

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1731 Disciplinary Docket No. 3
Petitioner :
 : No. 59 DB 2011
v. :
 : Attorney Registration No. 206555
ROBERT JOSEPH KIDWELL, III, :
Respondent : (Monroe County)


ORDER

PER CURIAM

AND NOW, this 9th day of August, 2012, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated May 15, 2012, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Robert Joseph Kidwell, III, be subjected to public censure by the Supreme Court.

A True Copy Patricia Nicola
As Of 8/9/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


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RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members David A. Nasatir, Howell K. Rosenberg, and Albert Momjian, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on April 19, 2012.

The Panel approves the Joint Petition consenting to a Public Censure and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.


David A. Nasatir, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 5/15/2012

BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

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ROBERT JOSEPH KIDWELL, III :
Respondent : (Monroe County)

JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Joseph J. Huss, Disciplinary Counsel, and Respondent, Robert Joseph Kidwell, III, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement and respectfully state and aver the following:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), 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.

FILED

APR 19 2012

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

2. Respondent, Robert Joseph Kidwell, III, was born in 1979, and admitted to the practice of law in the Commonwealth on October 11, 2007. Respondent's office is located at 712 Monroe Street, Stroudsburg, Monroe County, Pennsylvania 18360.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania

4. Respondent is represented by Barbara S. Rosenberg, 1060 First Avenue, Suite 400, King of Prussia, PA 19406.

FACTUAL ADMISSIONS
(As Stipulated to by the Parties at the
March 6, 2012 Disciplinary Hearing -
See Exhibit J-1)

5. On the night of January 10, 2009, Respondent, whose blood alcohol content (BAC) was .13%, was operating a motor vehicle. He struck and killed a pedestrian. The pedestrian was wearing dark clothing, was in Respondent's path of travel, had marijuana in his system, and had a BAC of .25%.

6. On August 30, 2010, Respondent, pursuant to a negotiated plea agreement, entered a plea of guilty to Driving Under the Influence (75 Pa.C.S.A. §3802(B)), and a plea of no contest to Involuntary Manslaughter (18 Pa.C.S.A. §2504(A)).

7. On October 29, 2010, Respondent was sentenced to an aggregate sentence of 6 to 18 months incarceration, plus a \$500 fine and costs. He was granted work release on December 15, 2010, and resumed his law firm employment at that time (see ¶13 g.). He was subsequently paroled on April 21, 2011, having served the minimum term of his sentence, including four months on work release.

8. Respondent reported his conviction, as required by Pa.R.D.E. 214(a), by letter to the Disciplinary Board Secretary dated October 20, 2010.

**SPECIFIC PENNSYLVANIA RULE OF
DISCIPLINARY ENFORCEMENT VIOLATED**

9. Respondent acknowledges that he is subject to discipline pursuant to Pennsylvania Rule of Disciplinary Enforcement 203(b)(1) for his criminal conviction of Driving Under the Influence (75 Pa.C.S.A. §3802(B)) and Involuntary Manslaughter (18 Pa.C.S.A. §2504(A)).

RECOMMENDATION FOR DISCIPLINE

10. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a public censure.

11. Respondent hereby consents to the imposition of this discipline by the Supreme Court of Pennsylvania. Attached to this is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that he consents to the recommended discipline including the mandatory acknowledgments contained in Pa.R.D.E. 215(d)(1) through (4).

AGGRAVATING CIRCUMSTANCES

12. In support of the parties' joint recommendation, it is respectfully submitted there are aggravating circumstances, as follows:

- a. Respondent was criminally culpable for the death of the pedestrian whom he struck and killed on January 10, 2009.

MITIGATING CIRCUMSTANCES

13. In support of the parties' joint recommendation, it is respectfully submitted there are mitigating circumstances, as follows:

- a. Respondent has admitted and acknowledged engaging in the conduct upon which the aforesaid criminal prosecution, as well as this disciplinary prosecution, are based;
- b. Respondent fully cooperated with the law enforcement authorities, and has fully cooperated with Petitioner, as evidenced by Respondent's admissions herein and his consent to receiving the jointly recommended discipline;
- c. Respondent is remorseful for his misconduct, as set forth in his testimony at the disciplinary hearing conducted in this matter on March 6, 2012;
- d. While criminally culpable for the victim's death, there were significant mitigating circumstances noted by the sentencing court, as set forth in the Pre-Sentence Investigation Report, to wit:
 - i. The victim had a blood alcohol content of .25%, as well as marijuana in his system, while Respondent's blood alcohol content was .13%;
 - ii. The victim was dressed in dark clothing and was within Respondent's path of travel. Undisputed expert testimony indicated that, given the totality of the circumstances, the accident would have occurred whether Respondent was alcohol impaired or not; and
 - iii. The defendant has led an "exemplary life," having maintained gainful employment throughout his adult life, as well as obtaining a law degree and a teaching degree.
- e. Numerous character witnesses testified at Respondent's disciplinary hearing, or submitted letters, attesting to Respondent's numerous positive traits of character, as well as his upstanding reputation in the community;
- f. Respondent, who is 33 years old, is married, and has a 2-year-old son. His wife is several months pregnant;
- g. Prior to, and since this incident, Respondent has been employed as a lawyer by the Stroudsburg, Pennsylvania law firm of Newman, Williams, Mishkin, Corveleyn, Wolfe, and Fareri;

- h. Attorneys Ronald Mishkin (Respondent's stepfather), Daniel Corveleyn, and Gerald J. Geiger, all of whom are principals at this firm, testified to Respondent's remorse, as well as to his productive work ethic and positive traits of character, based upon their frequent personal interaction with Respondent during the period subsequent to the incident in question;
- i. Since his admission to practice in October 2007, Respondent has not been the subject of a disciplinary complaint received by the Office of Disciplinary Counsel; and
- j. Prior to this incident, Respondent has never been charged with a criminal offense, other than those involved in the instant matter.

OTHER RELEVANT CIRCUMSTANCES

14. Respondent does not suffer from alcoholism, or any other type of addictive disorder, and does not seek *Braun* mitigation.

RELEVANT LEGAL PRECEDENT

15. The parties believe that the recommended public censure is consistent with the following disciplinary case law, given the circumstances of the instant matter:

- a. In *Office of Disciplinary Counsel v. Rickabaugh*, 75 DB 1992, 19 Pa. D. & C.4th 143 (1993), respondent pled guilty to homicide by vehicle and DUI (both misdemeanors at that time). The respondent, while intoxicated, with a passenger in his vehicle, caused a one-car accident resulting in the death of the passenger. He was sentenced to 30 to 60 months incarceration. The Board opined that a public censure was appropriate. In a dissent, two Board Members stated their belief, notwithstanding the fact respondent's misconduct did not involve the practice of law, that:

Each member of the bar assumes a public position when he or she is admitted to practice. This position in society demands that every lawyer exemplify the highest standards of respect for the law, as benefits "an officer of the court." *Office of Disciplinary Counsel v. Casety*, (61 DB 1984), 511 Pa. 177, 512 A.2d 607 (1986). Where one who has sworn to

uphold the law is convicted of breaching it, the public's confidence may be jeopardized and the Court's endorsement undercut. *Office of Disciplinary Counsel v. Stern*, (2 DB 1985), 515 Pa. 68, 526 A.2d 1180 (1987).

The Court suspended Rickabaugh for one year and one day, retroactive to the date he was placed on temporary suspension.

- b. In *Office of Disciplinary Counsel v. Murphy*, No. 32 DB 2007 (2008), Murphy, with a blood alcohol content of .24%, struck a car head-on causing severe injuries to the driver and passengers. Murphy pled guilty to felony aggravated assault with a vehicle while driving under the influence and reckless endangerment (a misdemeanor). He had a prior DUI, as well as a prior conviction for failure to report an accident involving personal injury. Additionally, he failed to report his criminal convictions to the Board. *Braun* mitigation, based upon respondent's alcoholism, was found to exist. The Court directed that respondent be suspended for six months, that the suspension be stayed in its entirety, and that he be placed on probation for four years subject to numerous conditions, including participating in alcohol counseling and being monitored by a sobriety monitor.

- c. In *Office of Disciplinary Counsel v. William Austin Watkins*, 38 DB 2000 (2001), respondent was convicted of one count of DUI in 1994, which resulted in his being admitted to an alcohol treatment facility in lieu of incarceration. In 1999 he caused an automobile accident by "rear ending" a vehicle, resulting in soft tissue injuries to the occupants. He left the scene, and failed to report this incident. An investigation by the Pennsylvania State Police resulted in respondent's arrest for Accidents Involving Death or Personal Injury. He was subsequently sentenced to intermediate punishment for one year, including a two week sentence to be served in the out-mate restrictive intermediate punishment program. He failed to report either his 1994 or 1995 convictions to the Disciplinary Board. There was no evidence supporting a claim of *Braun* mitigation, notwithstanding the fact that respondent had yet another DUI arrest, in 1989, for which he successfully completed an Accelerated Rehabilitative Disposition (ARD) program. The Supreme Court adopted the Disciplinary Board's recommendation of a public censure.

16. Most lawyers convicted of driving under the influence have received private reprimands. Many such cases have involved some aggravating circumstances, including respondent's conviction of a felony (not present in the instant matter), utilization of a controlled substance in addition to alcohol, previous convictions for driving under the influence or other offenses, failure to report the conviction to the Board, failing to demonstrate remorse, and also engaging in practice-related misconduct. See e.g.: *Office of Disciplinary Counsel v. Anonymous*, No. 105 DB 2002 (2002); *Office of Disciplinary Counsel v. Anonymous* No. 37 DB 2004 (2005); *Office of Disciplinary Counsel v. Anonymous*, No. 56 DB 2000 (2001); *Office of Disciplinary Counsel v. Anonymous*, No. 140 DB 2000 (2002); *Office of Disciplinary Counsel v. Anonymous*, No. 61 DB 2003 (2004); *Office of Disciplinary Counsel v. Anonymous*, No. 142 DB 2003 (2003); *Office of Disciplinary Counsel v. Anonymous*, No. 57 DB 2004 (2004); *Office of Disciplinary Counsel v. Anonymous*, No. 30 DB 2003 (2004); *Office of Disciplinary Counsel v. Anonymous*, No. 67 DB 2001 (2002); *Office of Disciplinary Counsel v. Anonymous*, No. 26 DB 2000 (2001); *Office of Disciplinary Counsel v. Anonymous*, No. 24 DB 2004 (2004); *Office of Disciplinary Counsel v. Anonymous*, No. 25 DB 1999 (2000); *Office of Disciplinary Counsel v. Anonymous*, No. 160 DB 2003 (2004); *Office of Disciplinary Counsel v. Anonymous*, No. 169 DB 2003 (2005); *Office of Disciplinary Counsel v. Anonymous*, No. 133 DB 2004 (2005); and *Office of Disciplinary Counsel v. Anonymous*, No. 171 DB 2002 (2004).

17. The parties submit that, given the unique circumstances of this matter, including those surrounding the victim's death, the exemplary background of Respondent, the other significant mitigating circumstances, and the absence of any

evidence that Respondent suffers from alcoholism or other type of substance abuse, that a suspension and/or probation are not warranted. Cf. e.g., *Office of Disciplinary Counsel v. Bonavita*, No. 184 DB 2007 (2009); *In re Anonymous* No. 101 DB 2003, (2004); and *Office of Disciplinary Counsel v. Murphy*, *supra*. Also see *Office of Disciplinary Counsel v. Yukevich*, No. 103 DB 2009 (2011); *Office of Disciplinary Counsel v. Gallen*, No. 8 DB 2002 (2004); *Office of Disciplinary Counsel v. Hohendel*, No. 18 DB 2008 (2009); and, *Office of Disciplinary Counsel v. Moore*, No. 113 DB 1996 (2001).

18. The parties respectfully submit that a public censure, given the facts of the instant matter, is consistent with the above cited disciplinary authority.

WHEREFORE, Petitioner and Respondent respectfully request that your Honorable Board recommend the imposition of the proposed discipline, a public censure, by the Supreme Court of Pennsylvania.

Respectfully submitted,

4/16/12

DATE



Robert Joseph Kidwell, III
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090 x 224
Attorney I.D. No. 206555

4/13/12

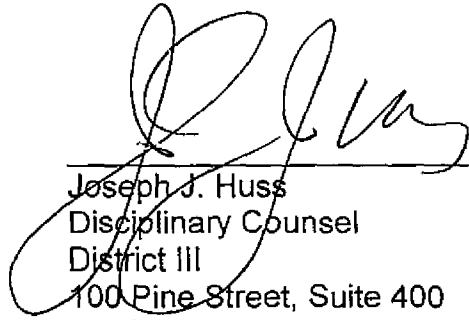
DATE



Barbara S. Rosenberg
Counsel for Respondent
1060 First Avenue, Suite 400
King of Prussia, PA 19406
(610) 964-1484
Attorney I.D. No. 18522

4/18/12

DATE

A handwritten signature in black ink, appearing to read "J. Huss", is written over a horizontal line. The signature is stylized and cursive.

Joseph J. Huss

Disciplinary Counsel

District III

100 Pine Street, Suite 400

Harrisburg, PA 17101

(717) 772-8572

Attorney I.D. No. 27751

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**RESPONDENT'S AFFIDAVIT UNDER RULE 215(d) OF THE
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT**

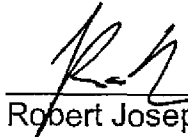
I, ROBERT JOSEPH KIDWELL, III, being duly sworn according to law, hereby submit this affidavit in support of the *Joint Petition for Discipline on Consent*, and aver as follows:

1. I am an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 11, 2007.
2. I desire to submit a *Joint Petition in Support of Discipline on Consent* pursuant to Pa.R.D.E. 215(d).
3. My consent is freely and voluntarily rendered. I am not being subjected to coercion or duress, and am fully aware of the implications of submitting this *Joint Petition*.
4. I am aware there is presently an investigation into allegations that I am guilty of misconduct as set forth in the *Joint Petition*.
5. I acknowledge that the material facts set forth in the *Joint Petition* are true.

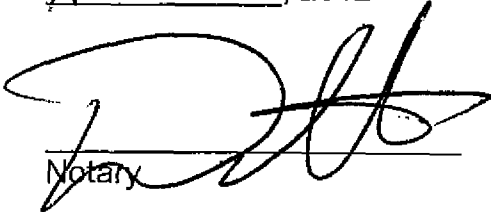
6. I consent to the imposition of discipline because I know that if the charges against me were prosecuted I could not successfully defend against them.

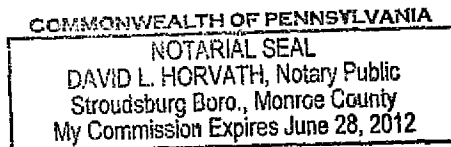
7. I am fully aware of my right to consult and employ counsel to represent me in the instant proceeding. I have retained, consulted and acted upon the advice of counsel, Barbara S. Rosenberg, Esquire in connection with my decision to execute the within *Joint Petition*.

Signed this 16th day of April, 2012.


Robert Joseph Kidwell, III, Respondent

Sworn to and subscribed
before me this 16 day of
APRIL, 2012


Notary



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VERIFICATION

I, Robert Joseph Kidwell, III, state under the penalties provided in 18 Pa.C.S. §4904 (unsworn falsification to authorities) that the facts contained in the *Joint Petition in Support of Discipline on Consent* are true and correct to the best of my knowledge, information and belief.



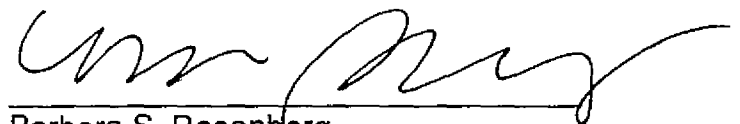
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Attorney Registration No. 206555
712 Monroe Street
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VERIFICATION

I, Barbara S. Rosenberg, state under the penalties provided in 18 Pa.C.S. §4904 (unsworn falsification to authorities) that the facts contained in the *Joint Petition in Support of Discipline on Consent* are true and correct to the best of my knowledge, information and belief.



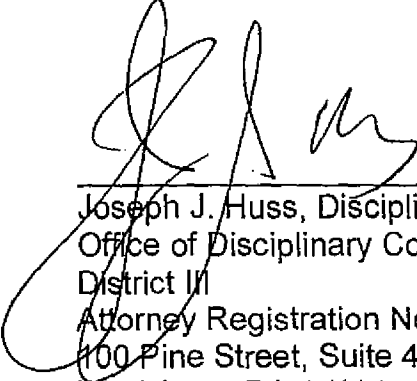
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VERIFICATION

I, Joseph J. Huss, state under the penalties provided in 18 Pa.C.S. §4904 (unsworn falsification to authorities) that the facts contained in the *Joint Petition in Support of Discipline on Consent* are true and correct to the best of my knowledge, information and belief.



Joseph J. Huss, Disciplinary Counsel
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