2006 CASE LAW REVIEW

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1. **Alcohol Cases – Mitigating Circumstances**

*Florida Bar v. Cohen,* 919 So. 2d 384 (Florida 2006)

The referee’s findings of fact and recommendations as to guilt were accepted, but the recommended discipline was rejected. As the attorney proved his rehabilitation, a 90-day suspension, followed by three years probation was ordered. Cohen’s criminal actions, which led to the misconduct charges, caused a serious accident, injuring innocent people. He was driving 70 to 90 miles per hour in the wrong direction. When he was stopped he was so intoxicated that he either would not or could not follow the trooper’s simple commands. He also refused to submit to a Breathalyzer. The referee found that Cohen has gone to great lengths to turn his life around and had established his rehabilitation.

*In Re Gilman,* 126 P.3d 1115 (Kansas 2006) (NM)

Public censure. Gilman appeared in court smelling of alcohol. He was asked to take a breath test and as a result was directed not to drive by the judge. He then administered himself a field sobriety test and left in his automobile. Two months later he was in the same courthouse when a prosecutor confirmed the presence of alcohol on his person based upon an agreed to breathe test. Gilman made no attempt to contact the Kansas Lawyers Assistance Program or seek any professional help. The Court noted that he did not appear to appreciate the serious nature of his misconduct. He was urged to contact KLAP for advice and help with his problem.
Public censure and one-year probation with conditions. Garrett sexually battered two young women by grabbing their breasts and their buttocks while intoxicated. The Supreme Court adopted the trial panel’s recommendation and noted that while the attorney’s problems stemmed from alcohol abuse, there was no evidence that his alcoholism had impaired his ability to practice law. The Court found that Garrett’s problems stemmed from the abuse of alcohol. There was no evidence that his alcoholism impaired his ability to practice law. There was, however, clear and convincing evidence that his actions after his arrest showed a commitment to maintaining his sobriety through AA and the LHL and to make amends to his victims. He displayed an understanding of the seriousness of his actions and the misery he brought to his victims.

2. **Alcohol Cases – No Mitigation**

*Iowa Supreme Court v. Kadenge*, 706 N.W. 2d 403 (Iowa 2006)

License suspended for a period of no less than 18 months. The ethics charges were that Kadenge neglected legal matters entrusted to him, by mishandled his trust account, was intoxicated in court and failed to respond to inquiries from the Disciplinary Board. The Grievance Commission recommended a six-month suspension. At his hearing Kadenge testified candidly about his struggle with alcoholism and depression, but the Court noted that he still cast blame on his support staff, the attorney with whom he shared an office, and his clients. In imposing a longer sanction than recommended the Court noted that a six-month suspension minimized the seriousness of what had occurred.
**Sate of Nebraska v. Petersen,** 710 N.W. 2d 646 (NE 2006)

Indefinite suspension with no possibility of reinstatement for two years. The referee found, pursuant to Petersen’s admissions, that he had numerous instances of neglect of client matters. The Court, in review, was not persuaded that his recent revelation of a substance abuse problem was a sufficient mitigating circumstance to avoid a lengthy suspension. His testimony before the referee indicated that his problem with substance abuse began after the conduct in question. His admissions of responsibility for his conduct came only when faced with discipline.

3. **Drug Cases - Mitigation**

**Disciplinary Counsel v. Ault,** 852 N.E. 2d 727 (Ohio 2006)

Two-year suspension stayed on the condition that respondent serve a two-year probation period and comply with a new two-year recovery contract with the Ohio Lawyers Assistance Program. Ault, an attorney and municipal court judge, was charged with professional misconduct due to his abuse of prescription painkilling drugs. Between September, 2001 through December, 2002 he obtained 1,432 pills and 20 patches from six doctors. He got four of the physicians to prescribe medication to him by not disclosing to them that they were replacing each other’s prescriptions. The Ohio Pharmacy Board discovered Ault’s use of the medication and a special prosecutor was appointed to pursue charges. In 2003 OLAP intervened on him and he entered inpatient treatment. The diagnosis was addiction to opiates and alcohol. Ault entered into a recovery and monitoring and monitoring contract with OLAP. In mitigation, the Court found that Ault’s addiction did not compromise his performance as a judge.
Grigsby v. Ky Bar Assn, 181 S.W. 3d 40 (Kentucky 2006)

Grigsby was arrested for first-degree promoting contraband and first-degree possession of a controlled substance after the police discovered cocaine on his person. One of the issues before the Court was whether a plea bargain to achieve a lesser convicted offense than that charged mitigated the underlying concerns about Grigsby’s fitness to practice law.

The Court found that pleading to a lesser charge did not act as mitigation in this instance. However, in noting that narcotics offenses by attorneys were ordinarily considered crimes of moral turpitude justifying disbarment there were other circumstances to be considered in this case. Grigsby had no other disciplinary proceeding, and had agreed to KYLAP assistance. He was suspended for 180 days with 61 days to be served and 119 days probated for the balance of his duties under the KYLAP monitoring agreement.

4. **Drug Cases- No Mitigation**

Disciplinary Counsel v. White, 848 N.E. 504 (Ohio 2006) (N

White was permanently disbarred. He had been charged with a felony drug offense. He pled guilty to the criminal charge of permitting drug abuse. In June 2004 the criminal court ordered him to refrain from possessing, using, or distributing any drug of abuse other than prescription medications. He violated the order when he tested positive for cocaine use in February, 2005. One of the Court’s findings was that White did not offer sufficient evidence of mitigation. They found no “commitment to sobriety” on the part of White.
5. **Drug Cases – Miscellaneous**

*Cincinnati Bar Assn. v. Hennekes*, 850 N.E. 1201 (Ohio 2006) NM)

Two-year suspension from the date of the Order. Hennekes acted as a liaison between a friend and an acquaintance in an attempt to arrange an exchange of drugs and money. He entered a guilty plea to a drug charge. He served part of his sentence of incarceration, was paroled to serve-to-serve time in a halfway house, and was then on probation. He was suspended upon notice that he was convicted of a felony.

6. **Depression Cases – Mitigation**

*The Florida Bar v. Shoureas*, 91s3 o. 2d 554 (Florida 2006)

A disciplinary referee recommended that Shoureas be suspended for three years, concurrent with a prior suspension, pay restitution, and continue her treatment and counseling with the Florida Lawyer Assistance Program. She had a well-documented history of chronic depression. The Court accepted those recommendations. The referee’s findings regarding neglect of two matters were approved by the Court. Shoureas had been previously suspended for similar conduct. The Court found one aggravating circumstance and several mitigating circumstances. She had been previously disciplined twice for neglect but the Court noted that in the present case imposition of the prior disciplinary measures occurred long after the neglect in the instant case. She thus did not have the benefit of the rehabilitative effect of the prior sanctions at the time she engaged in the conduct that resulted in the present violations.
Lawyer Disciplinary Board v. Dues, 624 S.E.2d 125  
(West Virginia 2005)

Public censure and other sanctions, including a 24-month restriction on working as a mental health commissioner. The attorney did not contest the violations found by the Board, which included neglecting clients and cases. He did oppose the recommended sanction an 18-month suspension. Dues asserted that the debilitating condition of his mental health was a mitigating factor that justified not suspending his license. Dues suffered from severe depression after heart surgery and there was no evidence of selfish or dishonest motive. The Court applied the ABA Standards regarding mental disability: (1) there is medical evidence of a mental disability; (2) the mental disability caused the misconduct; (3) recovery from the mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and the misconduct if not likely to recur.

7. Depression Cases - No Mitigation

Meaden v. District of Columbia Court of Appeals,  
902 A.2d 802 (District of Columbia 2006)

Reciprocal three-year suspension imposed. The attorney was suspended in New Jersey for three years related to charges that he attempted to obtain golf equipment using another person’s credit card. This Court held that Meaden’s proofs regarding mitigation relating to his bipolar disorder fell short of the New Jersey standard because his conduct, not the illness, formed the basis for the imposition of the discipline. In the New Jersey case the hearing board heard conflicting medical testimony and concluded that his illness did not excuse his misconduct. The board accepted the opinion of a physician that Meaden’s
condition and the fact that he was between medications ‘did not so impair Mr. Meaden’s basic cognitive and thought processes (for engaging in planned, purposeful, careful, and other such behaviors) as to have prevented him from doing so.’ The conclusion was that Meaden ‘knew what he was doing when he attempted to obtain golf equipment using someone else’s credit card and that he understood that it was wrong to do so.’


Reciprocal discipline in New York. Supino was suspended in New Jersey for his actions during a contentious divorce with his former wife wherein he filed nine criminal complaints against her, all but one of which was dismissed; filed at least 30 criminal complaints against seven different police officers, which were either withdrawn or dismissed; threatened to file complaints against judges at least eight times and left threatening messages with a court administrator. He was suspended for three months. The New Jersey Hearing Panel declined to accord any significant weight to his testimony about his mental condition, as he failed to provide any corroborating medical records.

8. Other Mental Health Cases

Columbus Bar Association v. Winkfield. 839 N.E. 2d 924 (Ohio 2006)

Indefinite suspension with conditions. The Court noted that there was proof that the mental disability was causally connected to the misconduct. The attorney had been previously disciplined for professional misconduct on two occasions. On the second occasion he failed to make restitution and was not reinstated to practice after his license was suspended. Most of the charges involved neglect. The sanction of indefinite suspension was chosen instead of disbarment due to his
history of mental impairment, his extremely difficult upbringing, and a character reference from bar counsel. The diagnoses included depression, attention-deficit disorder and a ‘long standing personality disorder not otherwise specified.’ Two mental health care providers agreed that Winkfield continued to show signs of his illness that precluded his competent and ethical practice of law. His reaction to life was described as ‘doing the best he can’ despite being pathologically unable to accept responsibility for his negative behavior of the mistakes he has made personally and professionally.

9. **Gambling Cases - Mitigation**

*Coffman v. Ky Bar Association*, 183 S.W. 3d 176 (Kentucky 2006)

Public reprimand with a 61-day suspension, with the period of suspension probated. Coffman pled guilty in Federal Court to one count of willfully failing to pay taxes. At sentencing, a psychologist testified that Coffman had been a pathological gambler. The expert testified that Coffman had a secondary disorder of alcohol abuse that was common in those suffering from pathological gambling. The attorney seriously and aggressively addressed his gambling addiction, his alcohol abuse and his major depression issues. Coffman had not gambled since 1999 and had been sober since 2002.

10. **Gambling Cases – No Mitigation**

*Iowa Supreme Court v. Reilly*, 708 N.W. 2d 82 (Iowa 2006)

License revoked. Reilly had an uncontrollable gambling problem that left him in constant need of funds. The commission found that Reilly was guilty of a
conversion of client’s funds and had perpetrated a check-kiting scheme that caused a substantial loss to one of the banks involved in the transaction. The Grievance Commission recommended a three-year suspension. In rejecting that recommendation the Court noted that the misappropriation of client funds would by itself warrant a revocation of his license. The check-kiting scheme was an aggravating factor.

11. **Cases Involving Physical Illness**

*In re Kleefield, 22 A.D. 3d 94 (New York 2005)*

The recommended sanction of public censure was disaffirmed, and the attorney was suspended from the practice of law for a period of three months. Kleefield was charged with professional misconduct consisting of handling a legal matter that he knew or should have known he was not competent to handle, neglecting a matter entrusted to him, failing to carry out a contract of employment, and, having withdrawn from employment, failing to refund promptly the fee paid in advance. At the sanctions hearing Kleefield’s psychiatrist testified that Kleefield, then 76, years old, suffered from Parkinson’s disease, that he was being treated for depression resulting from his physical ailments, and that he suffered attacks of vertigo. The psychiatrist testified that there is no memory loss associated with vertigo and that his Parkinson’s disease had no effect on his mental ability. The Court concluded that the evidence adduced in mitigation did not demonstrate a connection between Kleefield’s episodes of vertigo or other medical conditions and his neglect of his client’s legal matter of his failure to refund promptly the deposit.
12. **Cases Involving Sexual Behavior**

*Cincinnati Bar Assn v. Kenney,* 850 N.E. 2d 60 (Ohio 2006)

Two-year suspension with 18 months stayed on conditions. Kenney, a former municipal court judge, pled guilty to sexual imposition and was sentenced to 60 days in the county jail with 50 days suspended. A police detective questioned him after a 21-year old male accused him of having unlawful sexual contact with him. During the interview with the detective Kenney denied he had done anything improper to the victim. Later in the interview he did tell the detective what happened with the victim, i.e. that he had touched the victim’s stomach while the victim slept on a sofa in the attorney’s home.

*Oklahoma Bar Assn. v. Wilburn,* 2006 OK 50 (Oklahoma 2006)

The attorney was charged with two felony counts of sexual battery arising from his contact with female security guards at a county courthouse. The allegation was that he slapped them both on their buttocks. Eventually, he pled guilty to misdemeanor charges, and he received a one-year suspended sentence as to each count. The Bar filed a disciplinary complaint and recommended a private reprimand. The Court rejected the recommendation in favor of a public censure, noting that Wilburn expressed remorse and had attended counseling sessions. However, because his profession required him to make frequent appearances at public courthouses, a public censure served to protect the public and to warn other bar members that such conduct was not tolerated.
13. **Admission/Reinstatement**

*In Re Hartmann*, 705 N.W. 2d 443 (Nebraska 2005)

Hartmann’s application to take the bar examination was denied, based upon The Nebraska State Bar Commission’s determination that he did not fit the character and fitness requirements for admission. In his application Hartmann disclosed his complete criminal history, which included a 1977 charge of reckless driving, a 1992 charge of driving under the influence that was later reduced to reckless driving and a 2002 charge of third degree sexual assault. The latter charge was based on allegations by his 15-year old niece that he placed his hand on her leg while in a darkened movie theater. Hartmann had been diagnosed with major depressive disorder, adjustment disorder with depressed mood, and personality disorder not otherwise specified. The Court found that there was insufficient evidence of rehabilitation to safely predict that the pattern of behavior would not recur.
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