

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1533 Disciplinary Docket No. 3  
Petitioner :  
 : No. 149 DB 2009  
v. :  
 : Attorney Registration No. 34322  
WILLIAM FLOYD CONWAY, :  
Respondent : (Allegheny County)

ORDER

**PER CURIAM:**

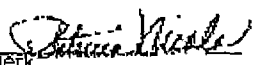
AND NOW, this 3<sup>rd</sup> day of October, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 15, 2011, it is hereby

ORDERED that William Floyd Conway is suspended from the Bar of this Commonwealth for a period of three years retroactive to February 3, 2010, 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.

Mr. Justice McCaffery files a dissenting statement.

A True Copy Patricia Nicola  
As Of 10/3/2011

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania



determined that there is no Braun mitigation because Respondent was not addicted to drugs or afflicted with any other psychiatric disorder that caused the professional misconduct.

In the case of Office of Disciplinary Counsel v. Perry Perrino, 18 Pa. D. & C. 4<sup>th</sup> 490 (1993), Mr. Perrino was convicted of possession with intent to distribute cocaine. Like the Respondent in this case, Mr. Perrino delivered the controlled substance to another person, his wife's cousin, for personal reasons; he had no profit motive. Despite the existence of Braun mitigation, Mr. Perrino was suspended by the Court for a period of five years, retroactive to the date of his temporary suspension. An apparently significant aggravating factor was that at the time Mr. Perrino committed the offense, he was waiting to assume a new position as an assistant district attorney, a position in which he would have had the duty to prosecute individuals for drug offenses similar to those he himself had committed.

Instantly, there is no Braun mitigation, and I view the level of professional misconduct here to be equivalent to that which Mr. Perrino committed. In both cases, the level of individual hypocrisy and reprehensible character is outrageous. Indeed, a colorable argument can be made that the hubris exhibited by Respondent here eclipses that exhibited by Mr. Perrino, who did not use his position as an officer of the court to facilitate his illegal distribution of narcotics.

Moreover, Respondent's instant infraction is only part of a larger pattern of aberrant behavior. In 2004, Respondent was arrested and charged with possession of crack cocaine and careless driving. Those charges were amended and Respondent ultimately pled guilty to disorderly conduct, which is not a "serious crime" as defined by the Disciplinary Rules. It also bears mentioning that in approximately 1976, while still a law student, Respondent entered a guilty plea to attempted sodomy and received a three-month sentence of incarceration in West Virginia. Although the sodomy statute at issue was repealed shortly after Respondent's conviction, in October 1977, Respondent was

again arrested and convicted of soliciting a juvenile to perform an unlawful sexual act. Respondent's history bespeaks dubious and reckless character traits that are not easily subject to reform, particularly given that Respondent is 63 years of age. Accordingly, I believe a five-year suspension is warranted.

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1533 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 149 DB 2009
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	:	Attorney Registration No. 34322
WILLIAM FLOYD CONWAY	:	
Respondent	:	(Allegheny 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 February 3, 2010, the Supreme Court entered an Order placing William Floyd Conway on temporary suspension and referring the matter to the Disciplinary Board. On March 3, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Mr. Conway. The Petition charged Respondent with misconduct arising out of conviction of various criminal charges. Respondent filed an Answer to Petition for Discipline on April 6, 2010.

A disciplinary hearing was held on June 16, 2010 before a District IV Hearing Committee comprised of Chair Martin T. Durkin, Esquire, and Members Steven R. Wolf, Esquire, and Laura Cohen, Esquire. Respondent was represented by Ryan R. Smith, Esquire.

The Hearing Committee filed a Report on October 22, 2010, concluding that Respondent violated the Rules of Disciplinary Enforcement and recommending that he be suspended for a period of three years, retroactive to the date of his temporary suspension by the Supreme Court.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 19, 2011.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave., Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the 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 William Floyd Conway. He was born in 1948 and was admitted to practice law in the Commonwealth of Pennsylvania in 1981. His attorney

registration mailing address is 130 Pearl St., #1, Pittsburgh PA 15224-1560. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of professional discipline in Pennsylvania.

4. On November 5, 2009, the Supreme Court, pursuant to Rule 214(d)(1), Pa.R.D.E., entered a rule directing Respondent to show cause why he should not be placed on temporary suspension.

5. Respondent did not respond to the rule to show cause.

6. By Order dated February 3, 2010, the Supreme Court made the rule absolute, placed Respondent on temporary suspension, and directed Respondent to comply with the provisions of Rule 217, Pa.R.D.E.

7. By the same February 3, 2010 Supreme Court Order, Respondent's criminal conviction in the Court of Common Pleas of Allegheny County and in the Allegheny Magisterial District Court were referred to the Disciplinary Board pursuant to Rule 214(f)(1) and (g), Pa.R.D.E.

8. On March 23, 2007, Respondent was arrested by detectives from the Allegheny County Police Narcotics Unit after he concealed an envelope containing a controlled substance (marijuana) in his sock, signed into the Allegheny County Jail (ACJ) and met with an inmate in the attorney-client room in the ACJ and then delivered the envelope to the inmate.

9. On September 20, 2007, the Allegheny County District Attorney filed a criminal information against Respondent, charging him with one count each of:

- (a) Controlled substance contraband to confined persons prohibited in violation of 18 Pa. C.S. Section 5123(a), a felony of the second degree;
- (b) Possession with intent to deliver marijuana, a schedule I controlled substance, in violation of 35 Pa. C.S. Section 780-113(a)(30), a felony;
- (c) Possession with intent to deliver marijuana, a schedule I controlled substance (delivery completed), in violation of 25 Pa.C.S. Section 780-113(a)(30), a felony;
- (d) Possession of marijuana, a controlled substance, in violation of 35 Pa. C.S. Section 780-113(a)(16), as amended a misdemeanor;
- (e) Criminal conspiracy in violation of 18 Pa.C.S. Section 903(a)(1), a felony of the second degree.

10. Following his arrest and after being advised of his right to counsel, Respondent voluntarily provided the detectives with a statement and admission that he received an unsealed envelope with the contents inside and he accepted it, sealed the envelope, concealed it in his sock, and delivered it to an inmate at the ACJ while meeting with the inmate in the attorney-client meeting room at the jail.

11. On June 30, 2009, Respondent, with the advice of counsel, executed a written plea colloquy, and voluntarily entered a plea of guilty to the charges contained in the criminal information.

12. Judge Donald Machen accepted Respondent's plea of guilty and sentenced Respondent that same day.



13. Respondent was sentenced on Count 1, controlled substance contraband to confined persons, to a period of five years probation. As to the remaining counts, the Court imposed no further penalty upon Respondent.

14. The terms and conditions of Respondent's five year probation were to be set by the probation office. All costs of the prosecution, except for supervision fees, were waived by the Court.

15. Notice of Respondent's sentencing was sent to the Office of the Secretary of the Board.

16. On June 4, 2004, a criminal complaint was filed by Swissvale Borough Police in Magisterial District Court charging Respondent with possession of a controlled substance, crack cocaine, in violation of 35 P.S. Section 780-113(a)(16), and careless driving in violation of 75 Pa.C.S. Section 3714.

17. At a preliminary hearing on July 21, 2004, the charges were amended and moved to the non-traffic docket.

18. On September 15, 2004, Respondent entered a plea of guilty to one count of disorderly conduct in violation of 18 Pa.C.S. Section 5503(a)(4), at which time Respondent was sentenced to pay a fine and costs.

19. Respondent was not required to report his conviction of disorderly conduct to the Office of the Secretary of the Board.

20. Respondent is currently receiving treatment through the Western Psychiatric Institute and Clinic's Center of Psychiatric and Chemical Dependency Services (CPCDS).

21. Respondent started voluntary treatment and therapy at CPCDS in November 2009.

22. In December 2009, Respondent completed the partial hospitalization program, and in March 2010 he completed the intensive outpatient program.

23. As of the June 16, 2010 hearing date, Respondent was participating in the after care program, which meets one day per week.

24. Concurrently with the programs for chemical dependency, Respondent is receiving psychiatric care and counseling.

25. After starting his care at CPCDS, Respondent was diagnosed as having cocaine dependency and a depressive disorder.

26. Respondent takes the drug Celexa for depression.

27. Respondent attends Alcoholics and Narcotics Anonymous meetings approximately four times per week, along with participation in programs offered by Lawyers Concerned for Lawyers.

28. Respondent has maintained abstinence from drugs and alcohol since November 2009.

29. Respondent remains on probation and is monitored by the Allegheny County Adult Probation Office.

30. Respondent acknowledged he still has an unpaid balance due and owing to District Court of \$81.

31. Respondent was actively practicing law at the time of the misconduct, but is currently unemployed and collects unemployment compensation.

32. Respondent is enrolled in Career Link in an effort to obtain employment.

33. Respondent has no health care coverage and relies on Allegheny County to pay for his participation in treatment programs and his prescription medication.

34. Respondent cooperated with Petitioner.

35. Respondent acknowledged his misconduct and is remorseful for his actions.

### III. CONCLUSIONS OF LAW

1. Each count of the Criminal Information filed in the Court of Common Pleas of Allegheny County, of which Respondent was convicted, is a "serious" crime as defined by Rule 214(i), Pa.R.D.E.

2. Respondent's conviction in Magisterial District Court on the summary amended charge of disorderly conduct is not a "serious" crime as defined by Rule 214(i), Pa.R.D.E.

3. Respondent's convictions in the Court of Common Pleas and in Magisterial District Court are an independent basis for discipline under Rule 203(b)(1), Pa.R.D.E.

4. Respondent failed to prove by clear and convincing evidence that he suffered from drug addiction and depression at the times he engaged in the misconduct, nor did he establish by clear and convincing evidence that any addiction or depression was a causal factor in the misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989)

### IV. DISCUSSION

This matter is before the Board for consideration of the appropriate discipline to be imposed on Respondent as a result of his criminal convictions. The certified copies of the court records from Respondent's conviction in the Allegheny County Court of

Common Pleas constitute conclusive evidence of his commission of the serious crimes charged in the criminal information. Further, the certified copies of the court records from Magisterial District Court constitute conclusive evidence of Respondent's commission of the crime of disorderly conduct. These convictions are an independent basis for discipline pursuant to Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement.

The factual essence of this matter is that Respondent needed money for cocaine. His drug dealer was in prison and the dealer's girlfriend came to Respondent and asked him to take drugs into the prison in exchange for money and some cocaine for personal use. Respondent agreed to do this, went to the prison and was arrested. Respondent is also charged with a summary conviction of disorderly conduct which occurred approximately six years prior to the disciplinary hearing.

Respondent testified on his own behalf as to his efforts to address his substance abuse issues. He eventually sought treatment for his substance abuse in November 2009, some five months after his conviction in the Allegheny County Court, and years after his disorderly conduct conviction. Respondent successfully completed a partial hospitalization program and intensive outpatient program at Western Psychiatric Institute, and is currently involved in an after care program at that facility. Respondent attends Alcoholics and Narcotics Anonymous at least four times per week and participates in Lawyer Concerned for Lawyers. He has remained abstinent from drugs since November 2009.

Respondent's evidence does not establish clearly and convincingly that he was addicted to drugs at the time of the misconduct, nor did he prove that any addiction was a causal factor in his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). Respondent testified that he used drugs, with cocaine as his choice.

Respondent was actively practicing law during the time periods of his misconduct, working every day and meeting with clients. While the Board concludes that Respondent did not meet his burden pursuant to Braun, we do conclude that he is entitled to some mitigation to acknowledge the steps he has taken to prevent reoccurrences of his problems. Additionally, Respondent cooperated with Petitioner and showed remorse for his misconduct, and has no record of prior discipline in Pennsylvania.

Case law reveals several cases in which attorneys were convicted of various drug offenses, including possession with intent to deliver and delivery of controlled substance. In the matter of Office of Disciplinary Counsel v. Gregory V. Smith, 14 Pa. D. & C. 4<sup>th</sup> 74 (1991), Mr. Smith was suspended for a period of three years retroactive to the date of his temporary suspension. Mr. Smith sold cocaine to his client on two occasions in order to secure a future supply of the drug. He sought treatment and fully admitted his misconduct. In the matter of Office of Disciplinary Counsel v. Perry Perrino, 18 Pa. D. & C. 4<sup>th</sup> 490 (1993), Mr. Perrino was convicted in federal court of the crime of possession with intent to distribute cocaine. Mr. Perrino delivered the cocaine to another person, his wife's cousin, who happened to be a police informant. It was done for personal reasons and without a profit motive. An aggravating factor in Mr. Perrino's case was that he was to assume a new position as an assistant district attorney. Mitigation was afforded pursuant to Braun. Even so, the Court suspended Mr. Perrino for five years retroactive to the date of his temporary suspension.

An attorney who was convicted of numerous drug charges, including possession, driving under the influence and defiant trespass was suspended for a period of three years. No Braun mitigation was found. Office of Disciplinary Counsel v. Mark E. Johnston, 75 Pa. D. & C. 4<sup>th</sup> 424 (2005).

Finally, in the 1994 case of Office of Disciplinary Counsel v. Henry Barr, 24 Pa. D. & C. 4<sup>th</sup> 169 (1994), the Supreme Court suspended Mr. Barr for a period of three years retroactive to the date of his temporary suspension. Mr. Barr was convicted in federal court for possession of cocaine and use of cocaine. Mr. Barr never sold the drugs. However, Mr. Barr was a prosecuting attorney at the time of the conviction, which aggravated the circumstances.

The Hearing Committee has recommended a three year period of suspension, retroactive to the date of Respondent's temporary suspension from the practice of law on February 3, 2010. The parties did not take exception to this recommendation. The Board's review of the totality of the circumstances and prior similar cases persuades us that this is an appropriate sanction to address Respondent's misconduct.


V. RECOMMENDATION .

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, William Floyd Conway, be Suspended from the practice of law for a period of three years retroactive to February 3, 2010.

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:   
Gabriel L. Bevilacqua, Board Member

Date: April 15, 2011

Board Member Todd did not participate in the adjudication.