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

In re Allred, 2001 WL 881457 (New Mexico 2001)

Three year suspension for neglect and failure to communicate with clients. Attorney claimed the conduct was the result of mental stress and alcohol use. He had been previously disciplined and had been ordered to receive counseling for alcohol abuse. He did not obtain the counseling. He did remain abstinent for one year. The Court believed that the counseling could have prevented his relapse to alcohol.


Goldstein was censured after a plea of guilty to operating a motor vehicle under the influence of alcohol, aggravated unlicensed operation of a motor vehicle, and reckless driving.

In re Piemonte, 732 N.Y.S. 2d 796 (New York 2001)

Suspension ordered where attorney falsely identified the source of cash on an IRS form. Court found that his addiction to alcohol and cocaine affected his judgment.

Cincinnati Bar Association v. Selnick, 94 Ohio St. 3d 1, 759 N.E. 764 (Ohio 2001)

Attorney charged with multiple ethical violations, entered into a stipulated sanction of an indefinite suspension with the Board of Commissioners on Grievances and Discipline. The charges were that Selnick had a pattern of neglect of client matters, failure to respond to court orders, deceit, misuse of client funds, and failure to return client files. The Supreme Court rejected the agreement and ordered disbarment. Attorney had undergone treatment for addiction to Oxycontin. However, he declined to rely on that ground in the hearing before the panel and failed to develop a sufficient record in mitigation.
II. Admission and Reinstatement After Mental Illness or Alcohol or Drug Use

**Bowling v. Kentucky Bar Association**, 54 S.W. 3d 160 (Kentucky 2001)

After nine month suspension Bowling was reinstated conditioned on being monitored by a mental health professional. The suspension arose from charges of assault, terrorist threatening and unlawful imprisonment committed against his former wife. Bowling presented evidence that medication he was taking at the time of the incident likely exacerbated his mental condition and contributed at least in part to his behavior.

**Cleveland Bar Assn v. Gay**, 94 Ohio St. 3d 404, 763 N.E. 2d 585 (Ohio 2002)

Reinstatement of attorney was warranted, even though malpractice judgment against attorney was discharged in bankruptcy, rather than paid. Court found that Gay had complied with two-year recovery contract with the lawyers assistance program, was attending AA meetings, remained sober and did not need psychiatric treatment for depression.

**Johnson v. Colorado**, 35 P. 3d 635 (Colorado 2001)

Johnson was reinstated after a suspension. The misconduct leading to the suspension, in large part, was the result of his abuse of alcohol. After the suspension Johnson received medical and psychiatric treatment for his addiction, was participating in AA on a regular basis. The Court found that he was “sincere” in his desire to remain alcohol free. He was ordered, as a condition of reinstatement, to submit to random drug testing for a period of twelve months.

**In re Mazza**, 200 WI 36 (Wisconsin 2002)

Reinstatement ordered after 18 year revocation when Mazza was convicted of conspiracy to commit theft. The hearing referee found that Mazza testified convincingly about the circumstances that led to his past substance abuse problem and its relationship to his criminal behavior. He had become active in the lawyers assistance program and was active in the recovery field/community. As a condition of his reinstatement he was ordered to participate in counseling for six months.
**In re Penn.** 249 Wis. 2d 667, 638 N.W. 2d 287 (Wisconsin 2001)

Penn had been suspended for two years for use of illegal drugs. Court reinstated him after he established by clear and convincing evidence that he had satisfied all the conditions for reinstatement. The Court found that Penn had addressed his drug dependency by undergoing in-patient treatment and had submitted to random drug testing. Both a physician and alcohol and drug counselor were of the opinion that he could safely resume the practice of law.

**Colorado v. Schoedel.** 35 P. 3d 750 (Colorado 2001)

Soon after commencing the practice of law Schoedel started treatment for depression and post-traumatic stress disorder relating to the circumstances of her father's death. She was suspended for thirty days for issues related to neglect. The Court ordered reinstatement holding that she had established that she was rehabilitated. She continues to take anti-depressants but was no longer in therapy.
III. Mitigation Based On Alcohol And/Or Drug Addiction

**Attorney Grievance Comm. of Maryland v. Garfield,** 2112 WL 851800 (Md. 2002)

Court found that there was sufficient evidence to support findings that Garfield suffered from a drug addiction and that his escalating addiction caused him to neglect matters resulting in dismissal or barring of seven civil cases. There was compelling evidence from his therapist and the director of the lawyer assistance program that, but for his addiction, he would not have violated the Rules of Professional Conduct. The Court concluded that the appropriate sanction was an indefinite suspension with the right to reapply in thirty (30) days.

**The Florida Bar v. Hochman,** 2002 WL 500149 (Florida 2002)

Attorney pleaded no contest to felony grand theft based on misappropriation of client trust funds. Court found that he had shown good cause to modify standard three-year suspension, and suspension was imposed retroactively to be effective on the date of a prior suspension. Hochman had voluntarily come forward and entered a guilty plea and admitted that “as a result of a significant problem with drug addiction, client trust funds were misappropriated.” The hearing referee found that he had admitted himself to inpatient treatment, and that after completion of treatment he voluntarily informed the Bar and his clients that he had misappropriated funds. He had entered into a rehabilitation contract with the lawyers assistance program, and was regularly attending support meetings.

**Iowa v. Hohenadel,** 634 N.W. 652 (Iowa 2001)

Court held that attorney’s neglect of clients’ legal matters and misrepresenting the status of those matters to the court warranted sanction of indefinite suspension with no possibility of reinstatement for four months. The Court rejected a Commission recommendation that three of the four months be suspended and that Hohenadel serve a twenty-four month period of probation. Although accepting his alcoholism as a mitigating factor, the Court felt that the suggested framework of probation (through the lawyers assistance program) was "ill advised." The Court’s view of the Lawyers Helping Lawyers Committee and the Lawyers Assistance program is that they are "ameliorative" rather than the supervisory nature of a probation authority.
**Office of Disciplinary Counsel v. Rolla,** 765 N.E. 2d 316 (Ohio 2002)

Indefinite suspension ordered for former county assistant prosecuting attorney convicted of felony offenses of obstructing justice, forgery, tampering with records, and misdemeanor dereliction of duty. Finding of mitigation that Rolla suffers from depression and substance abuse.

**District of Columbia Court of Appeals v. Soininen,** 783 A. 2d 619 (D.C. 2001)

Suspension stayed, and attorney placed on probation after misdemeanor convictions for theft and possession of a controlled substance not obtained by a valid prescription. Attorney was addicted to lawfully obtained prescription drugs. Soininen had a long standing problem with abuse of alcohol and doctor prescribed anti-anxiety medication.

**Iowa v. Ruth,** 636 N.W. 2d 86 (Iowa 2001)

Grievance Commission recommended six month suspension after convictions for operating while intoxicated, third offense, and domestic abuse assault causing injury. Supreme Court held that the proper discipline was indefinite suspension with no possibility of reinstatement for six months. In mitigation the Court found that Ruth had made “great strides” in his recovery from alcoholism.
IV. Mitigation Based on Mental Illness

**In re Albright,** 640 N.W. 2d 341 (Minnesota 2002)

Failure to timely file income tax returns and to promptly return client documents, and improper disclosure of a witness statement and use of trust funds warranted a ninety-day suspension and two years of supervised probation. Albright admitted the violations and it was agreed that as mitigation he suffered from both untreated depression and undiagnosed and untreated attention deficit disorder that contributed to the violations. He was ordered to initiate or continue current treatment by a licensed consulting psychologist or other mental health professional.

**Kentucky Bar Association v. Colston,** 54 S.W. 3d 158 (Kentucky 2001)

Attorney's conviction on harassing communications and violating a protective order warranted sanction of public reprimand and probated six-month suspension. At the time of the incidents Colston was being treated for depression, and later bipolar disorder, and was being prescribed Paxil, and eventually Prozac and Lithium. He experienced a number of negative side effects, including severe sleep disturbance, loss of memory, anger control problems, slurred speech, and an unsteady gait. He was found to be suffering from Lithium toxicity and his dosage was significantly reduced. At the hearing he asserted that the reduction in the Lithium made the effects of the Prozac more pronounced and this led to his erratic behavior toward his former girlfriend, the victim. He also admitted to prior drug and alcohol abuse, but maintained that he no longer used either.


Disciplinary Committee sought to suspend attorney from practice of law immediately and until further order of the Court. Court held that attorney was required to be examined by a physician to determine whether he was suffering from mental or physical disability which made it impossible for him to adequately defend himself. Factor had asserted that he had been in a deep depression since his father's recent death.
**Idaho State Bar v. Frazier**, 28 P. 3d 363 (Idaho 2001)

Suspension for one year was ordered for misconduct of charging an estate an excessive fee and failing to safeguard estate jewelry and funds. Frazier presented mitigation evidence that he was burdened by his wife’s alleged alcohol and drug problems.


Failure to perform required functions as an attorney for executor of an estate, to meet deadlines, and to close the estate for nearly nine years, misrepresentation of status of the estate to the district court, and failure to file a timely answer warranted a sixty-day suspension, not public reprimand, although his depression was a mitigating factor in imposing the discipline. The Court held that personal problems of a lawyer that may contribute to the commission of unethical conduct do not excuse the misconduct, but may be taken into account in mitigation of the discipline imposed.

**Akron Bar Association v. Mudrick**, 758 N.E. 176 (Ohio 2001)

Indefinite suspension, with restitution to clients as a condition of any possible reinstatement, was appropriate sanction for attorney convicted of felony offense of appropriating funds from a trust, and neglect of an estate. In mitigation, the panel noted Mudrick was suffering from depression and an anxiety disorder warranting psychiatric treatment.
V. No Mitigation Based on Mental Illness

**In re Campbell,** 21 P. 3d 1147 (Washington 2001)

Attorney who had been placed on disability inactive status based on a finding of mental incompetence petitioned for reinstatement. Court denied reinstatement, finding that petitioner had failed to set forth “a single fact” demonstrating that his disability had been removed, and an independent medical examination indicated that he suffered from a delusional disorder and that his mental health had not changed since being placed on disability inactive status.

**In re O’Brien,** 29 P. 3d 1044 (New Mexico 2001)

Attorney’s decision to abdicate practice during time of personal illness, rather than to seek aid from other attorneys, was not an acceptable decision. A medical condition, though met with sympathy and compassion, may not be considered as a mitigating factor absent a meaningful and sustained period of successful rehabilitation. A suspension for a minimum of two-years was ordered for deceit as to time spent on an estate matter; focus on personal problems to the exclusion of her law practice and inadequate trust accounting.

**In re Rudman,** 791 So. 2d 1280 (Louisiana 2001)

Suspension for one year and one day ordered for neglect, failure to communicate with client and unauthorized practice of law. Court found that there was no supporting evidence for attorney’s assertion that his personal and emotional problems should be considered in mitigation. Further, there was no supporting evidence of a causal connection between Rudman’s alleged depression and the misconduct.

**Iowa v. Sherman,** 637 N.W. 2d 183 (Iowa 2001)

The Grievance Commission recommended a thirty-day suspension centered on neglect and failure to cooperate with the Board’s investigation. On review the Court ordered a suspension for a minimum of three months. There was evidence presented that Sherman was under a great deal of stress at the time of the alleged misconduct. He also testified that the Mayo Clinic diagnosed him with major depression and
obsessive-compulsive disorder. However, the Court held that such personal problems do not excuse ethical misconduct.

**Colorado v. Tidwell,** 35 P. 3d 624 (Colorado 2001)

Court ordered disbarment where attorney had a pattern of neglect, and both negligently and knowingly converted client funds. The Court held that even if Tidwell’s testimony concerning his health qualified as medical evidence for mitigation purposes, his testimony that he suffered from depression could not be a mitigating factor, absent testimony that the depression caused the conduct, that he had recovered from the depression, that the depression had been arrested, or that he had a sustained period of recovery from the depression.

**In re Tullis,** 559 S.E. 2d 833 (Louisiana 2002)

Suspension ordered for neglect, trust account irregularities and failure to respond to disciplinary investigation. At the hearing Tullis testified to facts and circumstances that resulted in significant stress and depression. However, he presented no medical evidence or medical testimony to support his claim. The Court held that they do consider mental illness as a mitigating factor, but that medical evidence of an actual diagnosis must be presented in order to have the issue considered.

**In re Wiederholt,** 24 P. 3d 1219 (Alaska 2001)

Attorney petitioned for reinstatement after disbarment for filing a pleading and affidavit stating that his client’s judgment had been satisfied when he knew that it had; and forging his client’s signature to endorse a check. The petition was denied. The Court found that a psychiatrist’s testimony that petitioner had made significant strides in his emotional development did not show that he currently possessed moral qualifications to qualify for reinstatement.

**In re Winterburg,** 41 P. 3d 842 (Kansas 2002)

Hearing panel was warranted in finding that depression was not a factor in mitigation, where there was no evidence, other than attorney’s testimony, of attorney’s diagnosis, that depression caused her misconduct, and whether and when it was treated.
VI. Sexual Behavior as Grounds for Discipline.

**In re Ashy,** 802 S0. 2d 1252 (Louisiana 2002)

Reinstatement was supported by completion of two-year suspension arising out of a sexual relationship with a female client. The victim made no appearance at the hearing, nor did she otherwise object to the application. Petitioner expressed remorse and regret for the misconduct, and candidly admitted he was ashamed of his “awful, awful mistake.”

**In re Boudreau,** 2002 WL 53868 (Louisiana 2002)

Disbarment ordered for attorney who pled guilty to federal charges of smuggling and possessing magazines containing child pornography. There was a specific finding that Boudreau intentionally violated duties owed to the public and the profession by participating in the sexual exploitation of children.

**In re Singer,** 738 N. Y. 2d 38 (New York 2002)

Disbarment ordered after conviction of aggravated sexual battery. The Court rejected a recommendation for a five-year suspension finding that respondent admitted that over a 10-year period from the time when he was 17, he had engaged in similar conduct with one other child and with up to four other children in other instances. The Court further found that it is speculative to suggest that several years of treatment would be enough to protect the public from a person with a lifelong pattern of maladaptive behavior.

**In re Walker,** 24 P. 3d 602 (Arizona 2001)

Attorney censured for touching client’s breast and attempting to enter into a consensual sexual relationship with her. The Court found as mitigating factors, his public and personal humiliation. He was arrested at his office and taken to jail in handcuffs. The charges against him were made public by the local press. He was prosecuted for sexual indecency and prostitution and forced to participate in a diversion program. He also sought out both religious and mental health counseling.
VII. Gambling


Attorney disbarred after uncontested evidence was presented that he converted client funds from his escrow account for his own personal use. Although the Supreme Court of New York considers alcoholism or drug abuse in mitigation, where a causal connection is proven, it rejects that defense where a gambling addiction is raised in mitigation of conversion of client funds. There was evidence presented that respondent suffered from "pathological" gambling and that he had been participating for over a year in a therapy program designed for treatment. The hearings referee found that respondent had not met his burden of persuasion that the psychological pattern he had engaged in his whole life had been altered, and that he does not pose a risk to the public.


The respondent judge was addicted to race track gambling and to obtain funds for gambling, borrowed money from his friends, fellow attorneys, who appeared before him. The Supreme Court ordered an indefinite suspension, rejecting a recommendation of a two-year suspension, with one stayed. The Court found that the judge's violation of the Code of Judicial Conduct to be "deplorable and egregious."


Disbarment was warranted sanction for attorney who misled friend with schizophrenia regarding ability to obtain legal counsel and kept $34,000 which was to be forwarded to the other attorney. The panel considered evidence in mitigation, including evidence relating to respondent's gambling addiction. The panel recommended that respondent be indefinitely suspended and not readmitted until he has passed a complete psychiatric and psychological examination.