

**BEFORE THE DISCIPLINARY BOARD OF  
THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	NO. 17 DB 2023
Petitioner,	:	Attorney Reg. No. 63600
v.	:	
ROBERT SCOTT CLEWELL	:	Philadelphia
Respondent.	:	

---

**BRIEF OF RESPONDENT, ROBERT SCOTT CLEWELL,  
TO HEARING COMMITTEE**

---

I hereby certify that I have this 18<sup>th</sup> day of December served by email  
The within Respondent's Brief upon all parties of record in accordance  
With 204 Pa.Code Section 89.22



---

Robert S. Clewell, Pro Se

**FILED**  
**12/18/2023**  
**The Disciplinary Board of the**  
**Supreme Court of Pennsylvania**

## **TABLE OF CONTENTS**

- I. Support for Mitigation of Office of Disciplinary Counsel Recommendation.
  - A. Clarification of Facts and General Mitigation Relating to Petitioner's  
Witnesses
  - B. Respondent's Mental Condition
  
- II. Conclusion.

I. Support for Mitigation of Office of Disciplinary Counsel Recommendation.

This Brief will be addressing testimony and facts that support Respondent's position that the Board should consider mitigating factors from clarifications of witness testimony and Respondent's testimony regarding symptoms of mental illness.

A. Clarification of Facts and General Mitigation  
Relating to Petitioner's Witnesses

Although Respondent stipulated to the violations contained in the DB Complaint, some of Mr. Turner's testimony generalized what the Respondent may have done or not done that required clarification during the hearing.

Respondent clarified, via his testimony, that although Mr. Turner testified that communication was "almost nothing", Respondent stated that he talked to Mrs. Turner (Brian's spouse) "so regularly and so often and long, big conversations about multiple issues that they were having." (N.T. p. 73)

Respondent also testified he would talk to Mr. Turner's wife Angie for long periods of time and would meet her "before hearings...and he (Mr. turner) would never be there, and I assumed that whatever I was saying would get back to Brian...and many times apparently that did not." (N.T. pp. 73-74).

Respondent also stated during testimony that he reported everything to Mr. Turner that he and Mrs. Turner discussed and that Mrs. turner had not communicated to her husband. (N.T. p. 74)

Regarding Mr. Kolloff, no clarification was required. Respondent acknowledged betraying his trust, stated that he did not deserve this to happen, and that he was sorry. (N.T. p. 53)

Regarding Mr. Cifone, the Respondent clarified that he did some work on behalf of his client and that he spoke on the telephone with him at least once or twice. (N.T. p. 76)

Respondent acknowledged what he had done and did not minimize the impact his conduct had on the witnesses. Respondent stated that "... it's very embarrassing to me, and it's very shameful. I should have acted professionally in these matters, and I did not. I betrayed their trust, I betrayed the trust of the profession, and I'll never live it down. I mean I won't. It's something I think about all the time. I feel terrible." (N.T. p. 78)

#### B. Respondent's Mental Condition & Depression

Respondent highlights the following testimony relating to his mental state, his symptoms, the medications and other remedies he has tried, and the challenges he has faced due to the manifestations of very commonly known symptoms of depression.

During the summer of 2022, I had reached out to Lawyers Concerned for Lawyers referred to as "LCL". I was referred at that time to an organization that they utilized called LifeStance. I had an evaluation, a psychological evaluation performed, basically a question-and-answer by a counselor with that organization. (N.T. p. 79)

My reality has basically been, for the better part of 10 to 15 years, I have had symptoms that are consistent with things that I have known, things I have read, and I can talk about those symptoms and the panel I guess can decide whether they're relevant or whatever. I had -- again, over the years, to give you sort of a history here, I'm not going to get into any diagnosis or hearsay, but I have communicated my issues to a couple different primary care providers. I had gotten prescriptions for Wellbutrin, Zoloft and, most recently, Lexapro. I've tried those medications. For many different reasons, and with multiple side effects and just the way I felt on them, none of them have worked. I went off of them essentially in short order. I never -- I kept trying different medications. That's over the course of a long period of time, but leading up to the evaluation I had with LCL, those are the things that I've sort of known about myself for many, many years. In November of 2019, I had a heart attack and I had diabetes, so I've been handling those issues as well. Both of those situations. I'm not always compliant, I haven't been anyway with the different aspects of controlling my diabetes, and it's -- I think it's exacerbating my whole physical and mental condition. Over the last year or so, I had begun to seek out professional help, and again, in my experience, one of the things that sort of goes along with depression, feeling depression and anxiety is that you know you need to get help but you don't. There's an approach avoidance. I'm not sure if the panel has experience either personal or with family, friends or whatever, but it's hard to explain sometimes to get people to understand it unless there have been some personal experience there. With regard to what I've been like over the last four to five years, and again, it's not every single day but it's most days and it's gotten worse, being here is a rock-bottom situation for me, it really is, I mean daily sadness, despair, faking all this. By the way, you fake it because I don't want to be -- I don't want to appear weak to my family. I don't want them to be burdened with the fact that I'm not functioning the way I should be. Money problems, financial issues, relationship problems, it's all there. Short of a hope. You're hopeless. It's hard to get up in the morning. I mean I'm sure, you know, anecdotally, I'm sure the panel has heard -- you know, mental health disorder is a big thing now, right. I mean it's out there. It's not a stigma I guess like it used to be 40 years ago or whatever, but there's still, in my personal situation anyway, a real reluctance to reveal this to anybody. Put a suit on, look, you know, -- you just kind of suck it up when it's time to go and do something, but that day-to-day, almost painful, physically painful. You know, I would get, literally get in the shower and I would feel physical pain from a showerhead, from the water. That's kind of what I think is an unknown with a lot of people. Like this is what I went through. This is what I'm going through. I am getting better. I've been seeing a counselor on an as-needed basis, and for no other reason, I mean I wanted her to be here today and that did not work out, but


it and I don't really think that I'm really receiving that much assistance in terms of how to cope with this or a strategy what to do, I know I'm not, but I go because it's the one person I can be honest with, you know. Look, I'm just telling it, I'm just telling you what I'm going through. My relationship with my wife is not good, you know, and she doesn't quite understand what I'm going through. I don't share a lot with her. So, to be able to go to a counselor and kind of spill my guts, that's what's helpful about it. One of the things I've done and haven't done or I suppose haven't done is get things done. Procrastination beyond belief. Not opening -- I have piles, as Mr. Krulik said, I have piles of mail that are still not opened. I can't explain this. I don't know why. I don't want to deal with it. It's that kind of a thing where you just -- you avoid, you avoid approaching these situations. Mr. Kollhoff is calling me, texting me, I know I got bad news for him, I'm a mess and I'm not serving his needs, and that's what I did. You know, to me, and I'm not an expert, but to me, that relationship between what I'm feeling every day and what I'm going through and barely being able to get out of bed and talk to people and just going through motions and trying to just kind of stay under the radar, that's connected to not doing things for clients is no different than, you know, having a broken arm and knowing I can't throw a football or baseball. Like that's the analogy I make myself, that causal connection. I know we're talking legal-Braun issues here. But in my mind, whether anyone else is able to consider that or believe it or think it's credible, it's okay, but that's what I know. Of course, with all the issues I've created, financial, you know, this, it's -- I mean it's a down -- it's a spiral, it's a real spiral. Every day you get up you think to yourself "I'm going to start" -- because you think you're -- I thought I was smarter than everybody else, you know, like I could overcome this, like just suck it up and be a man and all this other stuff that you hear people might say, you know, do it -- I always look to my kids because they're obviously, you know, -- but thinking it's going to change tomorrow, I'm going to get up, I'm going to eat right, I'm going to exercise, I'm going to do what I have to do to feel better. Tomorrow comes a million times, and you never change. You think you'll do it on New Year's Eve, you make some New Year's resolution, you think you'll do it Monday because it's a new week or it's your birthday or it's some other thing that you think is going to help you get on track, and it never happens. You think you're smart enough to figure it out, I did, and it just keeps getting worse. And that's really it. That's my background here. This is what I'm going through. I do feel a little better. I started to do some simple things day-to-day. It might sound kind of crazy, but I'm trying some white, some soft light therapy. It's something you do in the morning. I bought this light, it's this little thing you put up and sit there for 15 minutes, and just kind of try to be in the light. I'm trying that. I'm trying a lot of little things around the edges. I'm going to a counselor. Like I said, I don't believe I'm getting a lot of strategy to deal with that but I'm getting the ability to vent, and that's part of it. Because I keep this all to myself, and that's a huge burden. I'm taking some vitamins -- I did some research, vitamin B12 and some other things you take to kind of help you improve your mood. I'm trying to improve the diet. So I know I was good at it, I'd fall off the wagon a little bit, but I've got to get -- this is my life. I've got to get this straightened out. Whatever happens here, I've got to get this straightened out. (N.T. pp. 83-91).

Petitioner stated in his Brief that Respondent's testimony is "due *little* (*emphasis added*) or no weight" because he failed to carry the burden of proof under ODC v. Braun. Respondent respectfully suggests that even if the Board gives little weight to Respondent's testimony, it could still be guided to the conclusion that the Respondent suffers from commonly understood symptoms of depression that directly related to the conduct which is the subject of this disciplinary matter. The symptoms testified to by the Respondent, when applying a real-world, common sense approach, support the finding that the symptoms he testified to are causally linked to some degree and in some fashion to his actions and inaction. Giving it whatever weight it deems proper, the Board may rely on common sense assumptions based on uncontroverted testimony relating to Respondents depression.

## II. CONCLUSION

Based upon the foregoing, Respondent respectfully requests that he be given a suspension of no less than one (1) year and a day and that the requirement that he be able to demonstrate that he has not only addressed, but that he has corrected the underlying depression that is connected to his behavior. If he does not demonstrate that he no longer suffers with depression, and is able to convince the Board that he is fit to practice law, his suspension should continue. This scenario gives ultimate control to the Board over this ultimate issue.

RESPECTFULLY SUBMITTED:



---

ROBERT S. CLEWELL, PRO SE