elapsed between his consumption of the cocaine and the commencement of Ms. O'Connor's hearing. Respondent also testified at the hearing before this panel that he was not actively under the influence of cocaine while representing Ms. O'Connor. These denials were contradicted by Trooper Chris Weber's observations on that day and his testimony before this Hearing Committee panel.

During the hearing on September 18, 2023, Respondent expressed no remorse for his actions in the course of representing Ms. O'Connor. It should be noted, however, that Respondent has no prior history of discipline. Respondent also did not offer any evidence of his ability to comply with a sobriety monitor and probation. Respondent denied having a drug addiction at the September 18, 2023 hearing, yet in a Brief filed on his behalf by Phillip B. Friedman, Esquire after the hearing, Attorney Friedman states that Respondent "is in fact an addict" with a "history of substance abuse". See, Brief of Respondent at pp. 1-2.

Based on the documentary evidence and testimony of Trooper Chris Weber and Respondent's own testimony, this Committee hereby finds that Respondent committed the following violation of the Rules of Professional Conduct:

1. RPC1.16(a)(2): Declining or Terminating Representation: Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: the lawyer's

physical or mental condition materially impairs the lawyer's ability to represent the client.

2. RPC 8.4(b): Misconduct: commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

III. RULINGS ON ADMISSION OF EVIDENCE

A pre-hearing conference was conducted on July 13, 2023 via videoconference by Hearing Committee Chair, Jason Medure, Esquire. During the pre-hearing conference, deadlines were set regarding the submission of exhibits, witness lists and expert reports, if any, and motions in limine. The parties were informed that the disciplinary hearing would take place on September 18, 2023.

During the September 18, 2023 disciplinary hearing, the ODC offered into evidence the following exhibits:

1. ODC 1-Commonwealth of Pennsylvania v. Allysen Elizabeth O'Connor Criminal Docket No. MJ-06301-CR-0000288-2022;
2. ODC-2-Allegheny Health Network Saint Vincent Occupational Health Center record of November 2, 2022 for Respondent's drug test;
3. ODC-3-DB 7 Request for Statement of Respondent's Position of December 27, 2022; and
4. ODC-4-Statement of Attorney Nathaniel E. Strasser's Position as Respondent.

The Hearing Committee admitted ODC exhibits 1 through 4 into evidence. N.T. at 11. Respondent objected to the admission of ODC 4, an objection overruled by the Hearing Committee.

During his case-in-chief, the Respondent only offered one exhibit into evidence. This was the National Highway Traffic Safety Administration Drug and Human Performance Fact Sheets. This was designated as Respondent A and admitted into evidence. N.T. at 40.

Following the conclusion of the hearing , Respondent hired counsel and sought to have the record re-opened. Attorney Phillip B. Friedman, on behalf of Respondent, filed a Motion to Present Additional Testimony. This Motion was filed on or about November 17, 2023. The purpose of said Motion was to seek leave to present evidence of Respondent's substance abuse history. The ODC opposed Respondent's Motion. The Hearing Committee Chair denied Respondent's Motion by Order dated November 30, 2023. On or about January 4, 2024, Attorney Friedman on behalf of Respondent filed a Motion requesting the Board to direct the Hearing Committee to consider evidence of mitigation. On or about January 5, 2024, ODC filed a response to that Motion requesting that the Board deny Respondent's Motion. On or about January 8, 2024, the Board Chair denied Respondent's Motion.

IV. FINDINGS OF FACT

The Panel has decided to adopt the ODC's Proposed Findings of Fact and therefore states as follows:

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*.

V. CONCLUSIONS OF LAW

The Panel has decided to adopt ODC's proposed Conclusions of Law as their own and finds that Respondent violated RPC 1.16(a)(2) and RPC 8.4(b).

VI. DISCUSSION

Having determined that Respondent committed professional misconduct, the Hearing Committee's task is to determine the appropriate sanction, bearing in mind that the recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating. *Office of Disciplinary Counsel v. Joshua Eilberg*, 441 A.2d 1193, 1195 (Pa. 1982).

Despite the fact-intensive nature of the endeavor, consistency is required so that similar misconduct "is not punished in radically different ways." *Office of Disciplinary Counsel v. Robert S. Lucarini*, 472 A.2d 186, 190 (Pa. 1983). When evaluating professional discipline, the Hearing Committee is cognizant that the primary purpose of the lawyer disciplinary system in Pennsylvania is to protect the public, preserve the integrity of the legal system and deter unethical conduct. *Office of Disciplinary Counsel v. Akim Czmus*, 889 A.2d 1197 (Pa. 2005).

The gravity of Respondent's conduct, which reflects adversely on his character and fitness to practice law, can be addressed by a suspension for one year and a day,

which requires that Respondent apply for reinstatement and establish his fitness before he is permitted to resume practice. This term of suspension fulfills the goals of the disciplinary system to protect the public, the courts, and the profession, and promotes deterrence. *Office of Disciplinary Counsel v. Lon Vandusen Hughes*, 128 DB 2021, (D. Bd. Rpt. 8/22/2022) (S. Ct. Order 10/25/2022).

The Court has imposed discipline on attorneys in prior matters involving criminal convictions for drug offenses. While each matter is adjudicated on its unique factual circumstances, the consequences have generally been a suspension of the attorney's license to practice law.

In *Office of Disciplinary Counsel v. Randal E. McCamey*, 43 DB 2014 (D. Bd. Rpt. 11/23/2015) (Sup. Ct. Order 1/22/16), respondent pled guilty to two DUI cases and failed to report the convictions as required. In determining a suspension of a year and one day, the Board stated that the evidence indicated that respondent had "failed to mitigate the harmful effects of his drinking in any significant way and had not paid fines and court costs associated with his DUI convictions." The Board further noted that "Respondent has not shown at this time that he is capable of practicing law and must be required to petition for reinstatement and prove his fitness if he desires to practice law in the future."

Similarly, a respondent's lack of remorse and failure to understand her actions and appreciate their impact were found to be aggravating factors. *Office of Disciplinary Counsel v. Terry Elizabeth Silva*, 164 DB 2014, (D. Bd. Rpt. 5/14/2016) (Sup. Ct. Order 7/14/2016).

In *Office of Disciplinary Counsel v. Ness*, 33 Pa. D.&C. 3d 188 (1984), an attorney who received one-quarter ounce of cocaine as a wedding gift and pled guilty to simple possession, received a suspension of one year, which at the time required a formal reinstatement hearing. The Disciplinary Board reasoned that a meaningful sanction was necessary “to deter [Ness’s] pattern of irresponsibility which was detrimental to the interests of justice.” Moreover, in *Office of Disciplinary Counsel v. John Paul Yukevich, Jr.*, 103 and 145 DB 2009 & 62 DB 2010, respondent was suspended for one year and one day due to two criminal convictions for DUI and the unauthorized practice of law. It was noted by the Disciplinary Board that respondent is not fit to practice law and his testimony highlighted a need to regain control over his personal affairs before he can or should represent clients.

During the hearing on September 18, 2023, Respondent expressed no remorse for his actions in the course of representing Ms. O’Connor. Respondent also did not offer any evidence of his ability to comply with a sobriety monitor and probation. Respondent denied having a drug addiction at the September 18, 2023 hearing yet in a Brief filed on his behalf by Phillip B. Friedman, Esquire after the hearing, Attorney Friedman states that Respondent “is in fact an addict” with a “history of substance abuse”. See, Brief of Respondent at pp. 1-2. Furthermore, Respondent submitted no evidence to this Hearing Committee that he has or is receiving any type of substance abuse treatment.

For the reasons set forth above, the Hearing Committee recommends that Respondent be suspended from the practice of law for one year and one day. This discipline is consistent with prior cases. By recommending a one year and one day

suspension, Respondent will bear the burden of demonstrating ultimately to the Supreme Court that he is fit to practice law such that, among other things, he must establish that he is sober, remorseful, and prepared to acknowledge that as a practicing attorney he must abide by the rules applicable to the conduct of members of the bar.

VII. RECOMMENDATION

The Hearing Committee recommends that Respondent be suspended from the practice of law for a period of one year and one day.

Respectfully submitted,

/s/ Jason Alan Medure
Jason Alan Medure, Esq., Chair

/s/ Ashley Ardoin Piovesan
Ashley Ardoin Piovesan, Esq., Member

/s/ Michael Thomas Della Vecchia
Michael Thomas Della Vecchia, Esq., Member

Date: March 20, 2024