

SUPREME COURT OF PENNSYLVANIA

Office of Disciplinary Counsel v. Pozonsky

177 A.3d 830 (Pa. 2018) · Decided January 18, 2018

SUMMARY

The Supreme Court of Pennsylvania considered whether to disbar Paul Michael Pozonsky, a former Washington County Court of Common Pleas judge, for stealing and using cocaine that was criminal evidence in cases over which he presided. The court held that his egregious criminal misconduct and abuse of judicial office outweighed the mitigating evidence and ordered his disbarment to protect the public and preserve the integrity of the legal profession.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Todd; Chief Justice Saylor; Justice Baer; Justice Donohue; Justice Dougherty; Justice Mundy; Justice Wecht
JURISDICTION	Pennsylvania
DECIDED	January 18, 2018
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the Office of Disciplinary Counsel sought disbarment after Respondent's criminal convictions. The Supreme Court of Pennsylvania conducted de novo review of the disciplinary record and the Disciplinary Board's unanimous recommendation.
STANDARD OF REVIEW	De novo review of attorney disciplinary matters; the Hearing Committee's and Disciplinary Board's factual findings are given substantial deference as credibility guidelines. The Office of Disciplinary Counsel bears the burden of proving misconduct by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania.
PARTIES	Office of Disciplinary Counsel v. Paul Michael Pozonsky

TOPICS

administrative law

agency adjudication

criminal procedure

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

judicial misconduct

QUESTIONS PRESENTED

1. Whether Pozonsky's criminal misconduct while serving as a judge warranted disbarment rather than a suspension.
2. Whether evidence of Pozonsky's cocaine use and alleged addiction established mitigating circumstances under the Braun standard.
3. Whether the Disciplinary Board properly weighed the aggravating effect of Pozonsky's status as a judicial officer against the mitigating evidence.

HOLDINGS

1. Disbarment was warranted because Pozonsky used the powers and processes of his judicial office to steal and use drug evidence, conduct that demonstrated unfitness to practice law and seriously undermined public confidence in the judiciary and legal profession.
2. Lay opinions and treatment evidence that merely establish addiction or assert that the misconduct was out of character do not satisfy the Braun standard; an attorney seeking mitigation must establish by clear and convincing evidence, generally through competent expert testimony, that the condition was a causal factor in the misconduct.
3. A criminal conviction establishes a basis for attorney discipline, but does not automatically require disbarment; the Court must determine the appropriate sanction by considering the totality of the facts and circumstances.

KEY QUOTATIONS

"We, therefore, conclude that Pozonsky's wanton disregard for the law, the judicial system, and the public, while holding judicial office, is, as the Hearing Committee and the Board found, a compelling aggravating factor warranting his disbarment."

"Consequently, we will not draw the inference that Pozonsky's addiction to cocaine was the causal factor in his criminal conduct based solely on the bald, conclusory opinions provided by attorney acquaintances and friends who, though well meaning, are nevertheless manifestly unqualified to render such a professional opinion."

"We order that Pozonsky be disbarred from the practice of law in this Commonwealth."

FACTUAL BACKGROUND

Pozonsky served as a magisterial district judge and later as a Court of Common Pleas judge in Washington County, where he founded and presided over the county Drug Court. From late 2010 through January 2012, he used his judicial authority to have cocaine admitted as evidence brought to an evidence locker in his chambers, stole quantities of it, used it recreationally, and attempted to conceal the thefts by replacing cocaine with other substances. He resigned from the bench, pleaded guilty to criminal offenses arising from the conduct, served one

month of incarceration, and completed probation. In the disciplinary proceeding, he presented evidence of rehabilitation, community service, remorse, lack of prior discipline, and alleged addiction-related mitigation.

PROCEDURAL HISTORY

Pozonsky resigned as a Court of Common Pleas judge after an investigation into his theft and personal use of cocaine that had been admitted into evidence in cases over which he presided. He pleaded guilty to three criminal offenses and was sentenced to incarceration followed by probation. The Supreme Court temporarily suspended his law license, after which the Office of Disciplinary Counsel filed a disciplinary petition. A Hearing Committee and then the Disciplinary Board recommended disbarment. The Supreme Court granted oral argument and independently reviewed the matter.

DISPOSITION

other

CASES CITED

- Office of Disciplinary Counsel v. Braun, 520 Pa. 157, 553 A.2d 894 (1989)
- Office of Disciplinary Counsel v. Cappuccio, 616 Pa. 439, 48 A.3d 1231 (2012)
- Office of Disciplinary Counsel v. Czmus, 586 Pa. 22, 889 A.2d 1197 (2005)
- Office of Disciplinary Counsel v. Eilberg, 497 Pa. 388, 441 A.2d 1193 (1982)
- In re Franciscus, 471 Pa. 53, 369 A.2d 1190 (1977)
- In re Melograne, 585 Pa. 357, 888 A.2d 753 (2005)
- Office of Disciplinary Counsel v. Monsour, 549 Pa. 482, 701 A.2d 556 (1997)
- Office of Disciplinary Counsel v. Nocella, 152 DB 2013 (Pa. disciplinary order filed Oct. 20, 2015)
- Office of Disciplinary Counsel v. Preate, 557 Pa. 4, 731 A.2d 129 (1999)
- Office of Disciplinary Counsel v. Preski, 635 Pa. 220, 134 A.3d 1027 (2016)
- In the Matter of Renfro, 548 Pa. 101, 695 A.2d 401 (1997)
- In re Bruno, 627 Pa. 505, 101 A.3d 635 (2014)
- Summers v. Kramer, 271 Pa. 189, 114 A. 525 (1921)
- Office of Disciplinary Counsel v. Keller, 509 Pa. 573, 506 A.2d 872 (1986)
- Office of Disciplinary Counsel v. Rolf Larsen, 19 DB 2003 (Pa. disciplinary order filed Nov. 30, 2006)
- Office of Disciplinary Counsel v. Michael Joyce, 47 DB 2009 (Pa. disciplinary order filed June 14, 2012)
- Office of Disciplinary Counsel v. David Murphy, 188 DB 2010 (Pa. disciplinary order filed Jan. 30, 2013)