2000 CASELAW REVIEW

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I. Alcohol or Drug Use as Grounds for Discipline or as an Aggravating Circumstance

The lawyer was suspended for three years and until further order of Court. He neglected at least five matters, misappropriated funds and made improper payments to one client in an attempt to cover up his neglect. The Hearing Board agreed with the disciplinary agency that the lawyer suffered from a serious alcohol abuse problem and that there was no evidence to indicate that he had taken steps to remedy, or even address, his alcohol abuse problem.

Grievance Committee filed motion to strike lawyer's name from roll of attorneys upon her conviction of a felony. The Supreme Court, Appellate Division, held that she ceased to be a lawyer upon her conviction of felony offense of operating motor vehicle while intoxicated. She was disbarred.

Lawyer was suspended on an interim basis and until further order of the Court. He was convicted in Missouri of possessing cocaine, operating a motor vehicle while under the influence of alcohol, possessing two metal pipes, which were drug paraphernalia, with the intent to use them to smoke crack cocaine and failing to operate a motor vehicle on the right side of a public road or highway.

II. Admission and Reinstatement After Mental Illness or Alcohol or Drug Use

Reinstatement action was brought by lawyer who had been indefinitely suspended and whose misconduct was substantially related to his dependence on alcohol, 319 Md. 686, 574 A.2d 1367. The Court of Appeals held that the lawyer would be reinstated subject to certain conditions, including counseling, participating in Alcoholics Anonymous, and monitoring of his practice by a member of the bar.

*In re Petition for Reinstatement of Richard J. Kadrie*, 602 N.W.2d 868 (Minn. 1999).
Over nine years after he was indefinitely suspended from practice of law for a minimum of five years, based on his actions in forging a cashier's check, misappropriating client funds, and falsely stating that he held funds in trust for a client, lawyer petitioned for reinstatement. After panel of Lawyers' Professional Responsibility Board recommended that petition be denied, the Supreme Court held that lawyer was entitled to reinstatement, in light of his moral change, competency to return to practice, acceptance of responsibility, and length of time since misconduct and suspension.
In 1994 the lawyer was suspended for ninety days followed by three years' for disciplinary violations arising from her use of marijuana and cocaine. Toward the end of her probationary period, the lawyer was arrested and charged with possession of marijuana, cocaine, Valium and drug paraphernalia. The criminal charges were ultimately dismissed. The lawyer admitted her misconduct in the disciplinary proceeding and presented mitigating evidence. The Court ordered her suspended for ninety-one days, and that she be ordered to show rehabilitation prior to being reinstated.

III. Mitigation Based on Alcoholism and Addiction

In re Lisa Ann Bailey, 986 P.2d 1077 (Kansas 1999).
Lawyer's misconduct in failing to act diligently in pursuing client matters and writing an insufficient funds check on her trust account warranted placing her on two years' supervised probation. In mitigation, a psychologist stated that her inability to focus and concentrate was attributable to combination of Prozac and Fenphen that she was taking.

In the Matter of Brown, 735 A.2d 774 (R.I. 1999).
Lawyer's mishandling of client funds, failing to take reasonable steps to protect client's interest upon termination of representation, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation warranted one-year suspension from practice of law and that any reinstatement to the practice of law be subject to certain restrictions. As a precondition to reinstatement to the practice of law, the lawyer must maintain his sobriety by continuing monitored treatment, including random alcohol and substance abuse testing. He may only return to the practice of law if he associates with other lawyers who can provide structure and support for his practice, and submits to a mentoring program pursuant to which experienced lawyers will monitor his practice. The lawyer will also be required to engage the services of a certified public accountant to audit his business and client accounts, and shall be required to submit the results of those audits to the Office of Disciplinary Counsel.

In re Dixon, 744 So.2d 618 (La. 1999)
Lawyer wrote multiple NSF checks. He admitted that he had done so, and informed the disciplinary board that he was chemically dependent at the time, but had subsequently sought treatment and had completed a successful recovery period. The lawyer's transfer to deferred disability inactive status was deferred, conditional upon two years of probation and supervision by the LAP.

Statewide Grievance Committee v Fountain, 743 A.2d 647 (Conn. App., January 18, 2000).
The lawyer forged the affiant's signature and notarized an affidavit. The lawyer was suspended for three months. At the disciplinary hearing, the lawyer's alcoholism had been under treatment for four years. The lawyer felt since he was a recovering alcoholic
a suspension was purely punitive. The Appellate Court advised each member of the bar that substance abuse treatment “should be used as a sword to cut off misconduct before it occurs rather than as a shield to insulate misdeeds”.

*In re Edwin A. Gausselein*, 99 CC 1 (Ill. Courts Comm., August 23, 1999). The judge was charged with driving while intoxicated, disregard of a stop sign and possession of an open alcohol container. The traffic charges were dismissed and, at a later time, the DWI charge was dismissed based upon the judge’s treatment for alcohol dependence. He was reprimanded.

*In re Theodore William Gebhardt*, M.R. 15924, 98 SH 121 (Ill., Sept. 29, 1999). Lawyer converted approximately $22,000 in client funds. He was suspended for one year and until further order of Court. He suffers from alcoholism and, at the time of discipline, was in treatment.

*In re James Adam Jankowicz*, M.R. 16636, 99 SH 31 (Ill., March 22, 2000). Lawyer suspended for 90 days with the suspension stayed by a one-year probation. He neglected two cases and misrepresented the status of one of the cases to the client. The lawyer had a substantial record of pro bono work, community service and involvement in the local bar association. He suffers from alcoholism.

*In the Matter of David Lee Judah*, No S899Y0779 (GA, May 2, 2000). Lawyer neglected numerous bankruptcy clients and failed to respond to the disciplinary agency. He made misrepresentations to the bankruptcy trustee and failed to account for funds. The lawyer was suspended for three years. In mitigation, the lawyer was suffering from alcoholism, depression, marital difficulties and pain from an automobile accident.

*In re Scott R. Jones*, 727 N.E.2d 711 (Ind. 2000). Lawyer’s repeated convictions for operating a motor vehicle while intoxicated violated the rules of professional conduct. Appropriate discipline for his misconduct was six-month suspension from practice of law, with suspension stayed on condition that he undergo successful treatment and monitoring of his alcohol addiction.

*In the Matter of Kummerer*, 714 N.E.2d 653 (Ind. 1999). Lawyer was arrested for possession of three grams of cocaine and admitted purchasing the “baggy” shortly before being stopped. Lawyer cooperated with the disciplinary commission, had no prior disciplinary record in 25 years of practice, the misconduct was unrelated to the practice of law, the drug possession was the result of “a single act of bad judgment”, and lawyer submitted to over 100 supervised random drug screens and tested negative each time. The lawyer was suspended for six months with the first thirty days being active and the remainder being conditionally stayed subject to the successful completion of one year of probation. The probation included prohibition against illegal conduct in connection with controlled substances and random drug testing.
Matter of George E. Lasch, 691 N.Y.S.2d 127 (N.Y.A.D. 2 Dept. 1999). Lawyer converted $3800 from two different clients. He was suspended for three years. He suffers from alcoholism and, at the time of discipline, was living in a “sober house” where he receives social services assistance.

Office of Disciplinary Counsel v. Gerald P. Leb, 87 Ohio St.3d 224, 718 N.E.2d 1281 (1999). Lawyer's sincere attempts to overcome and treat the substance abuse addiction and mental disorders that contributed to his repeated neglect of client matters and misappropriation of client funds were sufficient to warrant indefinite suspension rather than disbarment.

Akron Bar Assn. v. Meyer, 87 Ohio St.3d 324, 720 N.E.2d 900 (1999). Lawyer was convicted of grand theft and trafficking in food stamps. He was suspended for two years from practice of law, with the second year stayed. His conduct is to be monitored for both years by the bar and the Ohio Lawyers Assistance Program. In mitigation, a hearing panel found that respondent's misconduct was caused by his addiction to alcohol and marijuana, that he had been in remission from his addictions since 1997, and that he regularly attends Alcoholics Anonymous meetings.

In re O'Brien, No. BD-1999-068 (Mass., December 30, 1999). Lawyer was convicted of operating a motor vehicle under the influence of liquor, third offense, and leaving the scene of an accident after property damage. He was sentenced to one-year imprisonment with six months to serve and the balance suspended. Lawyer failed to notify the disciplinary authority of the three convictions. The lawyer was suspended from the practice of law for six months and one day. In mitigation, the parties stipulated that no person was injured in the accident that gave rise to the charge of leaving the scene and that the lawyer's misconduct arose from a longstanding problem of alcoholism which the lawyer was addressing during his probation.

In the Matter of Ricci, 735 A.2d 203 (R.I. 1999). Lawyer's misuse of client funds warranted suspension from practice of law for minimum of one year. The lawyer must provide competent evidence that his gambling problem remained under control as a pre-condition to reinstatement.

In the Matter of Welling, 715 N.E.2d 377 (Ind. 1999). Lawyer arrested for drunk driving twice and alcohol-related intimidation (over the phone) once in a three-year period. Lawyer admitted being an alcoholic and underwent treatment in an in-patient facility following his last arrest. Court found alcohol does not excuse transgressions (two misdemeanor convictions and three probation violations pertaining to alcohol possession). Instead, this conduct reflects adversely on his trustworthiness and fitness as a lawyer. Lawyer suspended for 6 months, last 4 months stayed subject to 1-year probation, monthly monitoring, three times weekly AA meetings, plus random drug/alcohol screens and waiver of all confidentiality associated with medical treatment.
IV. Mitigation Based on Mental Illness

Lawyer converted $28,180 from an estate over a two-year period. The Louisiana Supreme Court noted that the conduct would normally result in disbarment; however because of mitigating factors, suspended the lawyer for two years with sixteen months of the suspension deferred subject to conditions including participation in mental health counseling.

Among other misconduct, the lawyer pled guilty to numerous charges of driving under the influence, possession of a controlled substance, criminal impersonation, and driving while a habitual traffic offender. The lawyer received a four-year deferred sentence. The lawyer was suspended from the practice of law for a period of nine months followed by a one-year and three-month probation. The lawyer and disciplinary counsel agreed that the lawyer’s misconduct was caused by bipolar disorder.

*In re Ronald A. Bredemann*, M.R. 16642, 98 CH 102 (ILL., March 22, 2000).
Lawyer was suspended for five years with suspension stayed by a fifty-four month probation subject to conditions for neglect of four matters, failure to communicate with a client and failure to cooperate with the disciplinary proceeding. Lawyer suffered from alcohol dependence and had a major depressive disorder. He was also experiencing personal problems including his son’s relapse of leukemia, his mother’s Alzheimer’s disease and the dissolution of his 20-year marriage. The lawyer had been previously censured.

Lawyer was suspended for one year and until further order of Court for neglecting four matters, failure to communicate and failure to refund unearned fees. He is currently being treated for depression and takes antidepressant medication. His psychotherapist testified that his conditions include loss of social function, loss of occupational function, depressed moods and feelings of sadness and isolation.

Lawyer was suspended after she acknowledged that she was unable to competently represent her clients due to bipolar manic depression.

Lawyer neglected three matters and failed to provide a full accounting of funds she received. The lawyer was reprimanded instead of being suspended. The Court considered as mitigating factors her lack of disciplinary record, lack of dishonest motive, her remorse, her personal/emotional problems, and her standing and good reputation in the community. In addition to the reprimand, the Court ordered the appointment of a
practice monitor, a psychological evaluation, CLE courses and ordered reimbursement of attorney fees to the clients.

Lawyer suspended for six months and until further order of Court for neglecting four workers’ compensation cases and making misrepresentations regarding the status of the cases. Lawyer now stays home to care for his children while his wife works. He suffers from depression and panic attacks.

Lawyer failed to diligently manage a decedent’s estate and failed to advise client he was suspended from practice for failure to meet CLE requirements. Lawyer suspended for one year with the entire period stayed in favor of probation. Events occurred after lawyer divorced, left employ as CPA, and moved to East Coast to care for sister who had developed brain cancer. Lawyer became insolvent and suffered from depression.

In re Disciplinary proceedings against Jane A. Edgar, 230 Wis.2d 205, 601 N.W.2d 284 (1999).
Lawyer’s converting funds belonging to a client and to an adverse party in a divorce action, commingling her own funds and client funds, and falsely certifying that she had a trust account and maintained trust account and bank records in compliance with the applicable rules governing conduct of attorneys warranted two-year suspension from the practice of law. In mitigation, she was suffering from depression at the time and she made restitution of the amounts involved.

Iowa Supreme Court Board Of Professional Ethics And Conduct v. Erbes, 2000 WL 44148 (Iowa).
The charges in this disciplinary action were characterized by the Iowa Supreme Court as “sadly familiar”: probate delinquencies compounded by failure to heed notices from the clerk of court and disciplinary authorities. The conduct at issue took place between 1995 and 1998. In February 1998, lawyer began counseling with a clinical psychologist. By July 1998, the psychologist concluded that lawyer was suffering from depression of biochemical origin and prescribed antidepressant medication. The results were remarkable. Lawyer transformed his office practices, hired a young lawyer to help him, bought a computer, and worked aggressively to obtain control over his files. Based on the lawyer’s “refreshingly proactive response,” the Iowa Supreme Court determined the appropriate discipline was a public reprimand.

In the Matter of Donald J. Francis, _ P.2d _, No. 84,214 (Kansas, April 21, 2000).
Lawyer’s misconduct including failing to comply with discovery requests or to prosecute a civil suit warranted two years’ probation. During the relevant period, the lawyer suffered from depression.
**Iowa Supreme Board of Professional Ethics and Conduct v. Richard Freeman a/k/a Dick Freeman**, 603 N.W.2d 600 (Iowa 1999).

Lawyer’s misconduct, including neglect of a client’s discrimination claim that allowed the statute of limitations to expire, warranted a three-month suspension. Lawyer returned to Iowa to care for sick mother and became sole practitioner. He married during this period and discovered that his new wife had a gambling problem and that he also suffered from depression.


A highly respected real estate lawyer allowed default judgments to be taken against his clients in 3 matters between 1991 and 1995. Following each default, the lawyer made complete restitution to his clients. The disciplinary panel found that at the time of his misconduct, the lawyer suffered from a major depressive disorder due to the illnesses of his parents, his wife’s parents and his being hit by an automobile. His treating psychiatrist testified that with continuing treatment and medication, attorney should be able to practice law in a competent manner. Attorney was suspended for two years, with the second year stayed and substituted with two years probation. During and after probationary period, attorney is required to remain in care of treating psychiatrist who will be making reports to monitoring attorney. The Court also recommended that attorney limit his practice to transactional matters and avoid litigation.

**In the Matter of Dewey N. Hayes, Jr.**, S99Y1615 (GA, May 2, 2000).

On numerous occasions during an eight-month period, the lawyer’s trust account was overdrawn. The lawyer received an eighteen-month suspension, with reinstatement conditioned upon proof of his continuation of psychological treatment and a showing of compliance of the implementation of law office management programs. In mitigation it was found that the lawyer was suffering from a major depressive disorder and certain physical ailments. Subsequent to the initiation of disciplinary proceedings, the lawyer restructured the management of his law office, obtained therapy and medication directed toward his physical and psychological problems and exhibited a marked improvement in his personality and ability to function.


Lawyer was retained to file an injunction to prevent the city from demolishing his client’s house while she made arrangements to have her roof fixed. He failed to file for an injunction. When his client entered a contract to sell her home, lawyer failed to contact the health department or the mortgagee. As a result, the client’s home was razed. In an unrelated matter, lawyer allowed an arbitration involving one of his clients to be dismissed with prejudice. In mitigation for this conduct, lawyer testified that his office procedures were lax but that he recently had hired a secretary and entered into an office-sharing arrangement that should alleviate his previous office management problems. The panel found that lawyer suffered from sleep apnea, which contributed to his forgetfulness and neglect and he was now being treated for this condition. Lawyer was suspended for one year, with six months of the suspension stayed if he obtains certification by a physician that his sleep apnea has been treated and no longer interferes with his ability to practice law.
Lawyer neglected a legal matter. Lawyer admitted misconduct and claimed she was suffering from emotional and personal problems. She was suspended for one year, deferred and placed on two-year probation.

In re Charles H. NeuZil, No. SB-00-0033-D (AZ, June 1, 2000).
Lawyer abandoned the representation of six clients and failed to return retainers. In mitigation, a causal connection was established that showed that during the relevant time periods, the lawyer was suffering from functional depression brought on by divorce for which he was being treated. The lawyer was suspended for one year and ordered to pay over $8,000 in restitution to the clients.

Lawyer's misconduct in notarizing forged signatures of clients warranted indefinite suspension from the practice of law, with credit for an interim suspension. A hearing panel heard evidence that the lawyer had been receiving therapy from a clinical psychologist and has been diagnosed as suffering from an adjustment disorder, major depression, and post-traumatic stress disorder. She is involved in a twelve-step program called Emotions Anonymous.

In re Robinson, 736 A.2d 983 (D.C. 1999).
Neglecting legal matters and failing to cooperate in disciplinary investigation warranted 60-day suspension, with reinstatement conditioned on showing of fitness. Lawyer presented evidence that she suffered from dysthymia, a form of long-term depression, that the charged disciplinary violations would not have occurred but for her disability, and that her condition could be controlled with appropriate weekly psychotherapy.

Lawyer's payment from escrow account of court costs, settlements, and other charges involving matters unrelated to transaction with respect to which funds were being held in escrow violated disciplinary rule prohibiting dishonesty, fraud, deceit, or misrepresentation. He was suspended from the practice of law for two years, with second year of suspension stayed on conditions, in light of significant mitigating circumstances. The Court noted that the lawyer grew up in a home with an alcoholic father, served in Vietnam in the Air Force, and suffered depression and that his longtime law partner had passed away.

In re John A. Sumners, No. SB-00-0004-D (AZ, February 15, 2000).
Lawyer neglected and abandoned the interests of seven clients. He failed to communicate with the clients and actions caused harm to the clients. He failed to cooperate with the State Bar of Arizona in its investigation. He suffered from clinical depression for which he was receiving ongoing treatment. He was suspended for two years.
In the Matter of Wayne P. Thigpen, 526 S.E.2d 839 (Ga. 2000).
Lawyer neglected one matter and lied to the client about the status of the case. He also engaged in the practice of law while suspended. Lawyer asserted he was suffering with a severe major depression. The Court in accepting his consent to discipline noted that his misconduct ordinarily would be punishable by disbarment, suspended the lawyer indefinitely, with reinstatement conditioned on: returning all client files to those that have requested them, reimbursing all unearned fees, obtaining a report from a psychiatrist that he is able to resume the practice of law and obtaining a favorable evaluation from the Lawyer Assistance Program.

In the Matter of Torres, 2000 WL 282930 (Cal.Bar Ct.).
Lawyer represented Doe in a medical malpractice case. When Doe did not prevail, the doctor defendant was awarded roughly $10,000 in costs. At about that time the lawyer claims he started receiving “hang-up” calls. He concluded that Doe must be calling him because she was mad at him over the loss of her case and the order requiring her to pay sanctions. According to the lawyer, he decided to retaliate by telephoning Doe late at night to hang-up or to leave an anonymous message. This went on for a number of months, and involved more than 100 late night calls, with Doe reporting the matter to the police and then hiring another lawyer after identifying the lawyer from a long and slurred message that he left. The calls ceased once Doe’s second lawyer told him to stop calling her. Doe then sued the lawyer for legal malpractice and harassment. Lawyer represented himself. His primary defense in the malpractice and state bar proceedings was that his relationship with Doe went beyond an attorney-client relationship. According to the lawyer, he and Doe went out a few times and had discussions that were sexual in nature. Doe denied these contentions. The hearing judge and the review department agreed with Doe. In the malpractice case, Doe was awarded $308,077. Lawyer had no insurance and claims to be indigent. The judgment remains unsatisfied and is viewed as aggravation. The lawyer denied that he suffers from any mental or other problem that requires medical treatment. The review board disagreed finding that his late night calls alone establish that he suffers from a mental or other problem needing medical treatment. The recommended discipline is a five-year suspension, stayed, with three years actual suspension and two years probation after proof of lawyer’s rehabilitation.

In the Matter of Richard O. Ward, No S00Y1041 (GA, May 1, 2000).
Lawyer neglected a criminal appeal and knowingly made a false statement regarding the appeal. In mitigation, the lawyer was suffering a mental impairment that affected both his judgment and his ability to attend to clients and legal matters entrusted to him. He was placed on indefinite suspension until he obtained a determination from the lawyer Assistance Program certifying that he was mentally fit.
V. No Mitigation for Alcoholism/Addiction/Mental Illness

Lawyer purported to advance money to pay off debts client owed to several credit card companies and was then reimbursed by client. Eventually, client discovered credit card companies had not been paid and secured a $3,900 agreed installment settlement with lawyer, which he breached. Lawyer also depleted his trust account of $4,000 in earnest money that was not replenished until one day prior to a closing. Lawyer admitted to a lifelong gambling problem and presented evidence that he was in treatment. However, since continued abstinence by a gambler cannot be verified or monitored, lawyer was suspended until further order of court.

Lawyer pled guilty to possession of cocaine. He requested a mitigated sanction based upon his enrollment in a drug and alcohol treatment program. The Court rejected this and he was disbarred.

Lawyer pled guilty to grand larceny in the third degree and burglary in the third degree while suspended from the practice of law. He was sentenced to five years probation with mandatory psychiatric counseling, as well as treatment for drug and alcohol abuse. He continued to practice law and was disbarred.

Lawyer never filed client's application for expungement of two criminal convictions. Client discovered lawyer's neglect of her matter when she was denied a residential lease based on her criminal record. She fired lawyer, requested that he refund her money and demanded he return her file. Lawyer refused. In the disciplinary proceeding, lawyer claimed that some of his conduct resulted from his addiction to cocaine, which he had started using in law school. He testified that he had stopped using cocaine a few months before, though unaccompanied by any treatment or counseling. He admitted that although disciplinary counsel had provided information regarding the Lawyers Assistance Program, he had failed to contact the program. Lawyer had previously been suspended for failure to meet Ohio's CLE requirements. The disciplinary panel recommended indefinite suspension, which the board adopted. The Ohio Supreme Court found disbarment to be the appropriate sanction. The Court concluded that the lawyer's cocaine addiction did not qualify as a mitigating factor because he did not seek assistance.

_In re Cramer_, No. 82030 (Mo., Nov. 23, 1999).
Lawyer allowed statutes of limitations to pass in two cases and misrepresented the status of the matters to her former partner. She reported that depression caused her to be unable to properly discharge her duties as a lawyer. She surrendered her license and was disbarred.
Columbus Bar Association v. Elsass, 1999 Ohio LEXIS 1949.
A repeat offender was investigated for allowing a secretary to prepare a motion for continuance while he was suspended from the practice of law. Other charges concern misconduct in the preparation of a will and efforts to perform legal services while still under suspension. In mitigation, lawyer provided various character witnesses who indicated that he did not give legal advice during the periods of his prior suspensions. Evidence was also presented concerning lawyer's successful recovery from drug addiction and alcohol abuse. The board recommended an indefinite suspension based on his repeated acts of dishonesty and deceit. Lawyer countered arguing that the board had failed to address his claim of discrimination in violation of the ADA. He contended that his past addiction was the basis for the charges being brought against him. The Court found that the ADA did not prevent discipline of lawyers with disabilities because the primary purpose of discipline is to protect the public. Lawyer was suspended for 2 years.

Lawyer's conviction for contempt of court and entry of guilty plea to fourth-degree stalking warranted three-month suspension from practice of law. The Court conditioned reinstatement on the lawyer submitting proof from a mental health professional that he is psychologically fit to practice.

Lawyer pled guilty to possession of cocaine. Lawyer was suspended for 30 days with the requirement of supervision by a practice monitor upon reinstatement and rehabilitative services.

An audit of the lawyer's trust account revealed numerous misappropriations. During the audit, the lawyer sent the discipline authority a letter falsely stating he never deliberately took money. The lawyer was indefinitely suspended without leave to apply for reinstatement for two years. The Court rejected the lawyer's claim that he was suffering from depression during the relevant period.

Lawyer disbarred for accepting fees and performing no work for four different clients. The lawyer thought he had a drinking problem. Through the course of the hearing panel's cross-examination, it was determined that the lawyer's completion of AA was only "in his mind".

Lawyer converted approximately $36,000 from five different clients. He was suspended for three years and until further order of Court. The Illinois Supreme Court rejected the Hearing Panel recommendation that he be suspended for three years with the
suspension stayed after five months with probation. The lawyer suffered from alcoholism.

In 1994 lawyer apparently had some money problems. He telephoned other lawyers and employees for an automobile repair shop threatening to have them implicated in a murder unless his car was released from the shop and he was given $2000 in $5 bills. The following month he threatened to report a client to the authorities and to have her children deported if she failed to pay his legal fees. Later in the year, he told a fellow tenant that he would ruin the building. Using graphic and obscene language, he threatened to hire men to sodomize the landlord. Other than psychiatric reports prepared by court-appointed medical experts and a finding of mental incapacity, lawyer had no evidence in support of his psychiatric claim for mitigation. He did not demonstrate efforts for treatment. Lawyer was disbarred.

Lawyer misappropriated over $120,000 from a decedent’s estate. He was suspended for three years and until further order of Court. Aggravating the misconduct was the lawyer’s “disastrous” bookkeeping practices, his poor financial condition and his limited cooperation with the disciplinary authority. He suffered from a serious alcohol abuse problem.

Lawyer’s numerous abuses of his client trust account warranted disbarment. The lawyer’s misconduct was related to his alcoholism and he is now in treatment.

_In the Matter of Stalcup_, 732 A.2d 509 (N.J. 1999).
Lawyer’s misconduct included lack of diligence, failure to communicate, and failure to provide client with written fee agreement. The lawyer was suspended for two years and until further order of Court. It was further ordered that prior to any application for reinstatement to practice, the lawyer shall submit proof from a mental health professional, shall submit proof of her successful completion of the Skills and Methods Course, including courses in professional responsibility, offered by the Institute for Continuing Legal Education. It was furthered ordered that on reinstatement the lawyer shall practice law under the supervision of a practicing attorney approved by the Office of Attorney Ethics, for a period of three years and until further order of the Court.

_Kentucky Bar Association v. Stevenson_, 999 S.W.2d 714 (Ky. 1999).
After accepting $425.00 to attempt to obtain custody for client of two children from client’s first marriage, lawyer failed to take action. One year later client discovered that lawyer had misled client into thinking that he was proceeding with their case. The lawyer defended by saying that he was depressed, and was undergoing treatment. The Supreme Court of Kentucky did not consider this defense as mitigation. Instead, it suspended attorney for 90 days because he lied to his client and was not diligent. No monitoring of his admitted depression was ordered.
In the Matter of Tonzola, 162 N.J. 296, 744 A.2d 162 (2000).
Lawyer and several others formed a firm in 1993. The partners grew concerned early on and insisted that the lawyer see a psychiatrist as a condition of their continued association. Lawyer was diagnosed as suffering from “depression, with an obsessive-compulsive lying component”. His psychiatrist concluded that lawyer’s condition was fully treatable with medication and appropriate supervision. This discipline case concerns two incidents that pre-dated lawyer’s bi-polar diagnosis and treatment. In 1992 lawyer forged two court orders to mislead a client into believing that a criminal conviction had been expunged. He also used client funds for his $24,000 capital contribution to the firm formed in late 1993. Previously, a supplemental proceeding was ordered to determine whether lawyer’s manic depression or bi-polar disorder should mitigate the quantum of discipline. In reaching its ruling, the Court acknowledged that as much still is not known about bi-polar disorders, maintaining public trust requires that lawyer be disbarred.

Lawyer’s misconduct in borrowing money from a guardianship and loaning it to another client without probate court permission and filing false reports with probate court warranted permanent disbarment notwithstanding a hearing panel finding that the lawyer had significant mental health difficulties and never recognized that the misuse of substantial guardianship funds for the lawyer’s own benefit was improper or illegal.

In the Matter of Theodore D. Wilson, 715 N.E.2d 838 (Ind. 1999).
Lawyer’s conduct in failing to reduce his contingent fee agreement to writing, in failing to provide written statement to clients indicating outcome of representation, remittance to clients, and method by which remittance was calculated, in misappropriating escrow funds for personal use, in failing to maintain balance in his escrow account sufficient to pay his obligation to clients, and in inserting a term into later settlement agreement which required client to withdraw grievance filed with disciplinary commission constituted professional misconduct warranting 18-month suspension from practice of law. The Court rejected the lawyer’s claim that the misconduct was attributable to sloppy bookkeeping and “declining skills . . . attributable to advanced age”.

VI. Sexual Behavior as Grounds for Discipline

Lawyer’s soliciting and engaging in sexual relationship with client and his refusal to call witnesses whose testimony was potentially significant to client’s child custody proceeding, because witnesses knew of sexual relationship, warranted disbarment. The Court rejected a referee’s recommendation that he be suspended for 2 years, during which time he attend sensitivity courses and continue counseling for depression and anxiety.
In the Matter of Richard A. Gole, 715 N.E.2d 399 (Ind. 1999).
Lawyer who asked two female clients about their sexual experiences and detailed his
own sex life was suspended for six-months, with the first thirty days an active
suspension and the remaining five months to be suspended upon compliance with all
terms of one-year probation. The conditions include:

1) The lawyer shall not engage in discussions of sexual matters of any kind with clients
who come to him for legal consultation, except to the extent that sexual matters are
directly relevant to the legal matter about which the respondent is consulted. The lawyer
shall not offer, invite or engage in social interactions of any kind with female clients who
consult and/or retain him for legal services.

2) The lawyer shall be under the supervision of and report to a monitor who is a
member of the Indiana Supreme Court Judges and Lawyers Assistance Committee. He
shall execute necessary authorizations or releases permitting his assigned monitor to
have access to information needed to verify his compliance with the terms and
conditions of his probation. He further agrees to meet with the monitor at any
reasonable degree of frequency proposed by the monitor and to comply with all
reasonable requests for information and cooperation by the monitor. The lawyer also
agrees to execute any authorizations or releases necessary to permit his assigned
monitor to communicate fully and on a regular basis with the Disciplinary Commission.
The lawyer shall submit a written monthly report to his assistance monitor in which he
certifies under oath his compliance with the terms and conditions of probation, or sets
forth or describes in detail under oath any instances of failure to comply with the terms
and conditions of probation. The monitor shall submit a quarterly written report to the
Executive Secretary of the Disciplinary Commission setting forth the lawyer's
compliance or lack of compliance with the terms and conditions of probation.

3) The lawyer shall continue his participation at least two times weekly in meetings of a
recovery group for individuals with problems related to sexual addictions or compulsions
or another appropriate twelve-step program specifically authorized and approved by the
Executive Secretary of the Disciplinary Commission. The lawyer shall submit to his
monitor the name of an individual or individuals who can personally vouch for his
attendance at the recovery group meetings described above, or alternatively, submit
written proof of meeting attendance acknowledged by the initials of another individual in
attendance at the meeting.

4) The lawyer agrees to meet with a qualified mental health professional specifically
authorized and approved by the Executive Secretary no less frequently than once every
six months and shall cause such qualified mental health professional to issue a
progress report to the Executive Secretary and the monitor at six-month intervals.
Progress reports will be due at the beginning of the period of probation, at the
conclusion of probation, and mid-way through the period of probation. The reports
referred to in this paragraph shall include at least: (a) the date on which the report was
prepared; (b) the date(s) and location(s) at which the lawyer was seen/interviewed/evaluated by the author of the report; and (c) a description of the
progress of the respondent's treatment and prognosis and any recommended changes in the respondent's treatment or aftercare program.

5) The lawyer consents to the release to the Disciplinary Commission of any and all sexual treatment records created before or during the term of probation. This consent prevails over all assertions of confidentiality including those in the Indiana Code, the United States Code, and the Code of Federal Regulations. This consent will be automatically revoked upon the lawyer's successful completion of his term of probation.

6) The lawyer shall maintain in his employ a female secretary or other female employee who shall be present in his law office at any and all times he meets with any female client, witness or other individual.

7) The burden of compliance with the terms of this opinion remains with the lawyer at all times and does not shift to the Disciplinary Commission or its staff, the monitor, the therapists, or any other person or entity.

One-year suspension, followed by two-year probationary period, was appropriate for lawyer's misconduct regarding sexual relationship with marriage dissolution client, where lawyer had also engaged in sexual relationships with five other clients, and where other lawyers looked to the lawyer for advice because of his prominence as a lecturer, writer, and past president of the Washington State Bar Association.

For a period of eleven years, the lawyer engaged in numerous instances of lewd and lascivious behavior unrelated to the practice of law. Most instances involved his compulsion to expose himself. In mitigation, the lawyer offered evidence of treatment for exhibitionism and obsessive compulsive behavior. The lawyer was suspended for three years with the suspension stayed with probation for three years. He was required to continue treatment and to probe, with professional help, the cause of his exhibitionist behavior and refrain from further behavior.

Lawyer was convicted in California of travel with intent to engage in criminal sexual activity and use of facility of interstate commerce (the Internet) to attempt to induce a minor to engage in criminal sexual activity. Terms of his criminal probation included participation in sexual offender and psychological or psychiatric counseling or treatment program. The terms also prohibit the lawyer from, among other things, possessing or having access to any device which offers Internet access. The lawyer was indefinitely suspended and he is not eligible to petition for reinstatement before the termination of his probation.

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