

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1332 Disciplinary Docket No. 3
Petitioner :
 : No. 185 DB 2006
v. :
 : Attorney Registration No. 87860
EDWARD JOHN MIMNAGH, :
Respondent : (Dauphin County)

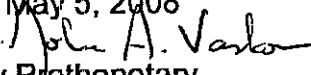
ORDER

PER CURIAM:

AND NOW, this 5th day of May, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated November 27, 2007, it is hereby

ORDERED that Edward John Mimmagh is suspended from the Bar of this Commonwealth for a period of one year and one day and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy John A. Vaskov
As of: May 5, 2008
Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 185 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 87860
	:	
EDWARD JOHN MIMNAGH	:	
Respondent	:	(Dauphin County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On December 6, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Edward John Mimmagh, Respondent. Respondent was charged with two violations of the Rules of Professional Conduct arising out of his solicitation of cocaine from his client. Respondent filed an Answer to Petition for Discipline on January 4, 2007 and an Amended Answer to Petition for Discipline on January 29, 2007.

A disciplinary hearing was held on March 15, 2007 before a District III Hearing Committee comprised of Chair Mark J. Powell, Esquire, and Members Victor A. Neubaum, Jr., Esquire, and Suzanne C. Hixenbaugh, Esquire. Respondent was represented by Robert H. Davis, Jr., Esquire. Petitioner introduced seven exhibits. Respondent did not contest the allegations of violations of the Rules of Professional Conduct, but presented testimony in mitigation from seven witnesses, including his own testimony, and documentary exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on July 2, 2007, finding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of two years.

Respondent filed a Brief on Exceptions and request for oral argument on July 23, 2007.

Petitioner filed a Brief Opposing Exceptions on August 8, 2007.

Oral argument was heard before a three member panel of the Disciplinary Board on August 27, 2007.

This matter was adjudicated by the Disciplinary Board at the meeting on September 10, 2007.

Respondent filed a Petition to Reopen the Record to Admit Additional Evidence on September 10, 2007.

Petitioner filed a Response to Respondent's Petition to Reopen the Record on September 20, 2007.

By Order of the Disciplinary Board dated September 26, 2007, the Board denied the Petition to Reopen the Record.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Edward John Mirmnagh. He was born in 1965 and was admitted to practice law in the Commonwealth in 2001. He maintains his office at 203 West Caracas Avenue, Suite 201, Hershey, PA 17033-2178. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

4. Respondent has known Terry Grimwood as a friend since the late 1980's and was his attorney from about August 2004 until about January 2006.

5. In the Spring of 2005 Respondent and Mr. Grimwood maintained an attorney-client relationship based on a history of representation of Grimwood by Respondent.

6. Sometime in the Spring of 2005, while Mr. Grimwood was in Respondent's law office, Respondent asked him if he could get Respondent some cocaine. At this time Respondent was attorney of record for Grimwood in a DUI in Perry County.

7. Mr. Grimwood indicated he could not obtain cocaine for Respondent but he knew someone who possibly could.

8. Several days after this conversation Respondent had a series of cell-phone conversation with Mr. Grimwood during which Respondent gave him directions to his house in Hershey.

9. Later that same day, after dark, Mr. Grimwood drove up to Respondent's house with Todd A. Walter as a passenger.

10. Respondent approached the driver's side of the car and handed \$200 directly to Mr. Walter.

11. In exchange for the \$200, Mr. Walter gave Respondent two small bags containing cocaine.

12. Respondent gave conflicting testimony concerning when he used the cocaine. At the preliminary hearing of Messrs. Grimwood and Walter on March 3, 2006, Respondent gave testimony under oath that he did not ingest the cocaine immediately upon receiving it but waited until the following morning.

13. Upon cross-examination at his disciplinary hearing on March 15, 2007, Respondent testified that he immediately took the cocaine up to the bathroom and ingested some. He contended that his testimony of a year earlier had been a mistake.

14. Over approximately the next week after purchasing the cocaine, Respondent ingested the remainder of the cocaine.

15. Mr. Grimwood was under investigation for a murder and a listening device had been installed in his home by the police between January 5 and January 18, 2006. While being monitored, Mr. Grimwood made reference to having delivered two eight balls of cocaine to Respondent at his home. With that information the Grand Jury investigation was expanded to include delivery of cocaine.

16. On January 30, 2006, the District Attorney sent Respondent an email letter together with a subpoena to appear before the Grand Jury on February 21, 2006. The penultimate sentence of the last paragraph said, "I am considering giving you an opportunity to testify under a grant of immunity following an 'off the record' proffer."

17. As a result of Respondent's solicitation of Mr. Grimwood to help Respondent obtain cocaine and his purchase of cocaine from Mr. Walter, in February of 2006 Grimwood and Walter were charged with the crimes of criminal conspiracy to deliver cocaine and delivery of cocaine, both felonies.

18. In exchange for a grant of immunity from criminal prosecution, on March 3, 2006, Respondent testified for the Commonwealth at the preliminary hearing for Grimwood and Walter before the Honorable Lawrence F. Clark, Jr., who bound the cases over for trial.

19. On June 6, 2006, Mr. Grimwood entered a plea of guilty to the criminal charges and was sentenced to concurrent terms of imprisonment of 33 months to six years.

20. On May 31, 2006, Mr. Walter entered a plea of guilty to the criminal charges and sentencing was deferred. He later made a deal with the Commonwealth and agreed to testify against Mr. Grimwood regarding the murder charge.

21. Respondent's involvement with Mr. Grimwood and his purchase of cocaine was reported in a number of newspaper articles in the Dauphin County area.

22. Respondent suffers from Irritable Bowel Syndrome (IBS) for which he is being treated by Dr. Frank DeLeo with the prescription Bentyl. Dr. DeLeo also has diagnosed Respondent with Attention Deficit Disorder (ADD), for which Respondent takes the prescription Adderall.

23. Dr. Joanna M. DeLeo is a specialist in IBS and testified as an expert. IBS is a spasm of the colon resulting from stress. Attacks can last for hours or days and can be so severe as to exhibit debilitating pain. IBS can be treated with medications and stress management but never cured.

24. Dr. Joanna DeLeo diagnosed Respondent in 2003 with the illness and at that time characterized Respondent's condition as "severe." She has had no other medical contact with Respondent since April 2003.

25. Dr. Joanna DeLeo was asked a hypothetical question as to whether there was a causal relationship between Respondent's IBS and his ADD and the

solicitation and purchase of cocaine. She answered in the affirmative, based on the assumption that Respondent was "experiencing an especially long attack or series of attacks at the time."

26. According to Dr. Frank DeLeo's practice notes he saw Respondent once a month in March, April, May and June of 2005 to monitor Respondent's medications. During this time Dr. DeLeo's notes indicate that Respondent complained only about a "runny nose" and other allergy complaints. Respondent did not complain of severe pain due to his IBS.

27. Respondent had used cocaine many times in the late 1980s and a couple of times in 1996. He remembered that cocaine helped ease his symptoms of IBS.

28. At the time Respondent bought the cocaine from Walter and Grimwood he claims he was experiencing intense pain and was feeling stressed due to personal issues with his family.

29. Respondent did not call Dr. Frank DeLeo about his pain as he believed that the medications would not provide relief from the symptoms.

30. Respondent's testimony as to the severity of his condition is inconsistent.

31. Respondent was embarrassed and humiliated by the media coverage of the case.

32. Respondent lives in fear that Grimwood and Walter or someone on their behalf will show up at his house; Respondent sleeps with a pistol in a different room from his family.

33. Respondent has gone to counseling services and regularly attends Lawyers Concerned for Lawyers.

34. Respondent admitted that his behavior was "pretty obscene," "despicable," and "horrible."

35. John C. Howett, Jr., Esquire, and Mark T. Silliker, Esquire, testified on behalf of Respondent at the disciplinary hearing.

36. Mr. Howett is a Harrisburg attorney who has been in private practice since 1980. He has known Respondent since 1995 and knows his reputation in the legal community as a proficient and competent practitioner.

37. Mr. Silliker is a Harrisburg attorney in practice since 1980. He knows Respondent's reputation in the legal community as being likeable and positive, and very good to work with.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.2(d) - A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal.

2. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

Respondent failed to provide clear and convincing evidence that his Irritable Bowel Syndrome was a substantial causal factor of his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). Respondent is not entitled to mitigation of sanction due to his Irritable Bowel Syndrome.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with professional misconduct arising out of his solicitation and purchase of cocaine from a client. Respondent admitted that he solicited cocaine from Terry Grimwood and further admitted that he purchased cocaine for \$200 from Grimwood and Grimwood's accomplice, Walter. Respondent further admitted that Grimwood was his client at the time of the solicitation and purchase of cocaine in the Spring of 2005. Respondent was not charged with any crime, but Grimwood and Walter were both charged, and Grimwood imprisoned, for their part in the criminal activities.

Respondent offered in his defense that his cocaine use was an isolated incident. He contends that the basis of his solicitation and purchase of cocaine was to manage an aggravated episode of Irritable Bowel Syndrome brought on by stress, as he needed to relieve his symptoms so that he could care for his six month old daughter and

deal with other family circumstances. In offering this defense Respondent seeks mitigation from his sanction pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

The Hearing Committee concluded that Respondent did not meet the Braun standard and was not entitled to mitigation. The Committee recommended a two year suspension, to which Respondent takes exception.

Initially, Respondent contends that the Hearing Committee erroneously found that Grimwood was a client when asked to obtain cocaine for Respondent. Contrary to this contention, the record provides clear and satisfactory evidence that Grimwood was in fact a client. Respondent himself admitted the attorney/client relationship existed. He admitted it in his statement to the police, in his sworn testimony at the preliminary hearing on March 3, 2006, and during his disciplinary hearing on March 15, 2007.

Respondent takes exception to the Committee's conclusion that no causal relationship existed between his IBS and the misconduct. Respondent contends that his expert, Dr. Joanna DeLeo, offered her unrebutted medical opinion that Respondent suffered from severe IBS and explained why cocaine would give effective relief to an IBS attack. The Board's review of Dr. DeLeo's testimony shows that she made a causal connection between IBS and the misconduct based on a hypothetical situation, in that she assumed that Respondent was suffering from a severe attack. Dr. DeLeo herself had no medical contact with Respondent after her 2003 diagnosis. The evidence is not clear and convincing that Respondent was suffering from a severe attack of IBS. The record shows

that Respondent saw Dr. Frank DeLeo in March, April, May and June of 2006 and did not complain at any of these office visits of severe abdominal pains or the need for additional medication over and above what Respondent was already taking to control his symptoms. Respondent offered conflicting testimony regarding the timing of his usage of the cocaine. At the preliminary hearing in March 2006 for Grimwood and Walter, he testified under oath that he used the cocaine the next day, belying his current assertion that he used it immediately to ease his IBS symptoms and suggesting that his symptoms were not as severe as he claims. Regardless of which version of events is more accurate, Respondent was well aware of the criminality of his actions and intentionally chose his course of conduct. The Board concludes that the evidence offered by Respondent to show a causal connection between his illness and his misconduct is not sufficient under Braun and he is not entitled to mitigation of sanction.

There are numerous disciplinary cases involving attorneys' distribution or possession of cocaine. The sanctions range from private reprimand to disbarment. In Office of Disciplinary Counsel v. Simon, 507 A.2d 1215 (Pa. 1986), the Supreme Court of Pennsylvania held that "facilitating the sale and purchase of cocaine, alone, warrants disbarment." 507 A.2d at 1220. Simon acted as a middle man between his client and a purchaser for the sale and purchase of four ounces of cocaine. He was found guilty after a jury trial of unlawfully, willfully and knowingly conspiring to import, distribute and possess with intent to distribute, and unlawfully, knowingly and intentionally possessing with intent to distribute, cocaine. This case had two aggravating factors in that the attorney knew that

one-half ounce was to be sold on the street; and the attorney refused to tell the authorities the identity of the ultimate purchaser. The attorney was disbarred. In the case of In re Anonymous No. 3 DB 89, 18 Pa. D. & C. 4th 490 (1993), the attorney was addicted to cocaine and alcohol and delivered cocaine to a police informant. He was convicted of one count of possession with intent to deliver. This attorney was suspended for five years. In the case of In re Anonymous No. 22 DB 88, 14 Pa. D. & C. 4th 74 (1991), the attorney had an alcohol and cocaine dependency, and exchanged drugs and money with a client whom he knew to be a drug dealer in order to cultivate a relationship with a client who was a potential supplier. The attorney was suspended for three years. The attorney's addiction was considered a mitigating factor.

In the matter of In re Anonymous No. 60 DB 83, 33 Pa. D. & C. 3d 187 (1984), an attorney was convicted of simple possession of one-quarter ounce of cocaine which he received as a wedding present. The Board recommended a one year suspension which the Supreme Court imposed. In In re Anonymous No. 37 DB 88, 50 Pa. D. & C. 3d 526 (1989), the attorney was addicted to cocaine and accepted cocaine supplied by a client in lieu of fees. He was convicted for possession of marijuana, cocaine, and paraphernalia. He was suspended for ten months. An attorney who served as an intermediary in the sale of one-eighth ounce of cocaine to a police informant was publicly censured by the Supreme Court. In re Anonymous No. 124 DB 89, 12 Pa. D. & C. 4th 417 (1991). The attorney made no money from the deal and cooperated with the police.

As can be seen from the above cited cases, the individual facts of the cases determine the severity of the sanction. Here, Respondent solicited his client to commit a felony for which the client is serving a sentence. While it was an isolated incident in Respondent's professional career, his misconduct lessened the public confidence in the legal profession. Office of Disciplinary Counsel v. Simon, 507 A.2d at 1219.

Respondent seeks the imposition of a public censure or even a private reprimand and relies heavily on the cases that resulted in such discipline. The Board's review of the record and the case law persuades us that suspension is warranted. In Respondent's own words, his conduct was "pretty obscene," "despicable," and "horrible." Respondent's misconduct deserves a suspension of one year and one day.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Edward John Mimmagh, be suspended from the practice of law for a period of one year and one day.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Smith Barton Gephart, Vice-Chair

Date: November 27, 2007

Board Members Pietragallo, Baer, Cognetti and Buchholz did not participate in the adjudication.

Board Member O'Connor dissented and would recommend a two year suspension.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No: 185 DB 2006
Petitioner :
v. :
Attorney Registration No. 87860
EDWARD JOHN MIMNAGH :
Respondent : (Dauphin County)

DISSENTING OPINION TO THE REPORT AND RECOMMENDATIONS OF THE
DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

I concur in the findings of fact of the majority but disagree with the recommendation of the majority.

A review of the record shows the Respondent has used cocaine since the late 1980's as found in the majority opinion. He continued to use this drug he admits, on an irregular basis in the 1990's and then he alleges he used it for medicinal purposes in 2005.

We are dealing with a person who used an illegal substance prior to his admission to the bar and after. At all times he had to know it was illegal. He took a sacred oath upon admission to the bar and violated that oath. This is not a one-time use of a substance but rather a continuing course of conduct whereby the Respondent used a substance he knew was illegal and justified it because of the effect it had on him. If defense lawyers could use this in court the jails would have far fewer occupants.

Compounding the use of cocaine the Respondent requested a client to commit a crime. Whether or not Mr. Grimwood had been a dealer or would have dealt in cocaine anyway is not relevant.

What is relevant here is that the Respondent requested his client agree to obtain cocaine for him. He, an officer of the court, requested another commit a crime for his benefit.

Had a law enforcement agency not been on to Mr. Grimwood, the Respondent's purchase and use of cocaine might still be continuing today.

Mr. Grimwood received thirty-three months to six years in jail. The Respondent received no time of incarceration; in fact he had no criminal charges filed against him.

The Respondent, after soliciting his client to commit a felony, proceeded to testify against his client, the same person whom he solicited to commit a crime, and who committed a serious violation of the law for Respondent's benefit.

As the Hearing Committee found, the actions of the Respondent lessened "public confidence in the legal profession". The implication is a lawyer can request a client to commit a felony, use the "fruits" of the crime, commit an illegal act, and then proceed to testify against his client with immunity from prosecution. In other words, a lawyer is above the law.

As lawyers we owe a duty to our clients. We should act with respect for the law. Not only should we avoid illegal activity, but also we should never knowingly cause our clients to commit illegal acts. Even if we suspect a client

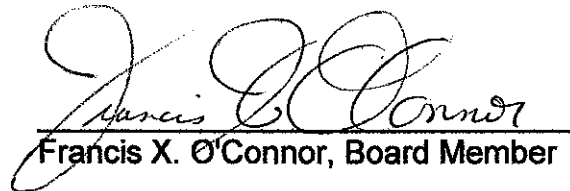
may be inclined to be involved in illegal activity, we owe a duty to our profession, our clients and the public at large to not encourage it.

As found by the Hearing Committee, "the Respondent committed a major violation of the law and has brought the legal profession into disrepute".

Mr. Mimmagh is an admitted long-term user of cocaine. He committed a criminal act and encouraged others to engage in criminal activity. He violated his sacred oath.

I concur with the Hearing Committee and dissent from the majority's recommendation, recommending instead, as the Hearing Committee did, for a two-year suspension.

Respectfully submitted,


Francis X. O'Connor, Board Member

Dated November 27, 2007