

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1187 Disciplinary Docket No. 3
Petitioner	:	
	:	
v.	:	No. 92 DB 2006
	:	
	:	Attorney Registration No. 81990
JAMES E. BUDZAK,	:	
Respondent	:	(Beaver County)

ORDER

PER CURIAM:

AND NOW, this 10<sup>th</sup> day of March, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 6, 2007, it is hereby

ORDERED that James E. Budzak is suspended from the Bar of this Commonwealth for a period of three years, that the suspension be stayed in its entirety and that he be placed on probation for a period of three years, subject to the following conditions:

1. Respondent shall abstain from using alcohol or any other mind-altering chemical, except as prescribed by licensed medical providers;
2. Respondent shall meet quarterly with a treating psychiatrist;
3. Respondent shall provide an authorization to Office of Disciplinary Counsel for the release of information and records from his medical providers;
4. Respondent shall provide verification of continued use of appropriate medications as prescribed by his treating physicians.

5. In addition to the conditions cited above, respondent shall continue to comply with the probationary requirements ordered by the Disciplinary Board on February 7, 2006 at No. 22 DB 2005.

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 Patricia Nicola

As of: March 10, 2008

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1187 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	No. 92 DB 2006
	:	
JAMES E. BUDZAK	:	Attorney Registration No. 81990
Respondent	:	(Beaver 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 May 16, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against James E. Budzak, Respondent. The Petition charged Respondent with professional misconduct arising out of misrepresentations made to a client. A Joint Petition for Discipline on Consent was filed with the Disciplinary Board on July 5, 2006. A three-

member Board panel approved the Joint Petition on July 18, 2006. By Order dated October 13, 2006, the Supreme Court of Pennsylvania denied the Joint Petition for Discipline on Consent.

Respondent filed an Answer to Petition for Discipline on November 2, 2006. A disciplinary hearing was held on January 19, 2007, before a District IV Hearing Committee comprised of Chair David K. Harouse, Esquire, and Members William D. Phillips, Esquire, and Mark Gordon, Esquire. Respondent was represented by John E. Quinn, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 30, 2007, finding that Respondent engaged in professional misconduct and recommending that he receive a three year stayed suspension and three year probation as well as a private reprimand.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 21, 2007.

## 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 208 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, James E. Budzak, was born in 1969 and was admitted to practice law in the Commonwealth in 1998. His attorney registration mailing address is 2108 Ridge Road Ext., Ambridge, Beaver County, Pennsylvania 15003. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent was subjected to a private reprimand by the Disciplinary Board on July 7, 2006. Additionally, the Board directed that Respondent be placed on probation for two years. The basis for the discipline was Respondent's guilty plea to one count of possession of heroin and one count of possession of cocaine. The probation is due to expire on April 17, 2008.

4. In June 2003, Respondent filed a complaint on behalf of Joseph Irwin in Mr. Irwin's civil action in the Court of Common Pleas of Beaver County, Pennsylvania.

5. At that time Respondent was employed as in house counsel for E.S. Environmental, and Mr. Irwin was Respondent's only private client.

6. In September 2003, Respondent told Mr. Irwin that he was going to schedule a date to depose Loretta Rudman, the defendant in the case.

7. In the fall of 2003, when Mr. Irwin met with Respondent at his office, Respondent discussed the upcoming deposition of Ms. Rudman.

8. The deposition did not occur due to scheduling problems.

9. From mid-November 2003 through January 2004, Mr. Irwin telephoned Respondent at least twice a week, leaving messages requesting that Respondent call him about discovery in his case.

10. Respondent did not return all of Mr. Irwin's calls.

11. In December 2003 Respondent was arrested for possessing heroin and cocaine.

12. At the time of his arrest, Respondent conceded that he was substantially addicted to heroin, which he used on a daily basis to function.

13. Mr. Irwin became aware of Respondent's arrest shortly after it happened and revealed to Respondent his knowledge regarding the same.

14. Notwithstanding Respondent's arrest and his client's knowledge, the two met on January 16, 2004 and January 20, 2004 to prepare discovery in Mr. Irwin's civil action. Shortly thereafter, Respondent sent the interrogatories and request for production of documents to Craig E. Wynn, Esquire, counsel for Ms. Rudman.

15. Mr. Irwin became impatient with the failure of opposing counsel to respond to the discovery that Respondent had submitted.

16. Apparently angered by Respondent's failure to press Ms. Rudman's counsel for answers to discovery, Mr. Irwin threatened to disclose to Respondent's employer his arrest and rehabilitative treatment.

17. During this time frame Mr. Irwin pressed Respondent by calling Respondent's home repeatedly and the home of Respondent's parents, often three or more times per day.

18. In about the middle of March 2004, Respondent told Mr. Irwin that because the defendant did not respond to the interrogatories, Respondent would file a Motion to Compel Production on Mr. Irwin's behalf.

19. Respondent did not file a Motion to Compel.

20. On April 14, 2004, Mr. Irwin contacted Respondent and advised that he was coming to the office to secure a copy of the court order. Mr. Irwin advised Respondent that if he could not produce the order, he was going to cause a scene and advise Respondent's employer that Respondent had been arrested.

21. Respondent testified that he felt as though he was backed into a corner, as a result of which on or about April 14, 2004, Respondent gave Mr. Irwin a copy of a Motion to Comply with Plaintiff's Discovery Requests, along with a cover sheet which he claimed to have filed, both prepared by Respondent, wherein Respondent requested an order to be issued compelling the defendant to comply with plaintiff's discovery requests in a reasonable amount of time.

22. The cover sheet of the Motion to Comply purported to have been stamped by the Beaver County Prothonotary as being "filed or issued" on April 14, 2004, at 12:12 p.m.

23. The Motion to Comply was not filed with the Prothonotary.

24. Respondent fabricated the time stamped cover sheet.

25. Included with the copy of the cover sheet and Motion, Respondent provided Mr. Irwin with an Order Respondent had prepared in connection with the Motion to Comply.

26. The Order prepared by Respondent purported to have been signed and dated April 14, 2004 by Judge Robert Kunselman.

27. The Order directed that the defendant, Ms. Rudman, serve responsive answers to the plaintiff's first set of interrogatories and request for production of documents upon plaintiff's counsel, Respondent, within 15 days of the date of the Order.

28. The signature on the Order was not that of Judge Kunselman, nor did Respondent have the Judge's permission to sign it.

29. Respondent forged Judge Kunselman's signature on the Order.

30. The documents that were fabricated by Respondent were shown only to Mr. Irwin.

31. Prior to May 2004, Respondent admitted to Mr. Irwin that he had not filed the Motion to Comply, nor had he secured the proposed Court Order dated April 14, 2004.

32. Sometime in May 2004, Mr. Irwin sought out the services of another attorney.

33. Respondent presented the testimony of Dr. Ann R. McAllister, a board certified psychiatrist.



34. Dr. McAllister evaluated Respondent for five hours in October 2005 and reviewed medical records documenting his efforts at rehabilitation at Cove Forge Behavioral Health Systems and Greenbriar Treatment Center.

35. On the basis of her multiple evaluations of Respondent, a review of literature and her own expertise, Dr. McAllister concluded that Respondent had an attention deficit hyperactivity disorder with hyperactivity impulsivity, inattentiveness and executive dysfunction, leading to substance abuse.

36. Dr. McAllister opined with reasonable medical certainty that Respondent's ADHD symptoms, which included incessant procrastination and impulsivity, created a desperate situation, which led him to fabricate documents and forge the signature of the court.

37. Since Dr. McAllister began seeing Respondent in October 2005, she has observed him to be "clean" and compliant with recommendations of his other medical providers.

38. Over the course of Respondent's treatment, Dr. McAllister noted that many of the symptoms he first exhibited are now controlled. Specifically, Respondent exhibits far less anxiety; his speech has slowed; and he does not exhibit pressured thinking. Dr. McAllister noted that Respondent can stick to task and, with the aid of medication, he can eliminate the need to return to substance abuse.

39. Dr. McAllister opined that if Respondent stays on his medication, his prognosis with regard to ADHD and substance abuse is favorable.

40. James Logan, Esquire, testified on behalf of Respondent. Mr. Logan is a recovering alcoholic for nearly 30 years and is actively involved in counseling alcoholic attorneys.

41. Mr. Logan has served as a sobriety mentor for Respondent since February 2006.

42. Mr. Logan noted that Respondent is recently going through stressful circumstances, in that he and his wife are expecting their first child, and Respondent is looking for employment. Notwithstanding, Mr. Logan opined that Respondent is handling these pressures "very, very well".

43. Respondent provided credible testimony that he was addicted to heroin at the time of his representation of Mr. Irwin.

44. Respondent injured his hand in 1999 and started taking the drugs Vicodin and Oxycontin. He began abusing these drugs, especially Oxycontin. He eventually converted from Oxycontin to heroin approximately a year after his injury.

45. Respondent attempted rehabilitation but suffered relapses through the years. His first formal rehabilitation was at Aliquippa Hospital followed by inpatient rehabilitation at Cove Forge in February 2003.

46. Respondent was sober for some time but relapsed shortly prior to his arrest in December 2003.

47. Immediately after his arrest Respondent entered outpatient rehabilitation and has been sober from drugs since his arrest. Respondent stopped using alcohol in September 2004 after the death of his father.

48. Respondent has been attending Alcoholics Anonymous meetings and has a sponsor.

49. Respondent takes the drug Suboxone which quells his desire for opiates. He also takes the drug Adderall to control his ADHD and meets with a psychiatrist.

50. Respondent cooperated with Office of Disciplinary Counsel by admitting his transgression and acting with candor.

51. Respondent is sincerely remorseful for his misconduct.

### III. CONCLUSIONS OF LAW

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

1. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

### IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the serious charges against Respondent that he committed professional misconduct by fabricating a document and forging a judge's signature. Respondent admits that he forged a judge's

signature on a Motion to Comply, which was fabricated in order to convince his client that he had taken action in the client's case. Respondent never submitted the document to the court and shortly after fabricating the document, he admitted that it was fraudulent. Respondent's client was not misled by the document and soon thereafter obtained new counsel. Respondent argues that his misconduct was a reaction to a client that he described as being very aggressive and threatening. Moreover, Respondent argues that his reaction was substantially caused by his mental and psychological problems.

The evidence demonstrates that at the time of the misconduct in question, Respondent was going through a difficult period in his life. Respondent was addicted to heroin and had been arrested for possession of drugs. His client, Joseph Irwin, was demanding and manipulative. Days after Respondent's arrest in December 2003, Mr. Irwin learned of the criminal charges filed against Respondent and threatened to reveal such information to Respondent's employer, which Respondent assumed would lead to his termination. Respondent was going through drug addiction rehabilitation at this time as well. To complicate matters, Respondent had recently separated from his wife because of his drug problems. Mr. Irwin wanted to aggressively pursue his matter, and believing that Respondent was not doing so, he made numerous calls to the home of Respondent's parents and Respondent's wife and reiterated his threats to Respondent about revealing the criminal charges. Faced with mounting pressures from Mr. Irwin, Respondent followed a course of action which he admits was inexcusable.

Respondent presented the expert testimony of Dr. Ann McAllister, which the

Board finds to be credible. Dr. McAllister diagnosed Respondent with ADHD and opined that he used and abused substances to help him deal with the ADHD symptoms. Dr. McAllister opined that there is a causal relationship between Respondent's ADHD symptoms, especially his executive dysfunction and incessant procrastination and impulsivity, and the misconduct engaged in by Respondent. Respondent's psychiatric condition at the time he was representing Mr. Irwin combined with what Respondent perceived to be Mr. Irwin's demands led him to forge a judge's signature in order to placate Mr. Irwin. The Board finds that Respondent has met his burden of proof pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), and is entitled to mitigation.

Respondent is currently sober and attends Alcoholics Anonymous. He takes medication to suppress his need for opiates and medication for his ADHD. His marital separation has been repaired and he is expecting a child with his wife. At the time of the hearing he was looking for employment after having worked at a temp agency for 18 months doing asbestos litigation.

The case law establishes that where an attorney forged documents and sought the court's reliance on the same, significant sanctions, including disbarment were deemed appropriate. Office of Disciplinary Counsel v. Holston, 619 A.2d 1054 (Pa. 1993).

On the other hand, in the case of In re Anonymous No. 23 DB 1993, 26 Pa. D. & C. 4<sup>th</sup> 339 (1999), a private reprimand was imposed upon an attorney who delivered a fake document to his client but who, thereafter, acknowledged his wrongdoing and presented strong evidence for mitigation.

The Hearing Committee has recommended a three year stayed suspension with three years of probation.<sup>1</sup> The Committee carefully considered the recommendation of both parties for a two year stayed suspension and probation period, but ultimately determined that a longer suspension was necessary, as even after considering the array of mitigating factors, Respondent was aware that his actions were wrong. The Board concurs with the reasoned recommendation of the Committee and makes its own recommendation for a three year stayed suspension and three year period of probation. This sanction will serve the underlying purpose of the disciplinary system yet not destroy Respondent's young career.

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<sup>1</sup>The Committee recommended a private reprimand in addition to the stayed suspension; this is not permitted pursuant to the Rules of Disciplinary Enforcement.

## V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, James E. Budzak, be Suspended from the practice of law for a period of three years, that the suspension be stayed in its entirety and that he be placed on probation for a period of three years, commencing February 7, 2008, subject to the following conditions:

1. Respondent shall abstain from using alcohol or any other mind-altering chemical, except as prescribed by licensed medical providers;
2. Respondent shall meet quarterly with a treating psychiatrist;
3. Respondent shall provide an authorization to Office of Disciplinary Counsel for the release of information and records from his medical providers;
4. Respondent shall provide verification of continued use of appropriate medications as prescribed by his treating physicians;
5. In addition to the conditions cited above, Respondent shall continue to comply with the probationary requirements ordered by the Disciplinary Board on February 7, 2006 at No. 22 DB 2005 as set forth below:
  - a. Respondent shall regularly attend Alcoholics Anonymous meetings on a weekly basis;
  - b. Respondent shall obtain a sponsor in Alcoholics Anonymous and maintain weekly contact with that sponsor;

- c. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule 89.293(c);
- d. Respondent shall furnish his sobriety monitor with his Alcoholics Anonymous sponsor's name, address and telephone number;
- e. Respondent shall establish his weekly attendance at Alcoholics Anonymous meetings by providing written verification on a Board approved form to the Board;
- f. Respondent shall undergo any counseling, out-patient or in-patient treatment, prescribed by a physician or alcohol counselor;
- g. Respondent shall file with the Secretary of the Board quarterly written reports;
- h. With the sobriety monitor, Respondent shall:
  - i. meet at least twice a month;
  - ii. maintain weekly telephone contact;
  - iii. provide the necessary properly executed written authorizations to verify his compliance with the required substance abuse treatment; and
  - iv. cooperate fully.
- i. The appointed sobriety monitor shall:
  - i. monitor Respondent's compliance with the terms and conditions of the order imposing probation;
  - ii. assist Respondent in arranging any necessary professional or substance abuse treatment;



- iii. meet with Respondent at least twice a month, and maintain weekly telephone contact with Respondent;
- iv. maintain direct monthly contact with Respondent's Alcoholics Anonymous sponsor;
- v. file with the Secretary of the Board quarterly written reports; and
- vi. immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of the probation.

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:   
Sal Cognetti, Jr., Board Member

Date: September 6, 2007

Board Members Newman and Raspanti did not participate in the adjudication.

Board Members Curran and Storey recused.